

Schaffzin v 86th Retail LLC

2025 NY Slip Op 33728(U)

October 3, 2025

Supreme Court, New York County

Docket Number: Index No. 151263/2024

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. 151263/2024

SUELLEN SCHAFFZIN,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 001

- v -

86TH RETAIL LLC, SHAKE SHACK ENTERPRISES
LLC, SHAKE SHACK 152 E 86 LLC, ABC CORPS 1-10

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15

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

FACTUAL BACKGROUND

This action arises from personal injuries allegedly sustained by Plaintiff, Suellen Schaffzin, resulting from a trip and fall incident on March 1, 2023, on a defective sidewalk adjacent to Defendants' premises located at 1460 East 86th Street, New York, New York. Plaintiff alleges that she suffered serious and permanent injuries to her pelvis, including a displaced and comminuted fracture, as a result of the fall.

Plaintiff commenced this action by Summons and Complaint filed on or about January 2024. On March 2024, Defendants Shake Shack Enterprises, LLC, and Shake Shack 86th, LLC interposed an Answer. In June 2024, Plaintiff served her Verified Bill of Particulars. In November 2024, during discovery, counsel for Defendants produced a lease agreement for the premises as well as documents identifying Charles H. Greenthal & Co. as the property management company at the time of Plaintiff's fall.

Based on this newly obtained information, Plaintiff now seeks leave to amend the Complaint to add additional defendants alleged to have owned and managed the subject premises at the time of the incident. In support, Plaintiff submits a proposed Supplemental Summons and Amended Complaint, her Verified Bill of Particulars, relevant correspondence, and the lease and management documents. Defendants do not submit opposition to the instant motion.

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 [2nd Dept 2012]). “Prejudice requires that the [opposing party] has been hindered in the preparation of his case or been prevented from taking some measure in support of his position’.” (*RCLA, Inc. v. 50-09 Realty, LLC*, 48 A.D.3d 538, 539, 852 N.Y.S.2d 211 [2d Dept 2008] [quoting *Loomis v. Civetta Corinno Constr. Corp.*, 54 N.Y.2d 18, 23, 444 N.Y.S.2d 571, 429 N.E.2d 90 (1981)]).

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 [1st Dept 2010]; see also *Cruz v. Brown*, 129 A.D.3d 455 [1st Dept 2015]).

DISCUSSION

Applying these principles, Plaintiff's motion for leave to amend the Complaint is granted. The proposed amendment seeks to add as defendants the property owner and managing agent identified during discovery as having responsibility for the subject premises at the time of Plaintiff's accident. These allegations are supported by documentary evidence, including the lease agreement and correspondence produced by Defendants, and are not palpably insufficient or clearly devoid of merit.

There is also no basis to find prejudice or surprise. This action has not been pending for an extended period of time, no depositions have been conducted, and discovery remains in the early stages. The information identifying the additional parties was produced by Defendants themselves, and therefore Defendants cannot claim surprise at Plaintiff's request to include those entities as defendants. Defendants have not demonstrated that permitting the amendment would hinder the preparation of their defense or prevent them from taking any steps in support of their position (*see RCLA, Inc. v. 50-09 Realty, LLC*, 48 A.D.3d 538 at 539).

Courts have repeatedly held that absent a showing of actual prejudice, delay alone is not a basis to deny amendment. Here, there is no evidence that Defendants will suffer any material disadvantage if Plaintiff is permitted to amend her pleading. To the contrary, allowing the amendment ensures that all potentially responsible parties are before the Court and promotes the full and fair adjudication of Plaintiff's claims.

Accordingly, Plaintiff's motion for leave to amend is granted in its entirety. Accordingly, it is hereby

ORDERED that Plaintiff's motion for leave to amend the Complaint pursuant to CPLR 3025(b) is granted; and it is further

ORDERED that the proposed Supplemental Summons and Amended Complaint annexed to Plaintiff's motion papers shall be deemed accepted for filing; and it is further

ORDERED that the caption shall be maintained as follows:

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SUELLEN SCHAFFZIN
Plaintiff, Index No.: 151263/2024

-against-

86TH RETAIL LLC, SHAKE SHACK ENTERPRISES LLC,
SHAKE SHACK 152 E 86 LLC, 85TH ESTATES COMPANY,
CHARLES H GREENTHAL MANAGEMENT CORP., and
ABC CORPS 1-10,
Defendants.

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ORDERED that the movant shall serve a copy of this Order upon the County Clerk within 14 days of this Order.

ORDERED that Plaintiff shall serve the Supplemental Summons and Amended Complaint upon all parties, including the newly added defendants, within fourteen (14) days of service of this Decision and Order with notice of entry.


The foregoing constitutes the decision and order of the court.

10/3/2025
DATE

CHECK ONE: CASE DISPOSED GRANTED DENIED NON-FINAL DISPOSITION OTHER

APPLICATION: SETTLE ORDER SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE


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