

<b>Trant v City of New York</b>
2022 NY Slip Op 34193(U)
December 8, 2022
Supreme Court, New York County
Docket Number: Index No. 160187/2021
Judge: Leslie A. Stroth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH

PART 52

Justice

INDEX NO. 160187/2021

SHEILA TRANT,

MOTION DATE 07/26/2022

Plaintiff,

MOTION SEQ. NO. 001

- v -

CITY OF NEW YORK, RUPPERT YORKVILLE TOWERS
CONDOMINIUM, FRIENDS OF JAMES CAGNEY PLACE,
LLC

DECISION + ORDER ON
MOTION

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18,
19, 20, 21, 22, 23

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

Plaintiff moves the Court for an order, pursuant to CPLR 3025 (b) and 1003 amending the caption
in the instant matter to add R.Y. Management Co. Inc. (R.Y. Management) as an additional first party
defendant. Defendants Ruppert Yorkville Towers Condominium (Ruppert Towers) and Friends of James
Cagney Place, LLC (Friends of James Cagney Place) oppose the motion.

This action arises from an accident that occurred on May 25, 2021, when plaintiff Sheila Trant
(plaintiff) sustained injuries when she allegedly tripped and fell on a sidewalk located in part of a street
enclosure known as James Cagney Place LLC (James Cagney Place) at East 91st Street between Second
Avenue and Third Avenue, New York, NY. According to plaintiff, the street, which is closed to traffic
and contains a pedestrian mall, is known as "James Cagney Place" and is maintained by defendant Friends
of James Cagney Place. Plaintiff's Affirmation, NYSCEF doc. no. 15 at ¶ 1.

1 Plaintiff objects to the Court's consideration of defendant's opposition papers as untimely. Defendants filed their opposition
on the motion's return date, and plaintiff submitted substantive reply papers. Given the short delay and little to no resulting
prejudice, as plaintiff had the opportunity to reply, the Court will consider both the opposition and the reply.

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. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances.

Leave to amend a caption should be freely granted in the absence of prejudice or surprise unless the proposed amendment is palpably insufficient or patently devoid of merit. *See MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499 (1st Dept 2010). The First Department, Appellate Division has held that, “[the] plaintiff need not establish the merit of its proposed new allegations...but simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit.” *Id.* at 500 (citations omitted). “The burden of establishing prejudice is on the party opposing the amendment.” *Kimso Apartments, LLC v Gandhi*, 24 NY3d 403, 411 (2014) (citations omitted). Courts are given “...considerable latitude in exercising their discretion, which may be upset by us only for abuse as a matter of law.” *Matter of Von Bulow*, 63 NY2d 221 (1984).

Plaintiff claims that R.Y. Management is the managing agent of defendant Ruppert Towers, and, as such, is a necessary party to this action. She further alleges that Ruppert Towers and R.Y. Management “have a history of involvement with the street and street closure.” Affirmation in Support, NYSCEF doc. no. 15 at ¶ 2. Furthermore, plaintiff claims that R.Y. Management employees submitted an application to designate the subject street enclosure as a pedestrian plaza called James Cagney Place, were involved in creating Friends of James Cagney Place, and were members of its Board.

Plaintiff also asserts that Friends of James Cagney Place is responsible for the maintenance of the subject sidewalk. Plaintiff cites to a portion of R.Y. Management employees’ application that states “[m]aintenance, cleaning, sidewalk and street repairs, snow removal, lighting and maintenance etc are provided by the sponsoring complex buildings.” NYSCEF doc. no. 16 at 4. Additionally, plaintiff cites to a letter dated June 22, 2017 on R.Y. Management stationery from Robert Vaccarello of R.Y. Management, which states that the maintenance service includes “clean[ing] and maintain[ing] sidewalks on a daily

basis that will include snow removal and salting during inclement weather.” *Id.* Plaintiff notes that said letter also provides that Ruppert Towers and R.Y. Management provide funding to James Cagney Place. *See id.* Therefore, plaintiff contends that R.Y. Management is a necessary party to this action, as it may operate and have significant involvement with the entity responsible for the sidewalk through James Cagney Place.

Defendants Ruppert Towers and Friends of James Cagney Place confirm that R.Y. Management is the managing agent for Ruppert Towers but oppose plaintiff’s motion, arguing that there is no basis for liability as against R.Y. Management as it did not owe any duty to plaintiff based on the location of the alleged accident or condition of the sidewalk. They assert that plaintiff was injured while walking on a municipal sidewalk parallel to Rupert Park (*not* Ruppert Towers), which is a city park, and that the park and sidewalk is solely under the jurisdiction of New York City’s Parks and Recreation Department. Further, according to the non-City defendants, Ruppert Towers has not controlled the land or surrounding sidewalks of Rupert Park since 1997. In sum, the non-City defendants maintain that, as Ruppert Towers is not liable for this accident as a matter of law, amending the caption to include its managing agent is futile.

The parties do not dispute that the owner of a property abutting a sidewalk has a duty to maintain the sidewalk in a reasonably safe condition, as per Administrative Code of the City of New York § 7-210. The dispute herein is whether the non-City defendants or the City had that duty. While the non-City defendants argue that they are not responsible for the maintenance of the subject sidewalk, such issue has not been decided as a matter of law.

Here, no prejudice or surprise would result from granting the proposed amendments. Additionally, plaintiff’s proposed amendment is not palpably insufficient or patently devoid of merit, because the issue of ownership and responsibility for the subject sidewalk has not yet been determined. Plaintiff provides

an abundance of facts to suggest that R.Y. Management may be involved in the maintenance of the subject area. Therefore, plaintiff's motion to amend the caption to include R.Y. Management is granted.

Accordingly, it is hereby

ORDERED that the plaintiff's motion for leave to amend the complaint is granted; and it is further

ORDERED that the amended 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 who have appeared in the action; and it is further

ORDERED that a supplemental summons and amended 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:

-----X  
SHEILA TRANT,

Plaintiff,

-against-

CITY OF NEW YORK, RUPPERT YORKVILLE  
TOWERS CONDOMINIUM, FRIENDS OF JAMES  
CAGNEY PLACE, LLC AND R.Y. MANAGEMENT  
CO. INC.

Defendant.  
-----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).

This constitutes the decision and order of the Court.

  
LESLIE A. STROTH, J.S.C.

12/8/2022  
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE