

Haskins v Metropolitan Transp. Auth.

2022 NY Slip Op 33122(U)

September 13, 2022

Supreme Court, New York County

Docket Number: Index No. 151643/2020

Judge: Sabrina Kraus

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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. SABRINA KRAUS PART 57TR

Justice

-----X

DARREN T. HASKINS,

Plaintiff,

- v -

METROPOLITAN TRANSPORTATION AUTHORITY,
TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY,
ENTECH ENGINEERING, P.C.,

Defendants.

-----X

METROPOLITAN TRANSPORTATION AUTHORITY,
TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY

Third-Party Plaintiffs,

-against-

ENTECH ENGINEERING, P.C.

Third-Party Defendant.

ENTECH ENGINEERING, P.C.,

Second Third-Party Plaintiff,

-against-

RESTANI CONSTRUCTION CORP.,

Second Third-Party Defendant.

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INDEX NO. 151643/2020
MOTION DATE 08/16/2022
MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

Third-Party
Index No. 595834/2020

The following e-filed documents, listed by NYSCEF document number (Motion 005) 142, 143, 144, 145, 146, 147, 148, 149

were read on this motion to/for Dismissal & Cross Motion for leave to amend .

BACKGROUND

This is an action for personal injuries sustained by plaintiff on October 15, 2019, at approximately 10:00 a.m., on the roadway at or about the southbound exit lanes of the Henry Hudson Bridge, in New York County. As a result of the occurrence involved herein, plaintiff alleges he was caused to sustain serious permanent personal injuries.

PROCEDURAL HISTORY

Plaintiff commenced this action by filing a summons and complaint on February 13, 2020. On May 13, 2020, Metropolitan Transportation Authority (MTA) and Triborough Bridge and Tunnel Authority (TBTA) appeared and answered. On May 15, 2020, MTA and TBTA amended their answers.

On October 8, 2020, TBTA and MTA filed a Third-Party Summons and Third-Party Complaint against Entech Engineering (Entech). On March 5, 2021, Entech appeared and answered. On February 22, 2022, Entech filed a Second Third-Party Summons and Second Third-Party Complaint against Third-Party Defendant Restani Construction Corp (Restani). On June 16, 2022, Restani Construction Corp. filed an answer with counterclaims.

On June 29, 2022, plaintiff filed a Supplemental Summons and a Verified Amended Complaint. On July 5, 2022, Entech Engineering filed a Reply to the Counterclaims.

PENDING MOTIONS

On August 16th, 2022, Entech moved for an order pursuant to CPLR §3025(a) dismissing the Supplemental Summons and Verified Amended Complaint filed by plaintiff on June 29, 2022, as untimely served.

On the same date, plaintiff cross-moved for an order pursuant to CPLR §3025(b) granting plaintiff leave *nunc pro tunc* to serve the Supplemental Summons and Amended Complaint previously filed on June 29, 2022.

For the reasons stated below, Entech's motion is denied and plaintiff's cross-motion is granted.

DISCUSSION

Pursuant to CPLR § 3025(a) “ (a) party may amend his pleading once without leave of court within twenty days after its service, or at any time before the period for responding to it expires, or within twenty days after service of a pleading responding to it.” CPLR § 3025(b) provides “(a) party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties.”

Entech alleges that for plaintiff to amend his pleadings without leave of court, his Supplemental Summons and Verified Amended Complaint had to be amended by June 4, 2020. Entech argues that plaintiff cannot rely upon the Answer with Counterclaims that was filed on behalf of Restani because the counterclaims were asserted solely against Entech and no responsive pleading was due from the plaintiff.

It is axiomatic that motions to amend pleadings should be granted freely unless it is palpably improper or actual prejudice results. *See* CPLR 3025(b); *Nissenbaum v. Ferazzoli*, 171 A.D.2d 654 (2nd Dept. 1991); *Haven Associates v. Duoro Realty Corp.*, 96 A.D.2d 526 (2nd Dept. 1983).

“[I]n the absence of prejudice or surprise to the opposing party, leave to amend a [pleading] should be freely granted unless ‘the proposed amendment is palpably insufficient or

patently devoid of merit” (*Rodgers v. New York City Tr. Auth.*, 109 A.D.3d 535, 536 quoting *Delahaye v. Saint Anns School*, 40 A.D.3d 679, 685; see CPLR 3025[b]).

Entech is a necessary party and should be added as a direct defendant. Entech has been a party in this action throughout the course of discovery and has conducted plaintiff’s deposition as well as the deposition of the other defendants and that of a non-party coworker. Entech has produced its own witness. Furthermore, the defendants cannot claim prejudice because the statute of limitations does not expire until November 19, 2021.

WHEREFORE it is hereby:

ORDERED that Entech’s motion to dismiss is denied; and it is further

ORDERED that the plaintiff’s cross-motion for leave to amend the complaint herein is granted, and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that Entech shall serve an answer to the amended complaint within 20 days from the date of said service; and it is further

ORDERED that, within 20 days from entry of this order, Entech shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk 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 any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that this constitutes the decision and order of this court.



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9/13/2022
DATE

SABRINA KRAUS, 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