

Pekar v Konfidan

2023 NY Slip Op 33321(U)

September 26, 2023

Supreme Court, New York County

Docket Number: Index No. 154384/2021

Judge: John J. Kelley

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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. JOHN J. KELLEY PART 56M

Justice

-----X

AUDREY PEKAR

Plaintiff,

- v -

LARI KONFIDAN,

Defendant.

-----X

INDEX NO. 154384/2021

MOTION DATE 08/21/2023

MOTION SEQ. NO. 002

**AMENDED DECISION + ORDER
ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26, 27, 28, 29

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

The court’s prior decision and order, also dated September 26, 2023, is recalled and vacated, upon the court’s own motion, to correct the identity of one of the newly added defendants, and the following order and judgment is substituted therefor:

In this action to recover damages for personal injuries, the plaintiff moves pursuant to CPLR 305(c), 1003, and 3025(b) for leave to file and serve a supplemental and amended summons and an amended complaint in order to add 24 Jefferson Ave., LLC, and LK Ventures 76, LLC, as party defendants. The defendant does not oppose the motion. The motion is granted.

During the course of this litigation, the plaintiff learned, through the defendant’s deposition testimony, that he was the sole member and principal of both 24 Jefferson Ave., LLC, and LK Ventures 76, LLC, which serially owned the residential real property in Jeffersonville, New York, where the plaintiff slipped and fell. The plaintiff also learned that the defendant had, as lessee, leased the property from his two limited liability companies so that he could sublet it to vacationers such as the plaintiff.

The subject accident occurred on March 25, 2021 and, hence, the applicable three-year limitations period of CPLR 214 has yet to expire. Nonetheless, even if it had expired, leave to amend a complaint to add new parties need not be denied where the relation-back doctrine applies (see *Cintron v Lynn*, 306 AD2d 118, 119-120, [1st Dept 2003]; CPLR 203[c]; see *also Garcia v New York-Presbyterian Hosp.*, 114 AD3d 615, 615 [1st Dept 2014]). The relation back doctrine permits a plaintiff to amend a complaint to add a defendant, even though the statute of limitations has expired at the time of amendment, if the plaintiff can demonstrate three things:

“(1) that the claims arose out of the same occurrence, (2) that the later-added [defendant] is united in interest with a previously named [defendant], and (3) that the later-added [defendant] knew or should have known that, but for a mistake by [plaintiff] as to the later-added [defendant's] identity, the proceeding would have also been brought against him or her”

(*Koplinka-Loehr v County of Tompkins*, 189 AD3d 2039, 2042 [3d Dept 2020], quoting *Matter of Sullivan v Planning Bd. of the Town of Mamakating*, 151 AD3d 1518, 1519-1520 [3d Dept 2017] [citations omitted]; see *Buran v Coupal*, 87 NY2d 173, 178 [1995]). Clearly, the claims sought to be asserted here by the plaintiff against the defendant's limited liability companies arise from the same occurrence as the claims against the defendant. Where, as here, one defendant is the sole and managing member of a limited liability company that is sought to be added as a party defendant, he is deemed to be united in interest with that limited liability company for the purposes of the relation-back doctrine (see *Euroway Contr. Corp. v Mastermind Estate Dev. Corp.*, 59 AD3d 157, 158 [1st Dept 2009]). Since there is a virtual identity between the defendant and his limited liability companies, those companies knew that, but for the plaintiff's mistake as to their identities, the action would also have been commenced against them as well.

Hence, leave to amend the complaint to add the limited liability companies as defendants is granted, the amended complaint in the form filed as Docket Entry No. 24 is deemed to name 24 Jefferson Ave., LLC, and LK Ventures 76, LLC, as additional party defendants, and is deemed to be filed as of September 26, 2023, and the claims asserted therein against the limited liability companies are deemed to have been interposed against them

as of May 4, 2021, the date this action was commenced. The court notes, however, that, unless the limited liability companies waive service of process, the plaintiff is obligated to serve them with process pursuant to CPLR 311-a, in accordance with the time frame set forth in CPLR 306-b.

Accordingly, it is

ORDERED that the plaintiff’s motion is granted, and the plaintiff is granted leave to file and serve a supplemental and amended summons and an amended complaint, in the form uploaded as Docket Entry No. 24 in the New York State Court Electronic Filing System, adding 24 Jefferson Ave., LLC, and LK Ventures 76, LLC, as party defendants; and it is further,

ORDERED that the amended complaint is deemed to name 24 Jefferson Ave., LLC, and LK Ventures 76, LLC, as additional party defendants, is deemed to have been filed as of September 26, 2023, and is deemed served upon the defendant Lari Konfidan as of September 26, 2023; and it is further,

ORDERED that the caption of the action shall be amended to read as follows:

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AUDREY PEKAR,

Plaintiff,

v

LARI KONFIDAN, 24 JEFFERSON AVE., LLC, and LK VENTURES 76, LLC,

Defendants.

-----X;

and it is further,

ORDERED that, on the court’s own motion, within 15 days of the entry of this order, the plaintiff shall serve a copy of this order upon the Trial Support Office (60 Centre Street, Room 148, New York, NY 10007), and shall separately file and upload the notice required by CPLR

8019(c) in a completed Form EF-22, and the Trial Support Office shall thereupon amend the court records accordingly.

This constitutes the Amended Decision and Order of the court.

9/26/2023

DATE

JOHN J. KELLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: