

Scognamiglio v City of New York

2025 NY Slip Op 33440(U)

September 11, 2025

Supreme Court, New York County

Docket Number: Index No. 159187/2023

Judge: Jeanine R. Johnson

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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. JEANINE R. JOHNSON PART 52M

Justice

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NIELLO SCOGNAMIGLIO, KATHLEEN SCOGNAMIGLIO,
Plaintiff,

INDEX NO. 159187/2023

MOTION DATE 04/30/2025

MOTION SEQ. NO. 004

- v -

THE CITY OF NEW YORK, BREAKSTONE REALTY
CORP., CAFE CHINA GROUP PLLC D/B/A CAFE CHINA,
61 WEST 37TH STREET, LLC, RICK'S CABARET
INTERNATIONAL INC. D/B/A VIVID CABARET NEW
YORK, CONSOLIDATED EDISON COMPANY OF NEW
YORK, INC., CERCONE EXTERIOR RESTORATION
CORP. D/B/A CERCONE EXTERIOR RESTORATION,
TRIUMPH CONSTRUCTION CORP,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
Plaintiff,

Third-Party
Index No. 595946/2024

-against-

TRIUMPH CONSTRUCTION CORP

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 116, 117, 118, 122, 123, 125, 126

were read on this motion to/for REARGUMENT/RECONSIDERATION

Upon the foregoing documents, Plaintiff's motion to reargue the Court's prior decision dated 03/28/2025 (NYSCEF Doc. No. 100), which granted the motion to reargue by Defendant – Rick's Cabaret International Inc. d/b/a/ Vivid Cabaret New York (hereinafter "Defendant") and dismissed the matter as to Defendant, is denied, and Plaintiff's motion seeking leave to Amend their Summons and Complaint to add and serve RCI Hospitality Holdings Inc. is granted.

A motion for reargument is “addressed to the discretion of the court” and, to be granted, requires a party “establish that the court overlooked or misapprehended the relevant facts or misapplied any controlling principle of law.” (*Mangine v. Keller*, 182 A.D.2d 476, 477 [1st Dept 1992]; *Foley v. Roche*, 68 A.D.2d 558, 567 [1st Dept 1979].) Reargument does not give that party “successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted.” (*William P. Pahl Equip. Corp. v. Kassis*, 182 A.D.2d 22, 27 [1st Dept 1992].)

In support of their motion to reargue, Plaintiff argues that this Court overlooked the nature of their claim against Defendant by focusing erroneously on whether it owned the property, instead of whether it “operated, maintained, managed, and controlled” the property. (NYSCEF Doc. No. 101.) Defendant contends Plaintiff is “merely . . . rehash[ing]” its earlier arguments. (NYSCEF Doc. No. 116.)

This Court focused on the ownership issue in dismissing Plaintiff’s claims against Defendant because that issue was dispositive. Generally, under New York law, “it is only the municipality which may be held liable for the negligent failure to have defects and dangerous conditions in a sidewalk repaired, unless a charter, ordinance or statute clearly imposes liability upon the owner in favor of the injured person.” (*Friedman v. Gearrity*, 33 A.D.2d 1044 [2d Dept 1970]; *Tremblay v. Harmony Mills*, 171 N.Y. 598 [1902].) The New York City “sidewalk law” imposes liability on landowners, not land possessors, for injuries suffered on sidewalks. (*See* Administrative Code of City of NY §§ 7-210, 19-152.) Plaintiff implicitly relies on this law for their theory that Defendant is liable to them as a private entity. In dismissing Plaintiff’s claims against Defendant on March 28, 2025 this Court was persuaded that Defendant could not be liable to Plaintiff because Defendant submitted admissible evidence showing it was not the

owner of the property at issue. Thus, Plaintiff has not satisfied the standard for reargument or renewal, as this Court did not overlook or misapprehend matters of fact or law in granting Defendant's motion.

Plaintiff also seeks leave to amend their Summons and Complaint to add and serve RCI Hospitality Holdings Inc. (hereinafter "RCI") as a party defendant, as Plaintiff originally sued the incorrect entity, Rick's Cabaret International Inc. d/b/a/ Vivid Cabaret New York. Plaintiff's excuse for its delay in adding and serving RCI as a party is that this Court had previously found, in originally denying Defendant's motion for dismissal and summary judgment in its June 13, 2024 order, that "further discovery was needed" to "ascertain the relationship of the parties." (NYSCEF Doc. No. 101.) Defendant opposes this amendment on the grounds that Plaintiff could have discovered the correct party earlier in the litigation but for "a lack of due diligence and investigation" and that the amendment "blatantly prejudices . . . all the parties in hindering the progress" of litigation. (NYSCEF Doc. No. 116.)

This Court may, in its discretion, grant leave to a party "at any time" to amend its pleadings, and such leave "shall be freely given upon such terms as may be just," provided that the party seeking amendment has accompanied their motion with a proposed amended or supplemental pleading. (CPLR 3025(b); *see Fahey v. County of Ontario*, 44 N.Y.2d 934 [1978] ("Leave to amend shall be freely given absent prejudice or surprise resulting directly from the delay"); *Briggs v. NYC Transit Authority*, 132 A.D.2d 451 [1st Dept 1987].) "Mere lateness is not a barrier" to granting a motion to amend pleadings; the opponent must show they would suffer significant prejudice as a result. (*Edenwald Contracting Co., Inc. v. City of New York*, 60 N.Y.2d 957 [1983]; *Norwood v. City of New York*, 203 A.D.2d 147 [1st Dep't 1994].) Where

there has been an “extended delay,” the party seeking leave to amend must establish a reasonable excuse for the delay. (*Heller v. Louis Provenzano, Inc.*, 303 A.D.2d 20 [1st Dep’t 2003].)

Plaintiff has met the standard for amendment by submitting evidence showing that Rick’s Cabaret International Inc. changed its name to RCI Hospitality Holdings Inc. in 2014 and that RCI operated Vivid Cabaret at the time of Plaintiff’s injury. While Plaintiff might have gathered this information earlier, this Court will nonetheless permit them to amend their complaint to add RCI as a party, as they have shown that RCI is the correct party rather than Defendant, that Defendant was simply sued under RCI’s former name, and that much of Plaintiff’s delay in naming the correct party defendant is reasonable in light of Defendant and Plaintiff having spent much of the time since commencement of the action actively litigating motions and pursuing discovery. Further, contrary to Defendant’s contention, Plaintiff submitted proposed amended pleadings as required. (NYSCEF Doc. No. 110.)

Furthermore, Defendant’s claim of prejudice is unpersuasive. Plaintiff served the General Manager of Vivid Cabaret at the commencement of the action but, in so doing, merely sued the wrong entity by using its former corporate name. Defendant must have been aware throughout this litigation that RCI was the party Plaintiff originally meant to sue and anticipated that it may be sued under that correct name after Plaintiff realized their mistake, so it cannot realistically be surprised or prejudiced in its defense by Plaintiff amending its complaint to add and serve RCI in its place. Moreover, New York courts favor disposition on the merits rather than procedural gamesmanship. (*See Andino v. DeJesus*, 15 A.D.3d 259 [1st Dept 2005]; *Nomako v. Ashton*, 22 A.D.2d 683 [1st Dept 1964].)

Accordingly, it is hereby,

ORDERED that Plaintiff’s motion to reargue and renew is denied; it is further

ORDERED that Plaintiff's motion to amend their Summons and Complaint to add and serve RCI Hospitality Holdings Inc. is granted; it is further

ORDERED that Plaintiff's motion to deem service valid against RCI Hospitality Holdings Inc. *nunc pro tunc* is denied; it is further

ORDERED that, within 10 days from entry, Plaintiff's attorney shall serve a copy of this Order and the Amended Summons and Complaint with notice of entry upon RCI Hospitality Holdings, Inc. in accordance with the CPLR; it is further

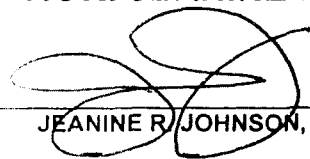
ORDERED that any relief not specifically addressed herein is denied.

This constitutes the Decision and Order of the Court.

HON. JEANINE R. JOHNSON
J.S.C.

9/11/2025

DATE



JEANINE R. JOHNSON, J.S.C.

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