

Brown v City of New York

2022 NY Slip Op 32787(U)

August 17, 2022

Supreme Court, New York County

Docket Number: Index No. 150757/2019

Judge: John J. Kelley

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOHN J. KELLEY PART 56M

Justice

-----X

INDEX NO. 150757/2019

CLARENCE BROWN and BETTY BROWN,

MOTION DATE 06/10/2022

Plaintiff,

MOTION SEQ. NO. 002

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY
DEPARTMENT OF BUILDINGS, THE NEW YORK CITY
DEPARTMENT OF DESIGN AND CONSTRUCTION, THE
NEW YORK CITY DEPARTMENT OF EDUCATION, THE
NEW YORK CITY HOUSING AUTHORITY, and DURANTE
RENTALS, LLC,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

DURANTE RENTALS, LLC

Third-Party Plaintiff,

-against-

INNOVAX-PILLAR, INC.

Third-Party Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 55, 56, 57, 58, 59, 60, 61, 106, 107, and 110

were read on this motion to/for AMEND ANSWER.

In this action to recover damages for personal injuries, the defendants The City of New York, The New York City Department of Buildings, The New York City Department of Design and Construction, and The New York City Department of Education (collectively the City defendants), together move pursuant to CPLR 3025(b) for leave serve an amended answer so as to deny ownership of the premises at which the subject accident occurred. The plaintiffs oppose the motion. The motion is granted.

In their complaint, the plaintiffs alleged that, on May 2, 2018, the plaintiff Clarence Brown was injured in the course of working on the construction of West End Secondary School at 227 West 61st Street in Manhattan. They further alleged that, at that time, the City defendants owned the construction site. In their answer, the City defendants admitted to being the owners and developers of the site.

On January 31, 2022, the plaintiffs served and filed a note of issue and certificate of readiness. By order dated May 20, 2022 (SEQ 001), this court denied the motion of the City defendants, joined in by the defendant The New York City Housing Authority, and the third-party defendant Innovax-Pillar, Inc., to vacate the note of issue, compel further discovery, and impose sanctions upon the plaintiffs for failure to provide responses to discovery demands. The City defendants now seek leave to amend their answer so as to deny that they were the owners of the accident site as of May 2, 2018 and that 61 Owner, LLC, was the owner as of that date.

Leave to amend a pleading is to be freely given absent prejudice or surprise resulting from the amendment (see CPLR 3025[b]; *McCaskey, Davies and Assocs., Inc v New York City Health & Hospitals Corp.*, 59 NY2d 755, 757 [1983]; *360 West 11th LLC v ACG Credit Co. II, LLC*, 90 AD3d 552, 553 [1st Dept 2011]; *Smith-Hoy v AMC Prop. Evaluations, Inc.*, 52 AD3d 809, 811 [1st Dept 2008]; *Daniels v Kromo Lenox Assoc.*, 275 AD2d 608, 608 [1st Dept 2000]; *Bellini v Gesalle Realty Corp.*, 120 AD2d 345, 347 [1st Dept 1986]). Thus, leave to amend should be granted unless the proposed amended pleading is "palpably insufficient or clearly devoid of merit" (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 500 [1st Dept 2010]; see *Hill v 2016 Realty Assoc.*, 42 AD3d 432, 433 [2d Dept 2007]) or the amendment would prejudice the opposing party (*Blue Diamond Fuel Oil Corp. v Lev Mgt. Corp.*, 103 AD3d 675, 676 [2d Dept 2013]). "Mere lateness is not a barrier to the amendment. It must be lateness coupled with significant prejudice to the other side, the very elements of the laches doctrine" (*Edenwald Contracting Co., Inc. v City of New York*, 60 NY2d 957, 959 [1983] [internal quotation marks and citation omitted]; see *Abdelnabi v New York City Tr. Auth.*, 273 AD2d 114, 115 [1st

Dept 2000)). In any event, this motion for leave to amend the answer was made only 45 days after the plaintiffs served and filed the note of issue (see *Perkins v New York State Electric & Gas Corp.*, 91 AD2d 1121, 1122 [3d Dept 1983] [granting leave to amend pleading pursuant to motion made five months after the filing of the note of issue]).

Contrary to the plaintiffs' contention, the City defendants were not obligated affirmatively to establish the merit of their proposed defense. Rather, only "where the lack of merit of a proposed defense is clear and free from doubt," should "a motion for leave to amend an answer to raise that defense . . . be denied" (*Lucido v Mancuso*, 49 AD3d 220, 226 [2d Dept 2008]). Hence, "[n]o evidentiary showing of merit is required under CPLR 3025(b)" (*id.* at 229; see *Hickey v Steven E. Kaufman, P.C.*, 156 AD3d 436, 436 [1st Dept 2017]; *MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d at 500). The court also rejects the plaintiff's contention that they would be prejudiced by the proposed amendment, as the City defendants correctly pointed out that, as of March 25, 2021, and thus more than one year prior to the filing of the note of issue, the plaintiffs were informed that 61 Owner, LLC, owned the accident site as of the date of the accident.

Accordingly, it is

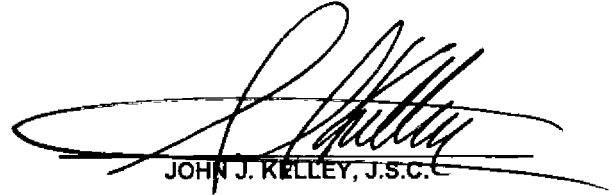
ORDERED that the motion is granted, and the defendants The City of New York, The New York City Department of Buildings, The New York City Department of Design and Construction, and The New York City Department of Education are granted leave to serve and file an amended answer in the form uploaded to the New York State Court Electronic Filing system as docket entry 61; and it is further,

ORDERED that the amended answer is deemed to have been timely served and filed, nunc pro tunc, as of March 17, 2022.

This constitutes the Decision and Order of the court.

8/17/2022

DATE


JOHN J. KELLEY, 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