

Turner Constr. Co. v Scottsdale Ins. Co.

2025 NY Slip Op 34712(U)

December 2, 2025

Supreme Court, New York County

Docket Number: Index No. 650575/2025

Judge: Emily Morales-Minerva

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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. EMILY MORALES-MINERVA PART 42M

Justice

-----X

INDEX NO. 650575/2025

TURNER CONSTRUCTION COMPANY

MOTION DATE 07/08/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

SCOTTSDALE INSURANCE COMPANY,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 26

were read on this motion to/for

LEAVE TO FILE

APPEARANCES:

Saxe Doernberger & Vita, P.C., New York, NY (Bethany Lynne Barrese, Esq., of counsel), for plaintiff.

Kennedys CMK LLP, New York, NY (Ann Odelson, Esq., of counsel) for defendant.

HON. EMILY MORALES-MINERVA, J.S.C.

In this insurance coverage action wherein plaintiff TURNER CONSTRUCTION COMPANY seeks a declaratory judgment, plaintiff moves, by notice of motion (sequence number 01), pursuant to CPLR § 3025 (b),¹ for leave to amend its complaint to correct an

¹ Rule 3025 (b) of the CPLR provides, "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 including the granting of costs and continuances. Any 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" (emphasis added).

error regarding the type of insurance policies plaintiff procured in connection with the construction project at issue in the underlying personal injury action, John Macropoulos v Turner Construction Company et. al, Index No. 9273/2016 (Sup Ct Queens Cnty). Defendant SCOTTSDALE INSURANCE COMPANY appears and opposes the motion.

For the reasons explained below, the motion (seq. no. 01) is granted entirely.

Leave to amend a pleading should be freely given absent a showing of substantial prejudice or surprise, unless the proposed amendment is palpably insufficient or patently devoid of merit (see CPLR § 3215 [b]; see also JP Morgan Chase Bank, N.A. v Low Cost Bearings N.Y., Inc., 107 AD3d 643, 644 [1st Dept 2013]). "On a motion for leave to amend, plaintiff 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] [internal citation omitted]).

Further, "prejudice is more than the mere exposure of the party to greater liability" (Kismo Apts., LLC v Gandhi, 24 NY3d 403, 411 [2014]). "Prejudice requires some indication that the defendant has been hindered in the preparation of his case or has been prevented from taking some measure in support of his

position" (Cherebin v Empress Ambulance Serv., Inc., 43 AD3d 364, 365 [1st Dept 2007], quoting Loomis v Civetta Corinno Const. Corp., 54 NY2d 18, 23 [1981]).

Here, though defendant argues that it will be prejudiced by the proposed amendment due to it having "developed a litigation strategy in reliance" on the original complaint, this argument is unavailing. This litigation is in its initial phase, discovery is in its infancy, and a deadline for filing the note of issue has not yet been scheduled (see Kocourek v Booz Allen Hamilton Inc., 85 AD3d 502, 505 [1st Dept 2011] ["[T]here is no prejudice to defendants because the litigation is still in its initial phase"]; see also Ayers v Dormitory Authority of State of New York, 165 AD3d 441, 443 [1st Dept 2018]). Further, defendant's need for additional discovery or additional time to prepare a defense does not constitute prejudice sufficient to justify denial of plaintiff's motion (seq. no. 01) to amend the complaint (see Jacobson v McNeil Consumer & Specialty Pharm., 68 AD3d 652, 654 [1st Dept 2009]; see also Pitt v Hague Convention, 191 AD3d 1344 [4th Dept 2021]).

Accordingly, it is hereby

ORDERED that the motion (seq. no. 01) of plaintiff TURNER CONSTRUCTION COMPANY is granted; it is further

ORDERED that the Amended Complaint in the form annexed to the motion shall be deemed served upon defendant SCOTTSDALE

INSURANCE COMPANY upon service of a copy of this order, with notice of entry; it is further

ORDERED that plaintiff shall serve a copy of this order with notice of entry on defendant within ten days of such entry; it is further

ORDERED that defendant shall file an answer to the amended complaint within thirty days of such service; it is further

ORDERED that the parties shall appear for a preliminary conference in Part 42M, Courtroom 574, 111 Centre Street on February 18, 2026 at 10:30 A.M.; and it is further

ORDERED that the Clerk of Court shall mark the file accordingly.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

12/2/2025
DATE


EMILY MORALES-MINERVA, 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	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE