

Executive Risk Indem., Inc. v Pagot

2025 NY Slip Op 34987(U)

December 22, 2025

Supreme Court, New York County

Docket Number: Index No. 159666/2021

Judge: Denis Reo

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DENIS REO PART 65
Acting Justice

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EXECUTIVE RISK INDEMNITY, INC. A/S/O KENNETH MALAVE AND SANDRA MALAVE, BANKERS STANDARD INSURANCE COMPANY A/S/O ROBERT TRUMP, PACIFIC EMPLOYERS INSURANCE COMPANY A/S/O GILA GOODMAN, PACIFIC EMPLOYERS INSURANCE COMPANY A/S/O DAVID JARVIS AND MICHELLE JARVIS, CHUBB NATIONAL INSURANCE COMPANY A/S/O DESPINA TSIOURIS AND JOHN TSIOURIS, EXECUTIVE RISK INDEMNITY INC. A/S/O MARK LANDISMAN AND JULIE NEWDOW, BANKERS STANDARD INSURANCE COMPANY A/S/O ERIC RIPERT AND SANDRA RIPERT, PACIFIC INDEMNITY COMPANY A/S/O ALLISON DUMAN AND CENGIZ DUMAN, PACIFIC INDEMNITY COMPANY A/S/O TODD ALBERT AND BARBARA ALBERT, PACIFIC INDEMNITY COMPANY A/S/O MATTHEW BERCHUCK AND ESRA BERCHUCK, CHUBB INDEMNITY INSURANCE COMPANY A/S/O PATRICIA HAMILTON; CHUBB INDEMNITY INSURANCE COMPANY A/S/O OM BATHEJA AND NIRMALA BATHEJA; EXECUTIVE RISK INDEMNITY INC. A/S/O ASHOK GURNANI AND VEENA GURNANI, CHUBB NATIONAL INSURANCE COMPANY A/S/O MURTAZA MOOCHHALA AND SAMMENA DOST, PACIFIC INDEMNITY COMPANY A/S/O ELIZABETH ROMANO; PACIFIC INDEMNITY COMPANY A/S/O OMAR QAISER

INDEX NO. 159666/2021
MOTION DATE 06/30/2025
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

Petitioners,

- v -

DR. STEPHEN PAGOT, MNYC REAL ESTATE HOLDINGS LLC

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62

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

Plaintiffs seek to amend the action to add Janey Peterson as a party. For the reasons set forth below, Plaintiffs motion is DENIED.

Background

On January 14, 2020, a fire allegedly started in apartment 24B within the building located at 515 East 72nd Street, New York, NY. The fire caused extensive damage to the neighboring apartments resulting in multiple subrogation lawsuits that were consolidated for discovery by stipulation dated April 18, 2025 (the other actions are hereinafter referred to as the “Companion Actions”) (NYSCEF Doc. No. 53).

At the time of the fire, apartment 24B was leased to Dr. Stephen Pagot (“Dr. Pagot”) and occupied by both Dr. Pagot and Janey Peterson (“Peterson”) (Apartment 24B shall be referred to hereinafter as “Dr. Pagot’s Apartment”). Dr. Pagot was named as a defendant in the within matter and as a defendant in many of the Companion Actions. Likewise, Peterson was named as a defendant in many of the Companion Actions; however, she was not named as a party in this matter.

As a defendant in the Companion Actions, Peterson gave testimony on April 25, 2024 concerning the fire. While Plaintiffs counsel was present at Peterson’s deposition, he did not ask her any questions about the incident.

Plaintiffs in the instant lawsuit now seek to amend the complaint to name Peterson as a defendant approximately four years after the action was commenced, five years after the fire, two years after the statute of limitations for negligence expired, and over one and one-half years since Plaintiffs counsel appeared at Peterson’s deposition in the Companion Actions.

Summary of March 11, 2025 Order

Previously, Plaintiffs filed a motion in one of the Companion Actions bearing New York County Index Number 154107/2020 for leave to file an amended complaint naming Peterson as a defendant in this action. On March 11, 2025, Hon. Shlomo S. Hagler denied Plaintiffs’

application because Plaintiffs failed to annex a copy of the proposed amended complaint that states the allegations against Peterson. Hon. Hagler in his oral decision on the record stated the following:

“You can’t have an amended complaint that doesn’t mention Ms. Peterson. The reason I looked at the complaint, I wanted to know what the allegations are against Ms. Peterson. There are no allegations against Ms. Peterson. Therefore, this Court is denying your motion without prejudice.

In addition, if you’re doing it again, you have to tell me how they’re united in interest. Give me the facts that give rise to how they’re united in interest or if there are any legal principles. You just gloss over it.” (NYSCEF Doc No 26, tr at 13, lines 5-15)

Summary of the Proposed Amended Complaint

In support of Motion Seq No 001 in this action, Plaintiffs corrected the defect in the prior motion and attached a redlined complaint. In short, Plaintiffs assert that Peterson was negligent in causing the fire that occurred in Dr. Pagot’s Apartment on January 14, 2020.

Discussion

Leave to amend a pleading shall be freely granted upon such terms as may be just. (*See* CPLR 3025[b]; *Edenwald Contr. Co. v City of New York*, 60 NY2d 957, 959 [1983]). However, leave will be denied if the proposed amendment is “palpably insufficient or patently devoid of merit”. (*16 West 8th LLC v Gluckman*, 222 AD3d 449 [1st Dept 2023]). Amendments seeking to add a time-barred claim or party are patently devoid of merit (*see Schwartz v Walter*, 171 AD3d 969, 970 [2d Dept 2019]; *Roco G.C. Corp. v Bridge View Tower, LLC*, 166 AD3d 1031, 1033 [2d Dept 2018]; *Grant v Brooklyn Ctr. for Rehabilitation & Residential Health Care, LLC*, 153 AD3d 798 [2d Dept. 2017]; *Jenal v Brown*, 80 AD3d 727 [2d Dept 2011]; *Ricca v Valenti*, 24 AD3d 647, 648 [2d Dept 2005]), unless the untimeliness can be overcome by applying the relation-back doctrine (*see e.g. Catnap, LLC v Cammeby's Mgt. Co., LLC*, 170 AD3d 1103, 1106 [2d Dept 2019]; *Myung Hwa Jang v Mang*, 164 AD3d 803, 804–805 [2d Dept 2018]; *Marrone v Miloscio*, 145

AD3d 996, 999 [2d Dept 2016]; *Rodriguez v Paramount Dev. Assoc., LLC*, 67 AD3d 767, 768 [2d Dept 2009]).

CPLR 203(c) and (f) provides the statutory basis for a motion to amend a complaint (*see Matter of Red Hook/Gowanus Chamber of Commerce v New York City Bd. of Stds. & Appeals*, 5 NY3d 452, 457 [2005]; *Ortega v New York City Tr. Auth.*, 170 AD3d 872, 873 [2d Dept 2019]; *Martin v City of New York*, 153 AD3d 693, 694 [2d Dept 2017]; *Moezinia v Ashkenazi*, 136 AD3d 990, 992 [2d Dept 2016]). CPLR 203(c) provides that “[i]n an action which is commenced by filing, a claim asserted in the complaint is interposed against the defendant or a co-defendant united in interest with such defendant when the action is commenced.” CPLR 203(f) provides that “a claim asserted in an amended pleading is deemed to have been interposed at the time the claims in the original pleading were interposed, unless the original pleading does not give notice of the transactions, occurrences, or series of transactions or occurrences to be proved pursuant to the amended pleading.” Building upon these provisions, the relation-back doctrine permits, under certain defined circumstances, the commencement of claims against a party that has not been timely sued, but the claims must relate back to the original timely complaint. The doctrine also permits the addition of untimely claims against an original defendant under some of those same defined conditions.

The Court of Appeals addressed the relation-back doctrine in *Buran v Coupal*, 87 NY2d 173 (1995). In *Buran*, a three-part test was established when applying the relation-back doctrine for the addition of untimely claims. When applying the relation-back doctrine the court found that the following must be established:

“(1) both claims arose out of same conduct, transaction or occurrence, (2) the new party is united in interest with the original defendant, and by reason of that relationship can be charged with such notice of the institution of the action that he will not be prejudiced in maintaining its defense on the merits, and (3) the new

party knew or should have known that, but for a mistake by the plaintiff as to the identity of the proper parties, the action would have been brought against that party as well” (*see id.* at 178–179).

The test for determining unity of interest is whether the defenses between the existing and newly added party are the same such that their interests stand or fall together. (*See Brunero v City of N.Y. Dept. of Parks & Recreation*, 121 AD3d 624, 625 [1st Dept 2014]; *Vanderburg v Brodman*, 231 AD2d 146, 147–148 [1st Dept 1997]). Unity of interest is “more than a notice provision” (*Higgins v City of New York*, 144 AD3d 511, 513 [1st Dept 2016]; *quoting Mongardi v BJ’s Wholesale Club, Inc.*, 45 AD3d 1149, 1151 [3d Dept 2007]). Unity of interest “will be found where there is some relationship between the parties giving rise to the vicarious liability of one for the conduct of the other.” (*Vanderburg*, 231 AD2d at 147-148; *Cuello v Patel*, 257 AD2d 499, 500 [1st Dept 1999]). There is no unity of interest where defendants have divergent interest in the litigation and may assert different defenses. (*See Connell v Hayden*, 83 AD2d 30, 45 [2d Dept 1981]). Unity of interest applies when parties are stand-ins or alter egos for each other. (*Matter of 27th St. Block Assn. v Dormitory Auth. of State of NY*, 302 AD2d 155, 164 [1st Dept 2002]). To establish a unity of interest, “more is required than a common interest in the outcome.” (*Id* at 165). The fact that two defendants may share resources does not conclusively establish that they are united in interest. (*See Zehnick v Meadowbrook II Assoc.*, 20 AD3d 793, 796 [3d Dept 2005] [the fact that the defendant and the proposed new party shared resources together with “the intermingled physical infrastructure of the housing complex” is insufficient to find them united in interest]; *Valmon v 4 M & M Corp.*, 291 AD2d 343 [1st Dept 2002] [the defendant and proposed defendant were not united in interest where one party owned property and the other financed it]). To establish unity of interest, the parties must share exactly the same jural relationship in the subject action. (*See Connell*, 83 AD2d 30).

With regard to the third relation-back prong, a plaintiff need only show a mistake was made in not adding additional defendants before the applicable statute of limitations expired, not that the mistake was also excusable. (*See Ramirez v Elias-Tejada*, 168 AD3d 401, 403–404 [1st Dept. 2019]). A party’s failure to timely name a party is not a mistake where they did not make a “diligent attempt” to ascertain the correct party. (*See Tucker v Lorieo*, 291 AD2d 261 [1st Dept 2002]; *Greater New York Mut. Ins. Co. v Coach, Inc.*, 112 AD3d 438 [1st Dept 2013]).

Plaintiffs seem to bring a negligence cause of action against Peterson which is subject to a three-year statute of limitations accruing from the date of the negligent act. (CPLR 214; *Nationwide Mut. Ins. Co. v Motor Vehicle Acc. Indemnification Corp.*, 198 AD2d 358 [2d Dept 1993]). Therefore, Plaintiffs’ time to commence a timely claim against Peterson for the alleged negligence in this matter expired on January 13, 2023, before the instant motion.

An untimely complaint is not fatal if Plaintiffs satisfy all the elements of the relation back doctrine; however, here they cannot. Plaintiffs satisfy the first condition of the doctrine because it is undisputed that Plaintiffs’ late claim against Peterson arises out of the same transaction or occurrence, namely the January 14, 2020 fire in Dr. Pagot’s Apartment. While the first condition is satisfied, the court finds that plaintiff cannot demonstrate that Peterson is united in interest with any of the other defendants as required in the second prong of the relation-back doctrine. Additionally, while Peterson may have had notice that she would be named in this litigation, Plaintiffs have not demonstrated that the failure to name Peterson was a mistake as they did not demonstrate how they diligently attempted to pursue a claim against Peterson.

Peterson is not united in interest with either of the defendants in this action. Peterson is not a leaseholder nor is there any special relationship between her and Dr. Pagot that would lead to vicarious liability. Dr. Pagot and Peterson do not rise and fall together as is required for

parties to be united interest. The mere fact that Dr. Pagot and Peterson shared space in Pagot's Apartment is insufficient to demonstrate that they were united in interest for the purposes of the relation back doctrine.

Dr. Pagot and Peterson have claims against each other which establishes that they are not united in interest. Dr. Pagot's third and tenth affirmative defenses in this action states that he is not responsible for the fire and that there is another party, over whom he does not have control, who may be negligent. Furthermore, both Dr. Pagot and Peterson both have cross claims against each other in the Companion Actions where they are both co-defendants. Dr. Pagot and Peterson have divergent interests and certainly do not have the same defenses in this action and, as such, they are not united in interest. As all of the elements necessary to evoke the relation back doctrine have not been satisfied, Plaintiffs' application to amend the complaint in this matter is DENIED.

Conclusion

Accordingly, it is

ORDERED that Plaintiffs motion to amend its complaint to add Janey Peterson as a defendant in this matter is DENIED.

Denis Reo

12/22/2025

DATE

DENIS REO, A.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