

**Be A Good Neighbor LLC v  
Torres Millwork & Constr. LLC**

2024 NY Slip Op 32802(U)

August 7, 2024

Supreme Court, New York County

Docket Number: Index No. 650901/2022

Judge: Emily Morales-Minerva

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. EMILY MORALES-MINERVA PART 42M

Justice

-----X

BE A GOOD NEIGHBOR LLC,

Plaintiff,

- v -

TORRES MILLWORK & CONSTRUCTION LLC, MAURO
TORRES, DAVID LESLIE

Defendant.

-----X

INDEX NO. 650901/2022

MOTION DATE 04/12/2024

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118

were read on this motion to/for

AMEND CAPTION/PLEADINGS

APPEARANCES:

Rottenberg Lipman Rich, P.C., New York, New York (C. Zachary Rosenberg, Esq., of counsel) for Plaintiff.

Zisholtz & Zisholtz, LLC, Garden City, New York (Meng Michelle Cheng, Esq., of counsel) for Defendants.

HON. EMILY MORALES-MINERVA:

In this breach of contract action seeking, among other things, \$269,035.91 in damages for allegedly defective construction and renovation work, BE A GOOD NEIGHBOR LLC ("plaintiff"), owner of commercial premises at 189 Avenue A in New York City, moves pursuant to CPLR § 3025 for leave to amend its complaint to assert two additional causes of action against TORRES MILLWORK & CONSTRUCTION LLC ("TMC"), MAURO TORRES ("Torres"), and DAVID LESLIE ("Leslie") (collectively, "defendants"). Defendants file

opposition to the motion. For the foregoing reasons, the motion (seq. no. 004) is granted.

#### BACKGROUND

Plaintiff's original complaint, filed on February 25, 2022, includes five causes of action for breach of contract, quantum merit, unjust enrichment, trespass, and fraud. The gravamen of plaintiff's complaint is that the work done by defendants on plaintiff's restaurant renovation project ("project") was substandard and had to be completely re-done by other contractors at additional cost and delay to plaintiff. Plaintiff seeks to recover the entire amount paid to the defendants.

As part of its pre-trial discovery, plaintiff deposed defendants TORRES and LESLIE on December 13, 2023, and February 1, 2024, respectively. As relevant here, defendant TORRES testified that defendant TMC did not obtain a safety registration number from the New York City Department of Buildings ("DOB") until "the second part" of 2021 (NY Ct. Elec. Filing [NYSCEF] Doc. No. 98, EBT of TORRES at p. 18, ¶ 6-17). Defendant TORRES further testified that general contractor OMD Corporation ("OMD") – not TMC – was listed as the general contractor for plaintiff's project, but OMD did not actually perform any work on the project (id. at p. 35-37). According to defendant TORRES, OMD oversaw the process of securing the permits necessary for commencement and completion of the project (id. at p. 39-40). Defendant TORRES described the

project site as encompassing "the entire first floor . . . except for the hallway that led upstairs", as well as the basement (id. at p. 59). The deposition of defendant LESLIE revealed that defendant LESLIE sent plaintiff a certificate of liability insurance listing OMD, not TWC, as the certificate holder (see NYSCEF Doc. No. 99, EBT of defendant LESLIE at p. 62, ¶ 7-20; NYSCEF Doc. No. 100, Certificate of Liability Insurance).

Following the depositions of defendants TORRES and LESLIE, on April 11, 2024, plaintiff filed the instant motion (seq. no. 004) seeking leave to amend their complaint to assert two additional causes of action upon the basis of the deposition testimony. The proposed amended complaint alleges that defendant TMC violated New York City Administrative Code § 28-420.1 by failing to obtain a safety registration number from the DOB, which is required for general contractors performing or supervising certain types of work, such as alteration or enlargement of more than 25% of an existing building's floor area (NYSCEF Doc. No. 103, Proposed Amended Complaint). The proposed amended complaint also alleges that defendants violated New York City Administrative Code § 28-420.7 by falsely listing the project's general contractor as OMD due to defendant TMC lacking a safety registration number (id.).

In its motion, plaintiff asserts that defendants will not be prejudiced by the two additional causes of action because "plaintiff responsibly requested permission to file [the proposed

amendment] one week after obtaining the testimony upon which the amendment is based" (NYSCEF Doc. No. 104, Plaintiff's Memorandum of Law in Support of Motion, p. 8). Further, plaintiff contends that, based on the testimony of defendants TORRES and LESLIE at their respective depositions, the new causes of action are meritorious.

In opposition, defendants contend that the proposed amended complaint is palpably insufficient to state a claim against defendants, and devoid of merit. Specifically, defendants contend that a safety registration number was not required for the project and therefore, the lack of such is of no consequence in the instant matter. Upon review of the motion, opposition, and exhibits, this court grants plaintiff's motion to amend the complaint (seq. no. 004) pursuant to CPLR § 3025.

#### ANALYSIS

It is well settled that leave to amend a pleading should be freely granted absent evidence of substantial prejudice or surprise, or unless the proposed amendment is palpably insufficient or patently devoid of merit (see CPLR § 3025 [b]; JP Morgan Chase Bank, N.A. v Low Cost Bearings N.Y., Inc., 107 AD3d 643 [1st Dept 2013]; MBIA Ins. Corp. v Greystone & Co., Inc., 74 AD3d 499 [1st Dept 2010]; Cherebin v Empress Ambulance Serv., Inc., 43 AD3d 364 [1st Dept 2007]; Nyahsa Servs., Inc., Self-Ins. Tr. v

People Care Inc., 156 AD3d 99 [3d Dept 2017])). “On 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., 74 AD3d at 500). Further, the party seeking to amend is “not required to support its allegations with evidence or an affidavit of merit” St. Nicholas W. 126 L.P. v Republic Inv. Co., LLC, 193 AD3d 488, 489 [1st Dept 2021]; Sorge v Gona Realty, LLC, 188 AD3d 474, 475 [1st Dept 2020])).

Applying these principles here, the plaintiff’s application to amend its complaint to include two additional causes of action is granted. The proposed amendments are neither patently devoid of merit nor palpably insufficient. While defendants argue that a safety registration number was not required and thus, the proposed new allegations have no merit, the allegations are predicated on the deposition testimony of defendants TORRES and LESLIE, and their testimony reveals that defendants may be liable under the New York City Administrative Code if the alterations included more than 25% of the building’s floor area (see Ferrer v Go N.Y. Tours Inc., 221 AD3d 499 [1st Dept 2023] [holding: “the legal sufficiency or merits of a proposed amendment to a pleading will not be examined unless the insufficiency or lack of merit is clear and free from doubt”]); see also Battery Bldg. Maint. Co. v 888 Seventh Ave. Assocs., 157

AD2d 556 [1st Dept 1990])). Therefore, it can not be said that the proposed amendments are lacking merit.

Further, "[t]he kind of prejudice required to defeat an amendment . . . must . . . be a showing of prejudice traceable not simply to the new matter sought to be added, but also to the fact that it is only now being added. There must be some special right lost in the interim, some change of position or some significant trouble or expenses that could have been avoided had the original pleading contained what the amended one wants to add" (Jacobson v Croman, 107 AD3d 644, 645 [1st Dept 2013] citing A.J. Pegno Const. Corp. v City of New York, 95 AD2d 655 [1st Dept 1983])). Defendants have failed to show such prejudice, and have also not demonstrated that the amendment would hinder the preparation of their case or prevent them from taking some measure in support of their position that a safety registration number was not required (see Sosa v Ideal El. Corp., 216 AD2d 128 [1st Dept 1995])).

Lastly, "the fact that a motion to amend is made after a note of issue is filed does not of necessity call for its denial" (Jacobson, 107 AD3d at 645; Smith v Indus. Leasing Corp., 124 AD2d 413 [3d Dept 1986])). Here, plaintiff filed the instant motion (seq. no. 004) on April 11, 2024, and subsequently filed the note of issue on July 1, 2024 (NYSCEF Doc. No. 119, Note of Issue). Given the note of issue was filed while the motion (seq. no. 004) was pending before the court, the parties may stipulate to vacate

such if they deem so necessary. Therefore, plaintiff's motion (seq. no. 004) is granted.

Accordingly, it is

ORDERED that plaintiff's motion to amend the complaint (seq. no. 004) pursuant to CPLR § 3025 is granted; and it is further

ORDERED that the amended complaint annexed to the moving papers shall be deemed served on defendants upon service of a copy of this order with notice of entry; and it is further

ORDERED defendants shall file an answer to the amended complaint within thirty days of proper service of a copy of this order; and it is further

ORDERED that parties shall file a stipulation to vacate the note of issue within ninety days, if the parties deem so necessary.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

8/7/2024  
DATE

*Emily Morales-Minerva*  
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/> GRANTED	<input 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"/> DENIED	<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE