

**Carey v Carey**

2025 NY Slip Op 35213(U)

December 8, 2025

Supreme Court, New York County

Docket Number: Index No. 152192/2021

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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**INDEX NO. 152192/2021**

MORGAN CAREY,

**MOTION DATE 03/21/2025**

Plaintiff,

**MOTION SEQ. NO. 007**

- v -

MARIAH CAREY, MACMILLAN PUBLISHING GROUP, LLC  
D/B/A HENRY HOLT AND COMPANY, MICHAELA  
ANGELA DAVIS, ANDY COHEN D/B/A ANDY COHEN  
BOOKS

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132

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

Morgan Carey (“Plaintiff”) commenced this action on March 3, 2021 against Mariah Carey (“Carey”), as well as MacMillan Publishing Group, LLC d/b/a Henry Holt and Company, Michaela Angela Davis, and Andy Cohen d/b/a Andy Cohen Books (the “Publisher Defendants”), asserting claims of defamation and intentional infliction of emotional distress as a result of statements in Ms. Carey’s memoir (NYSCEF Doc. No. 1). Plaintiff filed the First Amended Complaint (“FAC”) on July 6, 2021 (NYSCEF Doc. No. 45). The FAC removed the claim for IIED and included claims of defamation and injurious falsehood (*Id.*). By order dated February 15, 2022, Judge Barbara Jaffe granted Defendants’ motion to dismiss in part, dismissing the complaint against the Publisher Defendants and dismissing several claims against Defendant Carey (NYSCEF Doc. No. 80). Plaintiff filed a Notice of Appeal from Judge Jaffe’s order on March 8, 2022. Additionally, on July 11, 2022, Plaintiff filed a motion seeking default judgment, or in the

alternative summary judgment, against Defendant Carey. Plaintiff's appeal was denied on October 12, 2023 and Plaintiff's motion for default and summary judgment was denied on April 12, 2024.

Plaintiff now moves pursuant to CPLR § 3025(b) for leave to file a Second Amended and Supplemental Complaint ("SAC"). The proposed SAC removes claims and defendants that have been dismissed from the case, and adds: detailed allegations regarding Plaintiff's claim for special damages, a new allegation regarding a third-party video, and a claim for intentional infliction of emotional distress ("IIED"). Plaintiff argues that the motion should be granted because leave to amend is to be freely granted and delay alone is an insufficient basis for denial. Defendant Carey opposes the motion on the grounds that the motion is untimely and that the allegations contained in the proposed SAC are futile and fail to state cognizable claims as a matter of law.

### DISCUSSION

CPLR § 3025 (b) provides that:

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.

Leave to amend should be freely granted in the absence of prejudice or surprise unless the proposed amendment is palpably insufficient or patently devoid of merit (*see MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499 [1st Dept 2010]). "[A] 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" (*Id.* at 500). "Mere lateness is not a barrier to the amendment. It must be lateness coupled with significant prejudice to the other side . . ." (*Edenwald Contr. Co. v City of New York*, 60 NY2d 957, 959 [1983]). However, "[w]here there has been an extended delay in moving to amend, the party seeking leave to amend must establish a reasonable excuse for the delay" (*Oil Heat Institute of Long Island Inst. Trust v RMTS Associates, LLC*, 4

AD3d 290 [1st Dept 2004] quoting *Heller v Louis Provenzano, Inc.* 303 AD2d 20 [1st Dept 2003]). “The burden of establishing prejudice is on the party opposing the amendment” (*Kimso Apartments, LLC v Gandhi*, 24 NY3d 403, 411 [2014] [citations omitted]). The determination to permit or deny amendment is committed to the sound discretion of the trial court (*LCVAWCP-Doe v Collins*, 218 AD3d 557, 558 [2nd Dept 2023]).

Here, Plaintiff filed the FAC on July 6, 2021 and Judge Jaffe issued an order on February 16, 2022, dismissing the Publisher Defendants and several of the claims against Defendant Carey. Following Judge Jaffe’s order, Plaintiff filed an appeal and moved for default judgment and summary judgment with respect to the remaining claims against Defendant Carey. Less than a year after the appeal and motion were denied, Plaintiff filed the instant motion to amend the complaint. In light of the pending appeal and motion, Plaintiff has a reasonable excuse for the delayed filing of the motion to amend the complaint.

Moreover, Defendant Carey has failed to establish significant prejudice caused by Plaintiff’s delay. Discovery is still in the early stages, as the preliminary conference order was entered on August 20, 2024, and no depositions have taken place to date. Additionally, the prejudice caused by the absence of Defendant Carey’s mother will disadvantage both parties, as she is unavailable to support either Plaintiff’s claims or Defendant Carey’s defense.

Turning to the merits, the proposed SAC makes four substantive changes: (1) eliminates defendants and claims that were dismissed by Judge Jaffe’s order, (2) cures prior deficiencies in Plaintiff’s allegations for special damages, (3) adds a claim for IIED, and (4) adds a claim regarding a YouTube video that was published in July 2024. Plaintiff’s motion to amend is granted with respect to the first two changes as they streamline the complaint and address deficiencies noted in Judge Jaffe’s order in 2022.

However, Plaintiff's motion is denied with respect to the IIED claim and the YouTube video as they are devoid of merit and palpably insufficient. Plaintiff argues that the IIED claim is supported by the claims that Defendant Carey has called Plaintiff her "ex-brother," expressed an intention to harm him in interviews, and has used her celebrity status to generate lies about him. However, these allegations "do not evince conduct so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community" (*Trujillo v Transperfect Glob., Inc.*, 164 AD3d 1161, 1162 [1st Dept 2018]). Moreover, the IIED claim is duplicative of Plaintiff's defamation claim. Therefore, Plaintiff's motion is denied with respect to the IIED claim.

Lastly, the proposed SAC seeks to add a new defamation claim regarding a YouTube documentary video about Plaintiff. Plaintiff alleges, upon information and belief, that an individual named "Lambily" is responsible for this video and is within the employ and control of Defendant Carey (NYSCEF Doc. No. 123, ¶ 61). Plaintiff argues that the allegations are not pure speculation because the video was created in July 2024, around the time that the action was proceeding towards discovery. Plaintiff further argues that the video stems from a website called "www.lambily.com," that the term "lambily" refers to fans of Defendant Carey, and that the trademark for the term "lambily" is owned by Defendant Carey's corporation, Lotion LLC. This evidence and the allegations fail to provide any support to the claim that the video is connected to Defendant Carey, let alone created by an individual within her employ and control. Therefore, Plaintiff's motion is denied with respect to the YouTube video as it is palpably insufficient.

Accordingly, it is hereby

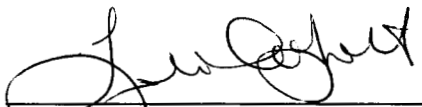
ORDERED that Plaintiff's motion for leave to amend is granted in part and denied in part as outlined above;

ORDERED that Plaintiff is directed to serve and file the second amended complaint with the proposed changes incorporated within 15 days of this order; and it is further

ORDERED that Defendant Carey shall serve an answer to the second amended complaint or otherwise respond thereto within 20 days from the service of the second amended complaint.

This constitutes the decision and order of the court.

12/8/2025  
DATE

  
LESLIE A. STROTH, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE