

Gavriel v Vigilant Engine & Hook & Ladder Co., Inc.
2025 NY Slip Op 35521(U)
March 11, 2025
Supreme Court, Nassau County
Docket Number: Index No. 604099/2023
Judge: Anna M. Grimaldi
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Present: **HON. ANNA M. GRIMALDI, A.J.S.C.**IAS Part 35

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ANAT GAVRIEL as Administrator of the ESTATE OF
MIRIAM ENES GAVRIEL, deceased,

Plaintiffs,

Index No. 604099/2023

Motion Seq. No.: 1

-against-

VIGILANT ENGINE AND HOOK AND LADDER
COMPANY, INC. a/k/a GREAT NECK VIGILANT
ENGINE AND HOOK AND LADDER CO., INC.,

Defendants.

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The following papers read on this motion:

Notice of Motion/Supporting Exhibits.....	19-25
Affirmation in Opposition.....	27-32
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Defendants, VIGILANT ENGINE AND HOOK AND LADDER COMPANY, INC. a/k/a GREAT NECK VIGILANT ENGINE AND HOOK AND LADDER CO., INC., (“Defendants”), moves this court for an order, pursuant to CPLR 3025(b), for leave to file an Amended Answer, adding three affirmative defenses. Plaintiffs, ANAT GAVRIEL as Administrator of the ESTATE OF MIRIAM ENES GAVRIEL, deceased, oppose the motion.

Plaintiff commenced this action by filing and serving a Summons and Complaint dated March 3, 2023. Issue was joined by service of an Answer dated July 19, 2023. The complaint alleges causes of action for negligence and wrongful death arising from an incident occurring on December 25, 2021 whereby Plaintiff sought emergency medical attention. On August 26, 2024, Defendant

filed the within motion seeking leave to amend his Answer pursuant to CPLR 3025, to add three affirmative defenses, *to wit*, rights, benefits and immunities pursuant to Public Health Law § 3000-a (also known as the Good Samaritan Law), and absolute and qualified immunity pursuant to Public Health Law § 3013. Plaintiffs oppose this motion on the basis that Defendants' Motion for Leave to Amend their Answer is devoid of merit. This Court disagrees.

“ ‘Leave to amend pleadings should be freely given provided that the amendment is not palpably insufficient, does not prejudice or surprise the opposing party, and is not patently devoid of merit’ ” (*Bloom v. Lugli*, 102 AD3d 715 [2d Dept 2013]; quoting *Greco v. Christoffersen*, 70 AD3d 769, 770 [2d Dept 2010], quoting *Gitlin v. Chirinkin*, 60 AD3d 901, 901–902 [2d Dept 2009]; see CPLR 3025[b];). “Generally, in the absence of prejudice or surprise to the opposing party, leave to amend pleadings should be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit.” (*Yong Soon Oh*, 124 AD3d at 640, citing *Rodgers v New York City Tr. Auth.*, 109 AD3d 535, 537 [2nd Dept 2013]; see also *Schwartz v Sayah*, 83 AD3d 926 [2nd Dept 2011]). “A determination whether to grant such leave is within the Supreme Court's broad discretion, and the exercise of that discretion will not be lightly disturbed” (*Gitlin*, 60 AD3d at 902; see *Greco*, 70 A.D.3d at 770). “The granting of such leave is committed to the sound discretion of the trial court and must be determined on a case-by-case basis” (*Biaggi & Biaggi v. 175 Medical Vision Properties, LLC*, 105 AD3d 790, 791 [2d Dept. 2013]; quoting *Skinner v. Scobbo*, 221 A.D.2d 334, 335 [2d Dept 1995]).

Defendants argue that after a Compliance Conference on May 16, 2024, the Court ordered the four responders for Defendant, VIGILANT ENGINE AND HOOK AND LADDER COMPANY, INC. a/k/a GREAT NECK VIGILANT ENGINE AND HOOK AND LADDER CO., INC., be produced on or before June 28, 2024. In preparing for the Defendant depositions, counsel learned

that the four responders to be deposed were volunteers and should have been offered immunity pursuant to the Public Health Law §§ 3000-a and 3013. Thereafter, Defendants sought consent by Plaintiff to Amend their Answer to include the affirmative defenses pursuant to the Public Health Law §§ 3000-a and 3013. Plaintiff did not consent. As a result, the within motion was filed on August 21, 2024 after a conference was held in Court on August 9, 2024.

Plaintiff's argument that Defendant's amendments are devoid of merit is unpersuasive. Plaintiff argues that Defendant failed to meet their burden of showing that the element of gross negligence required under the Good Samaritan Law defense. Here, the Court disagrees that Defendant is required to establish the merits of his amendment at this juncture. "The legal sufficiency or merits of a proposed amendment to a pleading will not be examined unless the insufficiency or lack of merit is clear and free from doubt" (*Sample v. Levada*, 8 AD3d 465, 467–68 [2d Dept 2004]). Furthermore, the Court is not rendering a decision as to the ultimate outcome of the affirmative defenses by permitting the proposed amendments (*see Lucido v. Mancuso*, 49 A.D.3d 220, 246 [2008]). It is undisputed that the four responders were volunteers, thus, Defendants' proposed amendment to include defenses related to Public Health Law §§ 3000-a and 3013 are not devoid of merit.

Additionally, the Court does not find the within application to contain prejudice or surprise. In fact, Plaintiff's opposition fails to set forth or even address that Plaintiff would suffer prejudice or surprise if the proposed amendments were granted (*see* CPLR 3025; *see generally Pub. Adm'r of Kings Cnty. v. Hossain Const. Corp.*, 27 A.D.3d 714, 716 [2d Dept 2006]). Shortly after learning that the four responders were volunteers, Defendants made Plaintiff aware of same. Prior to filing the within motion, Defendant requested Plaintiff's consent to amend their answer to include the affirmative defenses, which Plaintiff refused. As such, this application was not a surprise to Plaintiff

and the Court does not find that granting the amendment would prejudice Plaintiff.

Accordingly, it is hereby

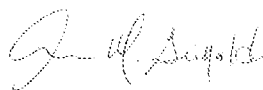
ORDERED that Defendants' motion for leave to amend the answer to include the affirmative defenses pursuant to Public Health Law §§ 3000-a and 3013 is GRANTED.

All other applications not specifically addressed herein are denied.

This constitutes the decision and order of the court.

Dated: March 11, 2025
Mineola, New York

SO ORDERED:



ANNA M. GRIMALDI, A.J.S.C.

ENTERED

Mar 11 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE