

**Rodriguez v Broadway Sugar Hill Hous. Dev. Fund
Co., Inc.**

2023 NY Slip Op 32777(U)

August 8, 2023

Supreme Court, New York County

Docket Number: Index No. 150725/2019

Judge: Alexander M. Tisch

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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. ALEXANDER M. TISCH PART 18

Justice

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INDEX NO. 150725/2019

JOSE RODRIGUEZ,

MOTION DATE 05/22/2023

Plaintiff,

MOTION SEQ. NO. 001

- v -

BROADWAY SUGAR HILL HOUSING DEVELOPMENT
FUND COMPANY, INC., CLARITY WATER
TECHNOLOGIES, LLC

DECISION + ORDER ON
MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46

were read on this motion to/for PARTIES - ADD/SUBSTITUTE/INTERVENE

Upon the foregoing documents, plaintiff moves to substitute the estate in the stead and place of Jose Rodriguez (deceased); leave to file and serve an amended complaint, adding two related defendants and add a cause of action for negligence per se and to seek punitive damages; to amend the caption accordingly; and lift the automatic stay imposed from Mr. Rodriguez's death.

Plaintiff commenced this action on January 23, 2019 to recover damages for injuries allegedly sustained from exposure to a Legionella outbreak in September 2018 from the cooling tower at the Sugar Hill Project in West Harlem and Washington Heights areas of Manhattan. Plaintiff's former counsel filed and served an amended complaint and supplemental summons on March 5, 2020. Plaintiff then passed away on or about October 15, 2020 (see NYSCEF Doc No 19).

By so-ordered stipulation dated May 26, 2021, fourteen (14) related matters, all stemming from the same occurrence(s), were consolidated for purposes of discovery before the undersigned (see NYSCEF Doc No 24).

Defendant Clarity Water Technologies filed opposition to this motion, contesting only those branches of the motion for leave to amend the complaint to seek punitive damages and to add a cause of action for negligence *per se*. Defendant Broadway Sugar Hill Housing Development Fund Company submitted an affirmation of counsel opposing the motion on the same ground(s) as Clarity Water, namely (1) the motion is too late and plaintiff fails to provide a reason for the delay in seeking these amendments; and (2) a request for punitive damages is devoid of merit.¹ Tellingly, Clarity Water points to the fact that punitive damages were sought in only one (1) of the 14 related matters and plaintiff notes in reply that negligence *per se* was asserted in all 14.

“Motions for leave to amend pleadings should be freely granted, absent prejudice or surprise resulting therefrom, unless the proposed amendment is palpably insufficient or patently devoid of merit” (Y.A. v Conair Corp., 154 AD3d 611, 612 [1st Dept 2017]).

Although defendant claims that the amendment is late, “[l]ateness must be coupled with significant prejudice” (Seda v New York City Hous. Auth., 181 AD2d 469, 470 [1st Dept 1992]; see Jacobson v Croman, 107 AD3d 644, 645-46 [1st Dept 2013]). Here, it cannot be said that the defendants are prejudiced with the cause of action premised upon negligence *per se*, as it has been interposed in the other 14 related cases and the claim is simply another theory of liability that is arguably premised upon the same allegations and/or conduct originally set forth in the current complaint, thus giving notice of the occurrences at issue and would not be considered

¹ Clarity Water later withdrew its opposition in accordance with a stipulation dated July 26, 2023 (NYSCEF Doc No 46), leaving the motion opposed by co-defendant and still requiring adjudication.

unduly prejudicial (see Jacobson, 107 AD3d at 645 [“There must be some special right lost in the interim, some change of position or some significant trouble or expense that could have been avoided had the original pleading contained what the amended one wants to add”], quoting A. J. Pegno Constr. Corp. v City of New York, 95 AD2d 655, 656 [1st Dept 1983] [internal quotations omitted]; cf. Cafe Lughnasa Inc. v A & R Kalimian LLC, 176 AD3d 523 [1st Dept 2019]; Ravnikar v Skyline Credit-Ride, Inc., 79 AD3d 1118, 1119-20 [2d Dept 2010]).

Defendants also claim that the proposed amendment to seek punitive damages is palpably insufficient on its face in light of the allegations. While the Court finds that there may be merit to this argument (see, e.g., Rosenblum v Trinity Hudson Holdings, LLC, 211 AD3d 494, 495 [1st Dept 2022] [finding that “mere evidence of safety regulations violation is insufficient to warrant the imposition of punitive damages”], quoting Heller v Louis Provenzano, Inc., 303 AD2d 20, 25 [1st Dept 2003] [internal quotation marks omitted]), the Court is inclined to deny leave to assert the amendment based on the potential prejudice to defendants at this stage in the litigation. The level of proof and/or degree of culpability required for punitive damages is considerably different than ordinary negligence, and the parties have not yet completed discovery on that as they are currently engaged in a significant global mediation (see, e.g., Heller, 303 AD2d at 25). As noted above, only 1 of the 14 complaints in the related matters seeks punitive damages for the same alleged negligence. The record reflects that further discovery would be warranted if this amendment is sought (see, e.g., NYSCEF Doc No 35 at ¶ 9 [noting that plaintiff intends to take the depositions of more fact witnesses from defendants, which have been paused in light of mediation]). Therefore, the denial is without prejudice with leave to renew if mediation is unsuccessful and upon the completion of further discovery demonstrating further merit for the amendment.

Accordingly, it is hereby ORDERED that the motion is denied in part without prejudice to the extent of permitting leave to seek punitive damages; and it is further

ORDERED that the motion is otherwise granted; and it is further

ORDERED that plaintiff shall file a second amended complaint in the form annexed to the moving papers (NYSCEF Doc No 30) without a request for punitive damages and a supplemental summons on NYSCEF within 30 days, which 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 second amended complaint, 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:

STEPHANIE RODRIGUEZ, as Administrator for the Estate of JOSE RODRIGUEZ, deceased,

Plaintiff,

INDEX No.:
150725/2019

-against-

BROADWAY HOUSING COMMUNITIES, INC.; BROADWAY HOUSING DEVELOPMENT FUND COMPANY, INC.; BROADWAY SUGAR HILL HOUSING DEVELOPMENT FUND COMPANY, INC.; and CLARITY WATER TECHNOLOGIES, LLC,

Defendants.

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 change in the caption including the parties being added pursuant hereto; and it is further

ORDERED that service of this order upon the Clerk of the Court 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 (see section J);² and


it is further

ORDERED that the matter is restored to active status; and it is further

ORDERED that this matter shall be joined with the 14 related matters consolidated for purposes of discovery and counsel are directed to appear virtually via Microsoft Teams on November 8, 2023 at 4:00 pm; and it is further

ORDERED that, as discussed in prior conferences with the related matters, the note of issue is extended to February 29, 2024.

This constitutes the decision and order of the Court.

<u>8/8/2023</u> DATE	 _____ ALEXANDER M. TISCH, J.S.C.			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

² The Protocol is accessible at the "E-Filing" page on the court's website: www.nycourts.gov/supctmanh.