

Greenberg v Marmin

2024 NY Slip Op 31621(U)

May 6, 2024

Supreme Court, New York County

Docket Number: Index No. 157348/2021

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12M

Justice

-----X

BUDDIE GREENBERG, SHEILA GREENBERG,
Plaintiff,

INDEX NO. 157348/2021

MOTION DATE 04/12/2024

MOTION SEQ. NO. 001

- v -

GARY MARMIN, MARMIN COLLISION SPECIALISTS
CORP., MARMIN AUTO BODY, 2451 FIRST AVENUE LLC

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 26, 27, 28, 29, 30, 31

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

This action arises from an accident that occurred on April 21, 2021, when plaintiff Buddie Greenberg (plaintiff) was caused to fall, allegedly due to a defective, broken, cracked, uneven, raised, and elevated walking area at Marmin Auto Body located at 2451 1st Avenue, New York, NY 10035 (the premises). As a result of the accident, plaintiff sustained serious injuries, including a closed two-part intertrochanteric fracture of the right proximal femur.

I. Procedural History

Plaintiff filed a Summons and Complaint on August 5, 2021, naming Gary Marmin, Marmin Collision Specialists Corp., and Marmin Auto Body as direct defendants. On September 24, 2021, plaintiff filed a Supplemental Summons and Amended Complaint adding 2451 First Avenue as a direct defendant. Although Manhattan Auto Service and Bodywork Inc. was not previously named, it answered on behalf of their d/b/a Marmin Auto Body. 2451 First Avenue LLC also filed an Answer to the Supplemental Summons and Amended Complaint. *See* NYSCEF Doc. No. 28, Exhibit A, Collective Pleadings.

Plaintiff passed away on December 10, 2022. On March 18, 2024, Bronx County Surrogate's Court granted Sheila Greenberg's unopposed petition by issuing a Decree appointing Sheila Greenberg as administratrix of the estate of plaintiff, through the issuance of Limited Letters of Administration to Sheila Greenberg. *See* NYSCEF Doc. No. 29, Exhibit B, Decree Appointing Administrator and Limited Letters of Administration.

Plaintiff now moves for an order, pursuant to Section 3025 of the Civil Practice Law and Rules, granting her leave to file and serve a Second Supplemental Summons and Second Amended Complaint that amends the caption as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNT OF NEW YORK

-----X
SHEILA GREENBERG as administratrix of the estate of
BUDDIE GREENBERG, and SHEILA GREENBERG,
individually,

Plaintiffs,

-against-

GARY MARMIN, MARMIN COLLISION SPECIALISTS CORP.,
MARMIN AUTO BODY, 2451 FIRST AVENUE LLC, and
MANHATTAN AUTO SERVICE & BODYWORK INC.,

Defendants.
-----X

II. Analysis

It is well-settled that a motion for leave to amend is committed to the sound discretion of the trial court. *See Oil Heat Inst. of Long Is. Ins. Trust v RMTS Assoc., LLC*, 4 AD3d 290 (1st Dept 2004). Leave to amend a pleading pursuant to CPLR 3025 (b) is freely given, and will be denied only if there is “prejudice or surprise resulting directly from the delay” in moving to amend, “or if the proposed amendment is palpably improper or insufficient” as a matter of law. *Carrasquillo v*

Wilfred Realty Corp., 205 AD3d 516, 517 (1st Dept 2022); quoting *McGhee v Odell*, 96 AD3d 449, 450 (1st Dept 2012). Pursuant to CPLR 3025 (b), “[a] party may amend his or her pleading or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties”. *RBP of 400 W. 42 St., Inc. v 400 West 42nd St. Realty Assoc.*, 27 AD3d 250, 250 (1st Dept 2006).

To establish entitlement to amend under CPLR 3025 (b), a movant need not to establish the merit of its proposed new allegations, instead, it must only show that the proffered amendment is not palpably insufficient or clearly devoid of merit. See *MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 500 (1st Dept 2010). “[T]he court should examine, but need not decide, the merits of the proposed new pleading unless it is patently insufficient on its face. Once a prima facie basis for the amendment has been established, that should end the inquiry, even in the face of a rebuttal that might provide the ground for a subsequent motion,” such as that seeking summary judgment. *Pier 59 Studios, L.P. v Chelsea Piers, L.P.*, 40 AD3d 363, 366 1st Dept 2007). To find prejudice, there must be some indication that the defendant has been hindered in the preparation of his case or prevented from taking some measure in support of his position. See *Abdelnabi v New York City Tr.. Auth.*, 273 AD2d 114, 115 (1st Dept 2000). Mere delay is insufficient to defeat the motion for leave to amend, and as the instant motion is unopposed, and considering defendants have been properly served (see NYSCEF Doc. No. 6, Affidavit of Service), defendants fail to show prejudice. See *176 West 87th Str. Owners Corp. v Guercio*, 216 AD3d 401, 402 (1st Dept 2023); *Kocourek v Booz Allen Hamilton Inc.*, 85 AD3d 502, 504 (1st Dept 2011).

In the instant matter, the Court finds there is no prejudice or surprise to defendants, nor is the proposed amendment palpably insufficient or devoid of merit. See *MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d at 499-500.

III. Conclusion

Accordingly, as based upon the foregoing, it is hereby:

ORDERED that plaintiff's unopposed motion, seeking leave to file and serve a Second Supplemental Summons and Second Amended Complaint that amends the caption is hereby GRANTED; and it is further

ORDERED that Second Supplemental Summons and Second Amended Complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this Order with notice of entry thereof; and it is further

ORDERED that the action shall bear the following caption:

SUPREME COURT OF THE STATE OF NEW YORK
COUNT OF NEW YORK

-----X
SHEILA GREENBERG as administratrix of the estate of
BUDDIE GREENBERG, and SHEILA GREENBERG,
individually,

Plaintiffs,

-against-

GARY MARMIN, MARMIN COLLISION SPECIALISTS CORP.,
MARMIN AUTO BODY, 2451 FIRST AVENUE LLC, and
MANHATTAN AUTO SERVICE & BODYWORK INC.,

Defendants.
-----X

This constitutes the Order and Decision of the Court.

5/6/2024
DATE

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION **J.S.C.**

APPLICATION: GRANTED DENIED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

Leslie A. Stroth
HON. LESLIE A. STROTH