

Liberty Mobility Link v Port Auth. of N.Y. & N.J.

2025 NY Slip Op 30293(U)

January 22, 2025

Supreme Court, New York County

Docket Number: Index No. 151814/2024

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

-----X

LIBERTY MOBILITY LINK,

Petitioner,

- v -

PORT AUTHORITY OF NEW YORK AND NEW JERSEY,
DCCA1, INC.

Respondent.

-----X

INDEX NO. 151814/2024

MOTION DATE 10/18/2024

MOTION SEQ. NO. 007

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 007) 171, 172, 173, 174, 175, 177, 178, 179, 180, 181

were read on this motion to/for LEAVE TO FILE.

Upon the foregoing documents, petitioner’s motion to amend is granted.

Background

In February of 2024, Liberty Mobility Link (“Petitioner”) timely filed the underlying special proceeding regarding the bid award process for the new AirTrain System at Newark Airport. Port Authority of New York and New Jersey (“Respondent”) filed an answer and a motion to dismiss the petition pursuant to CPLR § 3211. In their reply papers, Petitioner advanced substantial new facts and theories based on recently procured documents, but they did not move to amend the petition. Respondent argued that the Court should not consider the new facts and arguments introduced in reply. The Court in their order dated October 8, 2024 (the “October Order”), considered the CPLR § 3211 motion to dismiss as instead opposition to the petition, stated that the new facts and arguments in reply would not be considered, and dismissed the petition.

Within 10 days of the entry of order, Petitioner brought the present motion requesting that the Court confirm that leave to amend the petition to include the new alleged facts is not required under CPLR § 3025(a), or, in the alternative, leave to amend the petition pursuant to CPLR § 3025(b). Respondent opposes.

Discussion

For the reasons that follow, the Court grants Petitioner leave to amend the petition.

Amendment of the Petition is Likely Not Guaranteed as of Right

At the outset, the motion presents an issue that has not yet been clarified by the higher courts. CPLR § 3025(a) allows a party to amend their pleading once as of right “within twenty days after its service, or at any time before the period for responding to it expires, or within twenty days after service of a pleading responding to it.” Under CPLR § 3211(f), a motion to dismiss under CPLR § 3211 “extends the time to serve the pleading until ten days after service of notice of entry of the order.” Petitioner contends that under this provision, they had ten days after the notice of entry of the October Order to amend the petition as of right. Respondent argues that because the entire special proceeding was dismissed, there is no ability to revive the petition via amending it.

In *Favourite Ltd.*, the Court of Appeals recently addressed the issue of amending a petition under CPLR § 3211(f). There, the issue was if a party needed to file a second action or could seek leave to file an amended complaint under this provision of the CPLR when the complaint had been dismissed but there were still outstanding counterclaims. *Favourite Ltd. v. Cico*, 42 N.Y.3d 250, 257 (2024). The court held that the trial court at issue had the power to allow the filing of a second amended complaint, but specifically stated that they were not issuing an opinion on what the trial court’s ability would be if “no action remained between the parties.”

Id., at n. 7. Another trial court considered this issue in *Almodovar*, where it concluded that a plaintiff has no ability to amend a complaint as of right when the complaint is dismissed in its entirety and there are no remaining claims between the parties. *Almodovar v. City of New York*, 2024 N.Y. Misc. LEXIS 5212, * 8 (Sup. Ct., N.Y. County, Aug. 9, 2024). This Court is inclined to agree with the *Almodovar* court, interpreting CPLR § 3211(f) to extend time to amend a pleading in a matter where some claim between the parties survives a motion to dismiss, rather than allowing a fully disposed matter to be resurrected within ten days of the dismissal as of right. But because this Court is granting leave to amend, for the reasons given below, the issue of whether or not CPLR § 3211(f) grants the right to resurrect a fully disposed case within 10 days via amendment does not need to be reached.

The Court Grants Permission to Amend the Petition Pursuant to CPLR § 3025(b)

The issue then turns to Petitioner’s alternative request that they be granted leave to amend the petition. To address an initial dispute between the parties on this matter, because the Court did not consider the additional documents and factual allegations, the October Order did not function as a ruling on the merits of the unconsidered material. Although the Court of Appeals declined to address the issue of if a party can amend a complaint as of right under CPLR §§ 3211(f) and 3025(a) after the full matter is dismissed, dicta from *Favourite Ltd.* is helpful here. The court there considered the argument that granting leave to amend where an entire complaint has been dismissed is not possible and rejected that argument, saying that “that position is at odds with the common practice of dismissing complaints with leave to amend.” *Favourite Ltd.*, at 258. Leave to amend under CPLR § 3025(b) “should be freely granted, so long as there is no surprise or prejudice resulting from the delay to the opposing party and the proposed amendment is not palpably insufficient or patently devoid of merit.” *Ferrer v. Go N.Y. Tours Inc.*, 221

A.D.3d 499, 500 (1st Dept. 2023). This Court grants Petitioner leave to amend the petition, as there is no dispute as to any surprise or prejudice to the opposing party, and the Court does not consider the proposed amendment to be patently devoid of any merit. Accordingly, it is hereby

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

ORDERED that the petitioner’s motion for leave to amend the petition herein is granted, and the amended petition 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 respondent shall serve an answer to the amended petition or otherwise respond thereto within 20 days from the date of said service.

1/22/2025
DATE


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LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: