

Nocera v RCPI Landmark Props., LLC
2022 NY Slip Op 32112(U)
July 6, 2022
Supreme Court, New York County
Docket Number: Index No. 157885/2020
Judge: Shlomo Hagler
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SHLOMO HAGLER PART 17

Justice

-----X

VITO NOCERA,

Plaintiff,

- v -

RCPI LANDMARK PROPERTIES, LLC, TISHMAN SPEYER,
CUSTODIO CONSULTING LLC, CHRISTIE'S INC.,

Defendant.

-----X

RCPI LANDMARK PROPERTIES, LLC, TISHMAN SPEYER

Plaintiff,

-against-

CHRISTIE'S INC.

Defendant.

-----X

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595965/2020

The following e-filed documents, listed by NYSCEF document number (Motion 001) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 46, 48, 49

were read on this motion to/for

AMEND CAPTION/PLEADINGS

Upon the foregoing documents, it is

In this personal injury action, plaintiff moves for an order for an order: (1) pursuant to CPLR §3025(b), permitting plaintiff to amend her complaint to add third-party CHRISTIE'S INC. as direct defendant; (2) granting leave to plaintiff to serve the proposed amended summons and complaint as presented herein; (3) amending the complaint and caption to include Plaintiff's direct action against CHRISTIE'S INC.

On July 19, 2018, Plaintiff allegedly sustained serious injury after being caused to trip and fall due to the negligence of Defendants. Plaintiff then commenced the subject action by filing his Summons and Verified Complaint on or about September 23, 2020. Defendants, RCPI LANDMARK PROPERTIES, LLC, and TISHMAN SPEYER, interposed its Verified Answer on or about October 8, 2020. Defendant, CUSTODIO CONSULTING LLC, interposed its Verified Answer on or about January 30, 2021. On November 19, 2020, defendant, RCPI LANDMARK PROPERTIES, LLC, and TISHMAN SPEYER, filed a Third-Party Complaint against Third-Party Defendants. Notably, the Third-Party Complaint attached Plaintiff's Summons and Complaint as an exhibit. Defendants, RCPI LANDMARK PROPERTIES, LLC, and TISHMAN SPEYER, alleged in its Third-Party Complaint that Plaintiff Vito Nocero commenced an action against defendants RCPI LANDMARK PROPERTIES, LLC, TISHMAN SPEYER and CUSTODIO CONSULTING LLC arising out of damages for personal injuries sustained by the Plaintiff as a result of an incident which occurred on July 16, 2018, on the premises 1230 Avenue of the Americas, Fifth Floor, which had been leased to CHRISTIE'S INC. (NYSCEF #12, ¶4-5). Defendants, RCPI LANDMARK PROPERTIES, LLC, and TISHMAN SPEYER, further alleged that Plaintiff's damages were caused by reason of carelessness, recklessness, and negligence and/or act of omission or commission by Third-Party Defendant CHRISTIE'S INC. and/or its agents, servants and/or employees. (Id. at ¶7). Defendants, RCPI LANDMARK PROPERTIES, LLC, and TISHMAN SPEYER, further alleged that Third-Party Defendant CHRISTIE'S INC would be liable to Defendants, RCPI LANDMARK PROPERTIES, LLC, and TISHMAN SPEYER for any recovery by the Plaintiff. (Id. at ¶8). Third-party Defendants interposed their Verified Answer to RCPI LANDMARK PROPERTIES, LLC, and TISHMAN SPEYER's Third-Party Complaint on January 25, 2021.

Assuming *arguendo* that the statute of limitations in this matter would have expired on May 15, 2021¹, plaintiff argues that amended complaint should be deemed proper based on the relation back doctrine. In particular, plaintiff relies on *Duffy v Horton Mem. Hosp.*, 66 NY2d 473 (1985) for the proposition that a direct claim against a third-party defendant, which is asserted in an amended complaint, relates back to the date of service of the third-party complaint for purposes of the Statute of Limitations, pursuant to CPLR §203(e), where the third-party complaint and the amended complaint are based on the same transaction or occurrence. The Court in *Duffy* discussed its rationale for arriving at this holding where the Court stated as follows:

“It is evident that when a third party has been served with the Third-party complaint, and all prior pleadings in the action as required by CPLR 1007, the third-party defendant has actual notice of the plaintiff's potential claim at that time. The third-party defendant must gather evidence and vigorously prepare a defense. There is no temporal repose. Consequently, an amendment of the complaint may be permitted, in the court's discretion, and a direct claim asserted against the third-party defendant, which, for the purposes of computing the Statute of Limitations period, relates back to the date of service of the third-party complaint (see, McLaughlin, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, C203:11, p 124; Siegel, NY Prac § 49, at 17-18 [1985 Supp]; 6 Wright and Miller, Federal Practice & Procedure § 1498).” *Duffy v Horton Mem. Hosp.*, 66 NY2d 473, 478 [1985].

(*Id.* at 475).

¹ Plaintiff argues that the Governor's Executive Orders effectively tolled the statute of limitations period and, therefore, the proposed second amended complaint is timely.


In this case, the Third-Party Defendants were served with the Third-Party Summons and Complaint on November 19, 2020, and thus has been on actual notice since the time of service of the Third-Party Complaint. Therefore, Plaintiff's second amended complaint relates back to the time of service of the Third-Party Complaint and is timely based upon the relation back doctrine.

Accordingly, it is

ORDERED, that plaintiff's motion is granted as follows:

- 1) permitting plaintiff to amend her complaint to add third-party CHRISTIE'S INC. as a direct defendant;
- 2) granting leave to plaintiff to serve the proposed amended summons and complaint as presented herein;
- 3) amending the complaint and caption to include Plaintiff's direct action against CHRISTIE'S INC.

The foregoing constitutes the Decision and Order of this Court.

<u>7/6/2022</u> DATE		 _____ SHLOMO HAGLER, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED <input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED <input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> SETTLE ORDER <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> SUBMIT ORDER <input type="checkbox"/> FIDUCIARY APPOINTMENT
CHECK IF APPROPRIATE:		<input type="checkbox"/> OTHER <input type="checkbox"/> REFERENCE