

**Andreas v Cushing**

2022 NY Slip Op 30797(U)

March 8, 2022

Supreme Court, New York County

Docket Number: Index No. 156486/2016

Judge: Alexander M. Tisch

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ALEXANDER TISCH PART 18

Justice

INDEX NO. 156486/2016
MOTION DATE 01/19/2022, 02/23/2022
MOTION SEQ. NO. 013 014

GERALDINE ANDREAS, CHRISTOPHER DARK,
GERALDINE ANDREAS A/K/A GERI ANDREAS AND
CHRISTOPHER DARK A/K/A CHRISTOPHER J.L. DARK
AS A SHAREHOLDERS OF 186 TENANTS CORP.,

Plaintiff,

- v -

JUSTINE CUSHING, 186 TENANTS CORP.,

Defendant.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 013) 402, 403, 404, 405, 406, 407, 408

were read on this motion to/for EXTEND - TIME

The following e-filed documents, listed by NYSCEF document number (Motion 014) 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421

were read on this motion to/for AMEND CAPTION/PLEADINGS

Upon the foregoing documents, plaintiffs moves for leave to amend the complaint (motion sequence no. 14) and to extend the time to file the note of issue in light of the proposed amended complaint (motion sequence no. 13).

"Motions for leave to amend pleadings should be freely granted, absent prejudice or surprise resulting therefrom, unless the proposed amendment is palpably insufficient or patently devoid of merit" (Y.A. v Conair Corp., 154 AD3d 611, 612 [1st Dept 2017]). While it is true that mere lateness is not a barrier to amendment, the amendment will be barred if such lateness is "coupled with significant prejudice to the other side" (Jacobson v Croman, 107 AD3d 644, 645 [1st Dept 2013], quoting Edenwald Contr. Co. v City of New York, 60 NY2d 957, 959 [1983]). "[A] motion for leave to amend is committed to the broad discretion of the court" (Yong Soon

Oh v Hua Jin, 124 AD3d 639, 640 [2d Dept 2015]; see Jacobson v Croman, 107 AD3d 644, 644-46 [1st Dept 2013] [“where the amendment is sought after a long delay, and a statement of readiness has been filed, judicial discretion in allowing the amendment should be discreet, circumspect, prudent and cautious”], quoting Cseh v New York City Tr. Auth., 240 AD2d 270, 272 [1st Dept 1997]). “In exercising its discretion, the court should consider how long the party seeking the amendment was aware of the facts upon which the motion was predicated [and] whether a reasonable excuse for the delay was offered” (Yong Soon Oh, 124 AD3d at 640, quoting Cohen v Ho, 38 AD3d 705, 706 [2d Dept 2007]).

Here, plaintiff seeks to add approximately 14 new claims, 2 new defendants, and otherwise amend allegations to existing claims. None of the proposed changes are supported by an explanation for the change or addition. Other than tersely referencing the fact that expert reports were exchanged in November 2021 and disclosure has concluded in December 2021, plaintiff fails to state a reason for the delay in seeking this amendment. Notably, the facts upon which plaintiff bases this amendment appear to have been known for quite some time. The expert report referenced was exchanged in February 2021, although a typo was corrected and re-circulated to all parties in November. The proposed new defendants have been involved with the building since 2017. All sides agreed at the December 8, 2021 status conference before the Court that (with the exception of the possible deposition of one non-party) all discovery was completed and the note of issue was set to be filed by December 31, 2021 (cf. Antwerpse Diamantbank N.V. v Nissel, 27 AD3d 207, 208 [1st Dept 2006] [“Despite the passage of a year since the filing of the original answer, there was no prejudice to plaintiff because of the lack of significant discovery or other progress in the case”]). Consequently, the Court denies the motion in light of the unexplained changes and lack of excuse for the delay with respect to each and every one of

the proposed changes. Because of such failure to state the reason for the changes or for the delay in moving to amend at this stage in the litigation, the Court cannot surmise any legitimate purpose other than to needlessly complicate and/or delay the disposition of this almost-6-year old case (see Cafe Lughnasa Inc. v A & R Kalimian LLC, 176 AD3d 523 [1st Dept 2019], citing Verizon New York, Inc. v Consol. Edison, Inc., 38 AD3d 391 [1st Dept 2007]).

Additionally, the lateness prejudices the defendants. Permitting the amendment to add 14 new claims<sup>1</sup> and 2 new defendants would undo the years of discovery and litigation that all the parties and their counsel have put into this complex matter, as expounded upon in the defendants' opposition papers to both motions. Thus, the Court finds that the motion should be denied for this reason as well (see Ravnikar v Skyline Credit-Ride, Inc., 79 AD3d 1118, 1119-20 [2d Dept 2010] [leave to add "12 causes of action alleging new and distinct acts of alleged retaliation" denied as it "would undoubtedly prejudice the defendant at this late stage of the litigation"]; Cafe Lughnasa Inc., 176 AD3d 523).

The only possible change(s) that the Court finds could be permissible at this late stage are those changes that seek to amend or add certain allegations to already existing claims set forth in the fourth and ninth causes of action (see NYSCEF Doc No. 412 at ¶¶ 16 and 21). However, the Court declines to grant the motion in part without the benefit of having the proposed amended pleading in redlined format or otherwise clearly showing the proposed changes, which is required by CPLR 3025 (b) (see Cafe Lughnasa Inc., 176 AD3d 523).<sup>2</sup>

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<sup>1</sup> Some of the claims appear to be entirely unrelated to the central issues in this action, further insinuating that there's no legitimate purpose here (see, e.g., NYSCEF Doc No. 412 at ¶ 18, describing the proposed sixth cause of action as a claim for attorneys' fees and expenses incurred in a separate summary eviction proceeding in Housing Court).


<sup>2</sup> The Court suggests the parties consider whether they may be able to stipulate to such amendment for those changes.

With respect to the motion to extend the note of issue, which expired December 31, 2021, plaintiffs contend that they sought an extension as the proposed amended complaint would necessarily require further discovery. As the motion to amend the complaint is denied, there is no need to extend the note of issue. Although plaintiffs chose to forego filing for interim relief so that the deadline would not expire, the Court will permit an extension of time pursuant to CPLR 2004 as plaintiffs' counsel affirmation states he was ill at the end of December 2021.

Accordingly, it is hereby ORDERED that the motion to amend the complaint (motion sequence no. 14) is denied; and it is further

ORDERED that the motion to extend time to file the note of issue (motion sequence no. 13) is granted in part, and plaintiffs must file the note of issue within 20 days from entry of this order.

This constitutes the decision and order of the Court.

<u>3/8/2022</u> DATE					 ALEXANDER TISCH, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE