

Katz v 30 E 40th St. JV, LLC
2022 NY Slip Op 31695(U)
May 25, 2022
Supreme Court, New York County
Docket Number: Index No. 160480/2020
Judge: William Perry
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. WILLIAM PERRY PART 23

Justice

-----X

INDEX NO. 160480/2020

FRANCES KATZ,

MOTION DATE 01/03/2022

Plaintiff,

MOTION SEQ. NO. 001

- v -

30 E 40TH STREET JV, LLC, 30 EAST 40TH, LLC, SL GREEN REALTY CORP., LAWLAND CORP., NINETY PARK PROPERTY, LLC, WALTER & SAMUELS, INC.

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52

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

Plaintiff Frances Katz brings this action against Defendants 30 East 40th Street JV LLC, 30 East 40th LLC, SL Green Realty Corporation (“SL Green”), Lawland Corporation, Ninety Park Property LLC (“Ninety Park”), and Walter & Samuels Inc., alleging that she was caused to trip and fall on the sidewalk near 30 East 40th Street, New York, NY due to their negligence.

In motion sequence 001, Plaintiff moves (1) to amend the complaint to add Vornado Realty Trust, the parent company of Ninety Park Property, as an additional defendant; and (2) to deem as admitted by 30 East 40th JV LLC and SL Green the factual assertions contained in her May 27, 2021 Notice to Admit.

“In general, leave to amend should be freely granted in the absence of prejudice or surprise, upon showing that the proposed amendment has merit.” (*Centrifugal Assocs., Inc. v. Highland Metal Indus., Inc.*, 193 AD2d 385, 385 [1st Dept 1993].) Plaintiff submits sufficient evidence demonstrating that Vornado Realty Trust is the parent company of Ninety Park Property. (NYSCEF Doc No. 34, Memo, at ¶¶ 9-13; Doc No. 40, Insurance Letter; Doc No. 41. SEC Filing.)

In opposition, Ninety Park fails to demonstrate that it would be prejudiced or surprised by the addition of Vornado, nor does it demonstrate that the proposed amendment is utterly devoid of merit at this stage of litigation. Ninety Park's citation to caselaw is inapposite. (NYSCEF Doc No. 50, Opposition, at ¶¶ 17-18, citing *Horowitz v Aetna Life Ins.*, 148 AD2d 584, 586 [2d Dept 1989] [granting motion to dismiss causes of action against parent company upon plaintiff's failure to adequately allege control over subsidiary]; *Fairpoint Cos., LLC v Vella*, 145 AD3d 645, 645-646 [1st Dept 2015] [denying motion to add parent company as defendant under alter ego theory upon insufficient allegation of parent company's abuse of corporate form].)

Plaintiff's motion to deem admitted, allegations contained in the May 27, 2021 Notice to Admit (NYSCEF Doc No. 9) is denied.

A preliminary conference pursuant to 22 NYCRR 202.12, has not been held in this matter. Moreover, plaintiff has failed to demonstrate compliance with 22 NYCRR 202.20-f (b). Accordingly, it is hereby

ORDERED that the second amended summons and complaint, in the form annexed to the motion papers, shall be deemed served upon service of a copy of this order with notice of entry upon all parties in the action; and it is further

ORDERED that the second amended summons and complaint, in the form annexed to the motion papers, shall be served, in accordance with the Civil Practice Law and Rules, upon the additional parties in this action within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that the action shall bear the following caption:

SUPREME COURT STATE OF NEW YORK
 COUNTY OF NEW YORK

-----X
 FRANCES KATZ

Plaintiff,

Index No. 160480/2020

-against-

30 E 40TH STREET JV, LLC, 30 EAST 40TH LLC,
 SL GREEN REALTY CORP., NINETY PARK
 PROPERTY, LLC, LAWLAND CORP.,
 WALTER & SAMUELS, INC., and VORNADO
 REALTY TRUST

Defendants.

-----X
 And it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being added pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address (www.nycourts.gov/supctmanh)); and it is further

ORDERED that Plaintiff's motion seeking an order pursuant to CPLR 3123 to deem admitted allegations set forth in the Notice to Admit dated May 27, 2021, is denied; and it is further

ORDERED that the parties are directed to meet and confer and electronically file a proposed Preliminary Conference Order for the court's review and signature, within thirty (45) days.

5/25/2022

DATE



WILLIAM PERRY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE