

Smith v Zocdoc Inc.

2025 NY Slip Op 34564(U)

November 20, 2025

Supreme Court, New York County

Docket Number: Index No. 158451/2021

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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ROLLAND SMITH INDIVIDUALLY AND ON BEHALF OF ALL OTHER PERSONS SIMILARLY SITUATED WHO WERE EMPLOYED BY ZOCDOD, INC., AND RELATED OTHER AFFILIATED ENTITIES,

Plaintiff,

- v -

ZOCDOD INC., AND RELATED OR AFFILIATED ENTITIES,

Defendant.

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INDEX NO. 158451/2021
MOTION DATE 08/15/2025
MOTION SEQ. NO. 007

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 007) 117, 118, 119, 120, 121, 122, 126, 127, 128, 129

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

Plaintiff moves, pursuant to CPLR 3025(b), for leave to amend the Verified Complaint. Defendant Zocdoc Inc. has submitted a Statement of Position advising that it does not oppose plaintiff's motion for leave to amend. In reply, plaintiff requests an award of attorneys' fees and costs incurred in making this motion.

Upon the foregoing documents, the motion is granted on consent to the extent of permitting the amendment, and plaintiff's request for fees is denied.

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]).

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]). 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.*).

The proposed Amended Complaint expands upon the existing wage-and-hour claims by adding class allegations, additional statutory causes of action, and a retaliatory termination claim. The amendments arise from the same employment relationship, alleged misclassification, and pay practices that underlie the original pleading, and are supported by plaintiff’s affirmation and counsel’s affirmation.

Defendant’s Statement of Position expressly states that Zocdoc “does not oppose Plaintiff’s motion for leave to amend.”

There is no showing of prejudice or surprise, and discovery remains in an early stage. On this record, and particularly in light of defendant’s non-opposition, the court finds that the proposed amendments are not palpably insufficient or patently devoid of merit and that leave to amend should be freely granted under CPLR 3025(b).

Accordingly, the branch of the motion seeking leave to amend is granted, on consent of defendant. The proposed Amended Complaint (NYSCEF Doc. No. 121) shall be deemed filed and served as set forth below.

In his reply papers, plaintiff seeks an award of attorneys' fees and costs associated with this motion, arguing that defendant's refusal to stipulate to the amendment necessitated motion practice.

Sanctions in connection with motion practice are discretionary and generally require a showing of frivolous conduct within the meaning of 22 NYCRR 130-1.1 or some other statutory or contractual basis. The record reflects that, before the motion was filed, defendant advised it would not oppose the filing of the proposed amended complaint, while reserving its defenses. Although defendant could have avoided motion practice by stipulating, its decision not to sign a stipulation, and instead to state on the record that it does not oppose the motion, does not render its conduct frivolous or otherwise warrant the imposition of fees.

The court does not find Defendants conduct frivolous, as Plaintiff was advised that they would not consent but would also not oppose. Plaintiff has not made an adequate showing of gamesmanship or other conduct warranting sanctions. As such, the court declines to award attorneys' fees or costs to plaintiff in connection with this motion.

Accordingly, it is hereby

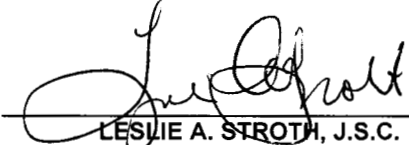
ORDERED that plaintiff's motion for leave to amend the Verified Complaint is granted, on consent of defendant; and it is further

ORDERED that the Amended Complaint in the form annexed as NYSCEF Doc. No. 121 shall be deemed filed and served upon service of a copy of this Decision and Order with notice of entry; and it is further

ORDERED that defendant shall serve and file an answer or otherwise respond to the Amended Complaint within twenty (20) days after service upon it of this Decision and Order with notice of entry; and it is further

ORDERED that plaintiff's request for attorneys' fees and costs incurred in connection with this motion is denied.

The foregoing constitutes the decision and order of the Court.

<u>11/20/2025</u> DATE	 _____ 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
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE