

Teperman v 1411 IC-SIC Prop. LLC

2023 NY Slip Op 33977(U)

November 8, 2023

Supreme Court, New York County

Docket Number: Index No. 158126/2022

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**

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| <p>PRESENT: <u>HON. MARY V. ROSADO</u></p> <p style="text-align: right; margin-right: 100px;"><i>Justice</i></p> <p>-----X</p> <p>YORY TEPERMAN</p> <p style="text-align: right; margin-right: 100px;">Plaintiff,</p> <p style="text-align: center;">- v -</p> <p>1411 IC-SIC PROPERTY LLC,</p> <p style="text-align: right; margin-right: 100px;">Defendant.</p> <p>-----X</p> | <p>PART 33M</p> <p>INDEX NO. <u>158126/2022</u></p> <p>MOTION DATE <u>05/16/2023</u></p> <p>MOTION SEQ. NO. <u>001</u></p> <p style="text-align: center;">DECISION + ORDER ON MOTION (AMENDED)</p> |
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The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20

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

Upon the foregoing documents, Plaintiff Yory Teperman's ("Plaintiff") motion for an Order amending the caption and Complaint herein to include Hines Interests Limited Partnership ("Hines") as an additional defendant and compel counsel for Defendant 1411 IC-SIC Property LLC ("1411") to accept service on behalf of Hines, is granted in part and denied in part.

Leave to amend pleadings is freely granted in the absence of prejudice if the proposed amendment is not palpably insufficient as a matter of law (*Mashinsky v Drescher*, 188 AD3d 465 [1st Dept 2020]). A party opposing a motion to amend must demonstrate that it would be substantially prejudiced by the amendment, or the amendments are patently devoid of merit (*Greenburgh Eleven Union Free School Dist. V National Union Fire Ins. Co.*, 298 AD2d 180, 181 [1st Dept 2002]). Delay alone is not sufficient to deny leave to amend (*Johnson v Montefiore Medical Center*, 203 AD3d 462 [1st Dept 2022]).

Here, Defendant 1411 does not oppose Plaintiff's motion seeking to add Hines as a direct Defendant, and no party has shown how they might be prejudiced by allowing Plaintiff to amend

the caption and Complaint. Therefore, under this lenient standard, Plaintiff's motion to amend the caption and Complaint herein to include Hines as an additional defendant is granted.

Paragraph 10 of Plaintiff's Affirmation in Support requests "that attorneys for Defendant, 1411 IC-SIC Property LLC accept service on behalf" of Hines (NYSCEF Doc. 15 at ¶10). Defendant 1411 opposes "that part of Plaintiff's motion requesting that 1411 accept service on behalf of the proposed newly added Defendant, Hines," (NYSCEF Doc. 20 at ¶4) asserting that their office "does not represent Hines nor is it an authorized agent for service on behalf of Hines" (NYSCEF Doc. 20 at ¶6). Pursuant to CPLR 305(a), where "a new party is joined in the action and the joinder is not made upon the new party's motion, a supplemental summons specifying the pleading which the new party must answer shall be filed with the clerk of the court and served upon such party." Pursuant to CPLR 311, such service upon a corporation shall be made by delivering the summons "to an officer, director, managing or general agent, or cashier or assistant cashier or to any other agent authorized by appointment or by law to receive service." As Plaintiff has provided the Court with no evidence that 1411 is an agent authorized by law to accept service on behalf of Hines, Plaintiff's motion is denied to the extent it seeks to compel 1411 to accept service on behalf of Hines.

Accordingly, it is hereby,

ORDERED that Plaintiff Yory Teperman's motion for an Order amending the caption and Complaint herein to include Hines Interests Limited Partnership as an additional defendant, is granted; and it is further

ORDERED that the amended complaint in the proposed form annexed as Exhibit C to Plaintiff's moving papers (NYSCEF Doc. 18) shall be deemed served upon Defendant, 1411 IC-

SIC Property LLC upon service of a copy of this Order with notice of entry thereof; and it is further

ORDERED that Plaintiff shall serve the newly added defendant, Hines Interests Limited Partnership pursuant to the directives of the CPLR; and it is further

ORDERED that the Defendant Hines Interests Limited Partnership shall serve an answer to the Amended Complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that this action shall bear the following caption:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
YORY TEPERMAN

Plaintiff

-against-

1411 IC-SIC PROPERTY LLC and HINES INTERESTS
LIMITED PARTNERSHIP,

Defendants.

-----X

And it is further;

ORDERED that within 10 days of entry, counsel for Plaintiff Yory Teperman shall serve a copy of this order with notice of entry on all parties to this action; and it is further

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

This constitutes the Decision and Order of the Court.

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| <u>11/8/2023</u> DATE | | <u>Mary V Rosado JSC</u> HON. MARY V. ROSADO, J.S.C. |
| CHECK ONE: | <input type="checkbox"/> CASE DISPOSED | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION |
| | <input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED | <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 |