

Nunez v City of New York

2025 NY Slip Op 34125(U)

October 27, 2025

Supreme Court, New York County

Docket Number: Index No. 161421/2024

Judge: Richard Tsai

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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. RICHARD TSAI PART 21

Justice

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MIRTHA NUNEZ,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY TRANSIT
AUTHORITY, METROPOLITAN TRANSPORTATION
AUTHORITY, NEW YORK CITY LODGE OF THE ANCIENT
AND MYSTICAL ORDER ROSAE CRUCIS, INC., THE
GRAND LODGE OF THE ENGLISH LANGUAGE
JURISDICTION OF THE ANCIENT AND MYSTICAL
ORDER ROSAE CRUCIS, BUILDING EQUITY
MANAGEMENT LLC., and OTHENTIC LUXURY HAIR, LLC,

Defendants.

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**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 003) 45 - 49
were read on this motion to/for AMEND CAPTION/PLEADINGS.

In this action, plaintiff Mirtha Nunez alleges that, on May 29, 2024, she was caused to “sustain serious and permanent injuries from unsafe conditions which caused her to trip and fall due to the dangerous nature of the sidewalk” where she was walking (summons and complaint [NYSCEF Doc. No. 1] ¶ 100). In the complaint, plaintiff alleges that the sidewalk was owned, maintained, and utilized by the above-named defendants. Now, plaintiff asserts that Consolidated Edison Company of New York (Con Ed) “performed work including but not limited to construction, repair, steam and/or gas repair, electrical repair, roadway/sidewalk excavation, paving, backfilling and other similar type of work at or about the subject premises” (plaintiff’s counsel’s affirmation in support of motion [NYSCEF Doc. No. 46] ¶ 5; see also exhibit B in support of motion [NYSCEF Doc. No. 48], proposed amended complaint ¶¶ 101-105 [asserting theory of liability as against ConEd]). As such, plaintiff seeks to amend her pleadings, and amend the caption, to add Con Ed as a defendant based on these allegations. Plaintiff’s motion is unopposed.

DISCUSSION

CPLR 3025 (b) provides that a party may amend its pleadings “at any time by leave of [the] court,” which “shall be freely given upon such terms as may be just”. It further provides that “[a]ny motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading” (*id.*).

“As a general rule, leave to amend a pleading should be freely granted in the absence of prejudice to the nonmoving party where the amendment is not patently lacking in merit . . . , and the decision whether to grant leave to amend a complaint is committed to the sound discretion of the court” (*Davis v South Nassau Communities Hosp.*, 26 NY3d 563, 580 [2015] [internal quotation marks omitted]; see also *Y.A. v Conair Corp.*, 154 AD3d 611 [1st Dept 2017] [holding that leave should be granted “absent . . . surprise resulting therefrom”]). “[P]laintiff 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., Inc.*, 74 AD3d 499, 500 [1st Dept 2010]).

In addition, a motion to add a new defendant, pursuant to CPLR 1003, need not be served on “the proposed additional defendant” (*Abraham v Torati*, 219 AD3d 1275, 1285 [2d Dept 2023]). Only the parties who have appeared in the action are entitled to service of the motion to add a new defendant.

Here, the proposed amended complaint is not patently lacking in merit and would appear to cause prejudice to any other party. Further there is no opposition to the motion. Therefore, the motion to amend is granted.

CONCLUSION

It is hereby **ORDERED** that plaintiff’s motion seeking leave to amend the Summons and Complaint to add Consolidated Edison Corporation of New York (Con ED) as defendant is **GRANTED** without opposition; and it is further

ORDERED that the proposed amended verified complaint annexed to the papers as Exhibit B (NYSCEF Doc. No. 48) is deemed served the defendants who have appeared in this action, upon service of a copy of this order with notice of entry; and it is further

ORDERED that the defendants who have appeared in this action, shall each serve a verified answer to the amended complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that a supplemental summons and amended complaint, the latter being in the form annexed to the motion papers, as Exhibit B (NYSCEF Doc. No. 48), 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 caption is amended to read as follows:

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MIRTHA NUNEZ,

Plaintiff,

-against-

**THE CITY OF NEW YORK,
NEW YORK CITY TRANSIT AUTHORITY,
METROPOLITAN TRANSPORTATION AUTHORITY,
NEW YORK CITY LODGE OF THE ANCIENT AND
MYSTICAL ORDER ROSAE CRUCIS, INC.,
THE GRAND LODGE OF THE ENGLISH LANGUAGE
JURISDICTION OF THE ANCIENT AND MYSTICAL
ORDER ROSAE CRUCIS, BUILDING EQUITY
MANAGEMENT LLC., OTHENTIC LUXURY
HAIR, LLC. and CONSOLIDATED EDISON
COMPANY OF NEW YORK, INC.**

Defendants

=====X

and it is further

ORDERED that counsel for plaintiff 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 amend their records to reflect such change in the caption herein; and it is further

ORDERED that 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 Section J of the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases*¹ (accessible at the “E-Filing” page on the court’s website at <https://www.nycourts.gov/LegacyPDFS/courts/1jd/supctmanh/Efil-protocol.pdf>).

¹ Pursuant to Section J, in order for the Clerk of the General Clerk’s Office to effectuate this order, the movant must e-file a copy of the order “using the NYSCEF document type ‘Service on Supreme Court Clerk (Genl. Clerk) w/Copy of Order’” and the filer must provide “as additional information (in the ‘Additional Document Information’ field) a brief description of the type of order being submitted (e.g., ‘Order of Consolidation’ . . .)” (*id.*).

Counsel for the parties are reminded that this matter is scheduled for a status conference on **May 14, 2026**, at **10:30 a.m.** before this court (Part 21) in courtroom **280** at 80 Centre Street, New York, NY.



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<u>10/27/2025</u> DATE					<u>RICHARD TSAI, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED		<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:		SETTLE ORDER			OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	REFERENCE

Likewise, pursuant Section J, in order for the County Clerk to effectuate this order, the movant must serve a copy of this order on the County Clerk "by filing with NYSCEF a completed Notice to the County Clerk - CPLR § 8019 (c) (NYSCEF Form EF-22, available on the NYSCEF site)" (*id.*)