

Abroon v Guardsman Tenants Corp.

2023 NY Slip Op 31987(U)

June 13, 2023

Supreme Court, New York County

Docket Number: Index No. 654035/2021

Judge: Louis L. Nock

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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. LOUIS L. NOCK PART 38M

Justice

-----X

JOHN ABROON,

Plaintiff,

- v -

GUARDSMAN TENANTS CORPORATION,

Defendant.

-----X

GUARDSMAN TENANTS CORPORATION,

Third-Party Plaintiff,

-against-

COLLADO ENGINEERING D.P.C., PELHAM PLUMBING &
HEATING, INC., and CHRISTOPHER J. CONSTRUCTION,
LLC, D/B/A J. CHRISTOPHER INTERIORS,

Third-Party Defendants.

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INDEX NO. 654035/2021

MOTION DATE 01/06/2023,
03/03/2023,
02/01/2023

MOTION SEQ. NO. 003 004 005

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 596063/2021

The following e-filed documents, listed by NYSCEF document numbers (Motion 003) 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 102, and 112

were read on this motion to DISMISS.

The following e-filed documents, listed by NYSCEF document numbers (Motion 004) 103, 104, 105, 106, 107, 109, 110, and 111

were read on this motion to AMEND CAPTION/PLEADINGS.

The following e-filed documents, listed by NYSCEF document numbers (Motion 005) 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 113, and 114

were read on this motion to DISMISS.

Upon the foregoing documents, the motions of third-party defendants Pelham Plumbing & Heating, Inc. (“Pelham”) (Mot. Seq. No. 003), and J. Christopher Interiors, Inc. (“J. Christopher”), incorrectly sued herein as Christopher J. Construction, LLC (Mot. Seq. No. 005),

to dismiss the third-party complaint, and plaintiff's motion to amend the complaint (Mot. Seq. No. 004), are consolidated for disposition in accordance with the following memorandum.

By decision and order dated October 20, 2022, the court granted the motion of third-party defendant Collado Engineering D.P.C ("Collado") to dismiss the third-party complaint in its entirety as against Collado (NYSCEF Doc. No. 69). The court thoroughly analyzed the claims of defendant/third-party plaintiff Guardsman Tenants Corporation ("Guardsman"), which are asserted with equal force against all three third-party defendants and found them all to be unsustainable (*see id.*). Pelham and J. Christopher now move to dismiss the third-party complaint for the same reasons previously set forth by Collado. In opposition, Guardsman does not offer any meaningfully different arguments to those already considered and denied by the court on the prior motion. Accordingly, for the reasons already set forth in the court's prior decision and order, Pelham and J. Christopher's motions are granted, and the third-party complaint is dismissed against them.

Plaintiff moves to amend his complaint to add two additional causes of action for breach of the lease between himself and Guardsman, with additional allegations in support, and to remove the word "permanent" where it appears in quotations from the second settlement agreement between the parties. "Leave shall be freely given upon such terms as may be just" (CPLR 3025[b]). "A party opposing leave to amend must overcome a heavy presumption of validity in favor of permitting amendment" (*McGhee v Odell*, 96 AD3d 449, 450 [1st Dept 2012] [quotation marks and citation omitted]). Absent undue delay, prejudice, or surprise, and provided the proposed amendment arises from the same transactions and occurrences as the original complaint, the motion should be granted (*Fellner v Morimoto*, 52 AD3d 352, 353 [1st Dept 2008]).

Here, there is no question that the proposed amendment arises out of the same transactions and occurrences as the original complaint. In opposition, defendant challenges the merits of the proposed amendment. However, “[o]n a motion for leave to amend, 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” (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 500 [1st Dept 2010] [quotation marks and citations omitted]). Plaintiff’s proposed amendment is neither palpably insufficient or clearly devoid of merit. Additionally, Guardsman makes no showing of undue surprise or prejudice.

Accordingly, it is

ORDERED that Pelham and J. Christopher’s motions to dismiss the third-party complaint are granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of Pelham and J. Christopher and against Guardsman dismissing the third-party complaint, and it is further

ORDERED that the plaintiff’s motion for leave to amend the complaint herein is granted, and the amended complaint in the proposed form annexed to the moving papers (NYSCEF Doc. No. 105) shall be deemed the first amended complaint in this action and shall be deemed served as of the date of the filing hereof; and it is further

ORDERED that the defendant’s time to serve an answer to the first amended complaint or otherwise respond thereto shall be on or before 20 days from the date of the filing hereof; and it is further

ORDERED that counsel are directed to appear for a status conference in Room 1166, 111 Centre Street, on June 27, 2023, at 10:00 AM.

This constitutes the decision and order of the court.



<u>6/13/2023</u>			<u>LOUIS L. NOCK, J.S.C.</u>
DATE			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> REFERENCE