

**Asaro v City of New York**

2025 NY Slip Op 32107(U)

June 12, 2025

Supreme Court, New York County

Docket Number: Index No. 452775/2024

Judge: Hasa A. Kingo

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. HASA A. KINGO PART 05M**

*Justice*

-----X

JOHN ASARO

Plaintiff,

- v -

THE CITY OF NEW YORK,

Defendant.

-----X

INDEX NO. 452775/2024

MOTION DATE 05/07/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20, 21, 22

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

Plaintiff John Asaro (“Plaintiff”) moves, without opposition and pursuant to CPLR § 3025, for leave to amend his complaint to add Restani Construction Corp. as a Defendant. For the reasons set forth herein, Plaintiff’s motion is granted.

**BACKGROUND**

On June 7, 2024, Plaintiff commenced this action to recover for personal injuries allegedly sustained on November 15, 2023, when Plaintiff fell from his electric scooter because of a defect in the roadway near Broadway and 33rd Street. Defendant the City of New York (the “City”) joined issue by service of its answer on June 8, 2024. Plaintiff recently obtained a response to a Freedom of Information Law (“FOIL”) request indicating that Restani Construction Corp. performed milling work on the subject roadway in 2019. In light of this newly discovered information, Plaintiff now seeks leave to amend the pleadings, pursuant to CPLR § 3025(b), to add Restani Construction Corp. as a Defendant in this action.

## DISCUSSION

A party may amend or supplement their pleadings “at any time by leave of court or by stipulation of all parties” (CPLR § 3025 [b]). “Leave shall be freely given upon such terms as may be just” (*id.*). “[A] request for leave to amend should generally be granted absent prejudice or surprise to the opposing party” (*Favourite Ltd. v Cico*, 42 NY3d 250, 256 [2024]) and so long as the proposed amendment is not “palpably insufficient or clearly devoid of merit” (*Sorge v Gona Realty, LLC*, 188 AD3d 474, 475 [1st Dept 2020]). A party is prejudiced if it is hindered or prevented from preparing or supporting its case (*Lindo v Brett*, 149 AD3d 459, 463 [1st Dept 2017]).

In this instance, Plaintiff has met his burden of demonstrating that the proposed amended complaint is neither prejudicial nor devoid of merit. Notably, this action was commenced just one year ago, and discovery remains in its early stages (NYSCEF Doc No. 8). The proposed amendment will neither cause undue delay nor impose significant expense on the City. Plaintiff has acted promptly in seeking this relief, having only recently obtained information concerning Restani Construction Corp.’s work on the subject roadway (NYSCEF Doc No. 16, Zullo Affirmation ¶ 8). Significantly, Plaintiff is within his statute of limitations, and there is no opposition to the motion. Accordingly, Plaintiff’s motion is granted.

Therefore it is hereby

ORDERED that the amended complaint, in the form annexed to the motion papers (NYSCEF Doc No. 22), shall be deemed served upon service of a copy of this order with notice of entry upon all parties who have appeared in the action; and it is further

ORDERED that a supplemental summons and amended complaint, in the form annexed to the motion papers, shall be served, in accordance with the Civil Practice Law and Rules, upon the

additional parties in this action within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that the parties shall answer in accordance with the Civil Practice Law and Rules; and it is further

ORDERED that the action shall bear the following caption:

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

-----x      Index No. 452775/2024  
JOHN ASARO,

Plaintiff,

-against-

THE CITY OF NEW YORK, and RESTANI  
CONSTRUCTION CORP.,

Defendants.  
-----x

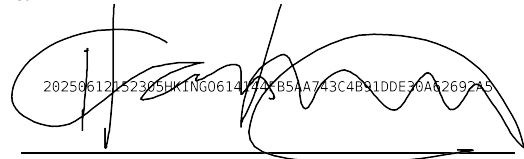
; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk and the Clerk of the General Clerk’s Office, who are directed to mark the court’s records to reflect the parties being added pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website); and it is further

ORDERED that the parties are directed to appear for a status conference in the Differentiated Case Management Part located in Room 103 of 80 Centre Street, New York, New York on Tuesday, September 9, 2025 at 2:00 PM.

This constitutes the decision and order of the court.

  
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HASA A. KINGO, J.S.C.

6/12/2025  
DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE