

**Hernandez v BSREP UA 3333 Broadway LLC**

2025 NY Slip Op 33172(U)

August 18, 2025

Supreme Court, New York County

Docket Number: Index No. 157816/2023

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*

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INDEX NO. 157816/2023

YAHAIRA HERNANDEZ,

MOTION DATE 06/30/2025

Plaintiff,

MOTION SEQ. NO. 002

- v -

BSREP UA 3333 BROADWAY LLC, NEW YORK CITY  
EDUCATIONAL CONSTRUCTION FUND, URBAN  
AMERICAN MANAGEMENT, LLC, SECURITY USA, INC.

**DECISION + ORDER ON  
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 82, 83, 85

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

**FACTUAL BACKGROUND**

Plaintiff commenced this action asserting claims under the New York City Administrative Code, among other theories of liability. Defendant Security USA, Inc. moved to dismiss, and the remaining defendants (BRSEP UA 3333 Broadway LLC, New York City Education Construction Fund, and Urban American Management, LLC) cross-moved for dismissal. Following oral argument on March 4, 2025, this Court denied both motions in their entirety, but granted Plaintiff leave to file a motion to amend her Complaint within seven days. Neither Plaintiff nor Defendant Security USA, Inc. sought to adjourn for further argument despite the absence of the remaining defendants.

Plaintiff timely moved to amend her pleading but initially omitted the proposed pleadings as exhibits, later filing them on March 25, 2025. That same day, Security USA, Inc. filed a cross-motion styled as one for summary judgment, again seeking dismissal under CPLR 3211(a)(7) and CPLR 3212, and requesting re-litigation of issues this Court had already decided.

**LEGAL STANDARD**

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. Leave shall be freely given upon such terms as may be just.” “In general, motions for leave to amend a pleading should be granted unless the proposed amendment is palpably insufficient or patently devoid of merit, or where the delay in seeking the amendment would cause prejudice or surprise” (*Corwise v. Lefrak Org.*, 93 A.D.3d 754 [2<sup>nd</sup> Dept 2012]).

In *MBIA Ins.*, the Court held that “on a motion for leave to amend, [a party] 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. v. Greystone & Co.*, 74 A.D.3d 499 [1<sup>st</sup> Dept 2010]; *see also Cruz v. Brown*, 129 A.D.3d 455 [1<sup>st</sup> Dept 2015]). The Court specifically ruled that there was “a sufficient showing of merit through the submission of an affirmation by counsel, along with a transcript of relevant deposition testimony” (*Id.*).

A motion to amend pursuant to CPLR 3025 must include an attached version of the proposed amended pleadings. However, such requirements may be disregarded under CPLR 2001 if the “proposed amendment was adequately described in their notice of motion and the attorney affirmation.” (*Dogwood Residential, LLC v Stable 49, Ltd.*, 159 AD3d 490, 492 [1st Dept 2018]).

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 323 [1986]). Once a party has submitted competent proof demonstrating that there is no substance to its opponent’s claims and no disputed issues of fact, the opponent, in turn, is required to “lay bare [its] proof and come forward with some admissible proof that would require a trial of the material questions of fact on which [its] claims rest” (*Ferber v Sterndent Corp.*, 51 NY2d 782, 783 [1980]). The party opposing a motion for summary judgment is

entitled to all favorable inferences that can be drawn from the evidence submitted (*See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204, [1st Dept 1990]).

### DISCUSSION

#### *Plaintiff's Motion to Amend*

Plaintiff seeks to correct a technical mislabeling in her original Complaint, revising a cause of action to reflect the proper citation to the Gender Motivated Violence Protection Law (“GMVA”), now codified at Title 10, Chapter 11 of the Administrative Code, which was initially labeled in the pleadings under the prior code section of the GMVA before it was amended in 2022. Although the initial motion papers inadvertently omitted the proposed pleadings, Plaintiff filed the corrected documents shortly thereafter. Moreover, the Court, in denying Defendant Security USA’s motion to dismiss, granted Plaintiff leave to file a motion to amend to change the title of the GMVA to the corrected form. As such, Defendant cannot be surprised by the proposed amendment, and has failed to show any prejudice.

The amendment is minor, clearly described in the motion papers, and will not prejudice Defendants. Under CPLR 3025(b) and CPLR 2001, and consistent with *Dogwood Residential*, such a technical omission does not warrant denial of leave to amend. Accordingly, Plaintiff’s motion to amend is granted to the extent that Plaintiff is permitted to correct the title of the GMVA to the proper one (Title 10, Chapter 11 of the Administrative Code).

#### *Defendant's Cross-Motion for Summary Judgment*

Defendant Security USA, Inc.’s cross-motion is procedurally improper and substantively unpersuasive. The Court has already denied Defendant’s motion to dismiss on substantially identical grounds in Motion Sequence 001. The instant application seeks successive, fragmentary dismissal and is barred by CPLR 3211(e) and well-settled precedent disfavoring such duplicative motion practice. (*see Phoenix Four, Inc. v. Albertini*, 245 A.D.2d 166 [1st Dept. 1997]). As the Court

previously ruled in Motion Sequence 001, Plaintiff’s GMVA cause of action sufficiently states a claim at the pleading stage. The statute requires allegations that a plaintiff was injured by a gender-motivated crime of violence, which Plaintiff has alleged. Defendant’s insistence on disproving respondeat superior liability before discovery is premature. Plaintiff is entitled to conduct discovery before her claims may be adjudicated on summary judgment. As such, Defendant’s cross-motion is denied.

The court has considered the remaining arguments of the parties and finds such unavailing.

For the foregoing reasons, it is hereby

ORDERED that Plaintiff’s motion to amend is granted to the extent outlined above; and it is further

ORDERED that Defendant Security USA, Inc.’s cross-motion for summary judgment is denied in its entirety.

The foregoing constitutes the decision and order of the court.

8/18/2025  
DATE



HON. LESLIE A. STROTH  
J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
				REFERENCE	