

Bedin v 244 W. 22nd St. LLC

2023 NY Slip Op 30570(U)

February 27, 2023

Supreme Court, New York County

Docket Number: Index No. 153594/2022

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

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JANET BEDIN,

Plaintiff,

- v -

244 WEST 22ND STREET LLC, NY SABET MANAGEMENT
INC., REVIVO REALTY CORP., TRIDENT RESTORATION
INC.

Defendant.

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INDEX NO. 153594/2022

MOTION DATE 10/13/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 22, 23, 32, 33, 34, 35, 36, 37, 38, 39, 42, 43, 44, 45, 46

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

Upon the foregoing documents, Plaintiff Janet Bedin’s (“Plaintiff”) motion seeking consolidation and to amend her complaint is granted in part and denied in part.

There is no opposition to Plaintiff’s motion seeking consolidation. However, this branch of the motion is denied without prejudice on procedural grounds. Plaintiff seeks consolidation of an action captioned *Janet Bedin v. NY Sabet Management, Inc.* in this Court with index number 157947/2021 with the case at bar. A review of the complaints and parties in both actions shows that the parties are essentially identical. Moreover, both cases involve personal injuries sustained from portions of a ceiling in Plaintiff’s apartment which purportedly fell on Plaintiff’s head multiple times (NYSCEF Doc. 1 and 15). While the Court agrees that it is appropriate to consolidate these two cases, the proper procedure, for case management reasons, is for the consolidation to take place under the older index number. As Plaintiff seeks consolidation under the newer index number, this branch of the motion is denied without prejudice.

The portion of Plaintiff's motion seeking leave to amend her Complaint is granted in part and denied in part. As Defendants' correctly point out, punitive damages are not recognized as a separate cause of action (*Jean v Chinitz*, 163 AD3d 497 [1st Dept 2018]; *La Porta v Alacra, Inc.*, 142 AD3d 851 [1st Dept 2016]). Therefore, Plaintiff's proposed third cause of action fails as a matter of law and leave to plead the third cause of action is denied.

Defendants argue that Plaintiff's second cause of action, which is titled "Failure to Cure" and alleges property damage to her own, her brother's, and her family's "furniture, fixtures, antiques, artwork, statues, religious figures, clothing, shoes, medications, health products, cosmetics, health devices, and personal jewelry" are time barred pursuant to the statute of limitations (NYSCEF Doc. 32). Plaintiff fails to provide any specific dates in which the property was damaged in her proposed amended Complaint. However, Plaintiff does state that the ceiling collapsed on two separate occasions - once on August 30, 2018, and again in "April of 2019" (NYSCEF Doc. 19). The statute of limitations for property damage is three years (*see* CPLR § 214[4]). As such, the claims for property damage from the August 30, 2018 incident would have ran on August 30, 2021. However, the statute of limitations was tolled by executive order due to COVID-19 from March 20, 2020 until November 3, 2020 (*see* *Murphy v Harris*, 210 AD3d 410, 411 [1st Dept 2022]). Therefore, after the toll was lifted, Plaintiff had until April 14, 2022 to allege a property damage claim based on the August 30, 2018 incident.¹

Plaintiff did not file its motion to amend the Complaint until October 24, 2022 (NYSCEF Doc. 14). Moreover, Plaintiff did not file the summons and complaint in this action until April 26, 2022 (NYSCEF Doc. 1). Therefore, even if the proposed property damage claim based on the

¹ The statute of limitations for property damage runs after the expiration of 1095 days. From August 30, 2018, until March 20, 2020, 527 days had accrued. Plaintiff therefore had 568 days remaining when the toll began on March 20, 2020. When the toll was lifted on November 3, 2020, the remaining 568 days began accruing again, meaning the statute of limitations had run on April 14, 2022.

August 30, 2018 incident related back to the allegations in the original complaint, they would still be untimely since the original complaint was filed after the statute of limitations for the 2018 property damage claim accrued. However, Defendants' argument as it related to the property damage arising from the April 2019 incident is without merit, as based on both the Covid-19 toll and the relation-back doctrine, it is timely (*O'Halloran v Metropolitan Transp. Authority*, 154 AD3d 83, 86-87 [2017]; *see also* CPLR § 203[f]).

Defendants also oppose Plaintiff's proposed second cause of action because she does not have standing to sue for damages to property owned by her "brother and family". While Plaintiff argues that Defendants make a "semantical" argument about the property at issue (NYSCEF Doc. 46), the Court disagrees. A party suing in tort for property damage must have a legal or beneficial interest in the property. A plaintiff cannot raise the legal right of another, and Plaintiff has not demonstrated that it is "impossible" for her brother or "family" to assert its own rights to the allegedly damaged property (*Douglaston Civic Assn. v City of New York*, 199 AD3d 562 [1st Dept 2021]; *I.S.A. In N.J. v Effective Sec. Sys.*, 138 AD2d 681 [2d Dept 1988]). Therefore, to the extent Plaintiff seeks to allege property damage to her brother or family's property, this portion of the motion is denied.

Finally, Defendants oppose Plaintiff's proposed second cause of action because she failed to provide an affidavit of merit. However, the proposed amended complaint is verified by Plaintiff (*see* NYSCEF Doc. 15), and Plaintiff also submitted an affidavit in support the motion (NYSCEF Doc. 17). Indeed, in the affidavit, Plaintiff testifies that the ceiling collapsed on two separate occasions and the five named defendants created the unsafe conditions or were negligent in the repair of the conditions (*id.*). Thus, this argument is not grounds to deny what remains of Plaintiff's proposed amended Complaint.

Therefore, Plaintiff is granted leave to amend the Complaint, but only to allege property damage that arose out of the “April 2019” incident, and only as to damage to her own property. Because leave to amend many of Plaintiff’s proposed allegations has been denied, for the sake of a clear and precise amended complaint to which Defendants may respond, Plaintiff is directed to serve a new amended complaint in accordance with this decision. That is, Plaintiff is directed to serve a new proposed amended complaint that alleges property damage arising out of the April 2019 incident, and only as to her own property.

Accordingly, it is hereby,

ORDERED that Plaintiff’s motion seeking to consolidate the instant action with an older action with index number 157947/2021 is denied without prejudice, as seeking consolidation under this newer action is improper; and it is further

ORDERED that Plaintiff’s motion seeking leave to amend her Complaint to include a third cause of action for punitive damages is denied; and it is further

ORDERED that Plaintiff’s motion seeking leave to amend her Complaint to include a second cause of action for “failure to cure” alleging property damage arising out of an August 30, 2018 ceiling collapse is denied as time barred; and it is further

ORDERED that Plaintiff’s motion seeking leave to amend her Complaint to include a second cause of action for “failure to cure” alleging property damage to her “brother’s and family’s” property is denied for lack of standing; and it is further

ORDERED that Plaintiff’s motion seeking leave to amend her Complaint to include a second cause of action for “failure to cure” alleging property damage to her own property arising out of an “August 2019” ceiling collapse is granted, and Plaintiff is directed to serve an amended

complaint in accordance with this Decision on or before March 27, 2023, and Defendants shall answer or otherwise respond thereto within twenty days of said service; and it is further

ORDERED that the parties are directed to appear for a preliminary conference on April 22, 2023 at 9:30 a.m. in 60 Centre Street, room 442; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order on all parties to this action, with notice of entry; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

<u>2/27/2023</u> DATE					<u>Mary V Rosado</u> HON. MARY V. ROSADO, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED			<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE