DB Ins. Co., Ltd. v General Roofing & Restoration Corp.
2026 NY Slip Op 30377(U)
February 3, 2026
Supreme Court, New York County
Docket Number: Index No. 153327/2020
Judge: Hasa A. Kingo
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. HASA A. KINGO** — ***Justice*** — **PART** **65M**

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DB INSURANCE CO., LTD,

Plaintiff,

- v -

GENERAL ROOFING & RESTORATION CORP., F & S PIZZA CORP., ARTICHOKE STRATEGIC WORLDWIDE, LLC., SALVATORE BASILE, FRANCIS GARCIA, DRP ELECTRICAL CONTRACTOR, INC.,JNS CONSTRUCTION, INC.,EMPIRE PLUMBING, INC.,NY ELITE GC, LLC,

Defendant.

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INDEX NO. 153327/2020

MOTION DATE 12/18/2025

MOTION SEQ. NO. 009

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 009) 358, 359, 360, 361, 362

were read on this motion to AMEND CAPTION/PLEADINGS.

Plaintiff DB Insurance Co., Ltd. a/s/o Golden Realty Company ("plaintiff") moves, pursuant to CPLR § 3025(b), for leave to amend its pleadings to add General Restoration Group Corp. as a party-defendant in Action No. 2 and to amend the summons, complaint, and caption in the form annexed to the motion papers (the "Amended Complaint"). Plaintiff further seeks related relief deeming service of the Amended Complaint upon service of this order with notice of entry, and directing the newly added defendant to answer or otherwise respond within a prescribed period.

BACKGROUND AND PROCEDURAL HISTORY

This action arises out of a fire occurring on or about May 26, 2017, at premises associated with defendants' restaurant operations, allegedly resulting in property damage exceeding $1,516,432.78. Plaintiff alleges, among other things, that defendants' conduct—including work performed in connection with repairs after an earlier fire on or about December 27, 2016—failed to cure known code violations and contributed to conditions that caused the May 2017 fire and resulting damages.

Plaintiff commenced Action No. 2 by filing a summons and complaint on May 26, 2020. Plaintiff avers that service was effected on various defendants in 2020–2021, and that certain defendants appeared and answered while others did not. Plaintiff also notes that counsel substitution occurred in 2022 and 2025.

Plaintiff further represents that these matters proceeded as part of a consolidated group of actions involving overlapping parties and claims arising from the same occurrence, and that the proposed amendment seeks to ensure that all potentially responsible entities are properly joined so that complete relief may be accorded.

ARGUMENTS

Plaintiff argues that leave to amend should be "freely granted" under CPLR § 3025(b) because: (i) the proposed claims arise from the same underlying occurrence; (ii) the amendment is not palpably insufficient or patently devoid of merit; and (iii) no undue prejudice or surprise will result. Plaintiff relies on emphasizing the liberal amendment policy and the heavy burden on an opponent to show prejudice.

Plaintiff acknowledges that any otherwise applicable statute of limitations has expired as to the proposed additional party, but contends the amendment is timely under the relation-back doctrine (CPLR § 203[b], [c]).

There is no opposition to the motion.

DISCUSSION

CPLR § 3025(b) provides that leave to amend "shall be freely given" upon such terms as may be just. The Appellate Division, First Department, has repeatedly held that leave should be granted absent surprise or prejudice resulting directly from the delay, and absent a showing that the proposed amendment is palpably insufficient or patently devoid of merit (see *O'Halloran v Metropolitan Transp. Auth*., 154 AD3d 83 [1st Dept 2017]; *Anon v City of New York*, 85 AD3d 694 [1st Dept 2011]; *McGhee v Odell*, 96 AD3d 449 [1st Dept 2012]; see also *Lucido v Mancuso*, 49 AD3d 220 [2d Dept 2008]).

Critically, the type of "prejudice" that warrants denial is not established merely because the amendment may expand potential liability, prolong litigation, or necessitate additional discovery; rather, prejudice concerns whether the opponent has been hindered in the preparation of its case or prevented from taking some measure in support of its position (see *St. Nicholas W. 126 L.P. v Republic Inv. Co., LLC*, 193 AD3d 488 [1st Dept 2021]).

Applying these standards, the court finds the proposed amendment appropriate.

On a motion for leave to amend, the court does not resolve the ultimate merits of the claims; rather, it considers whether the proposed pleading states viable causes of action and whether it is palpably insufficient as a matter of law. Here, the proposed amendment is grounded in the same occurrence alleged in the original pleading—repair work and alleged failures to remediate code violations after the December 2016 fire, culminating in the May 26, 2017 fire—and asserts negligence-based liability for the resulting property damage.

At this stage, plaintiff's proposed allegations are sufficient to satisfy the threshold for amendment under CPLR § 3025(b). (*O'Halloran*, 154 AD3d at 86–88; *McGhee*, 96 AD3d 449.)

The court further finds that the proposed amendment will not cause undue prejudice or surprise within the meaning of CPLR § 3025(b). The proposed additional defendant is alleged to have been involved in the same restoration work at issue and, as plaintiff explains, is intertwined with the broader consolidated litigation arising from the same fire occurrence.

Even if the amendment results in additional discovery or litigation activity, that is not the kind of prejudice that warrants denial (*St. Nicholas W. 126 L.P*., 193 AD3d 488). The record as presented does not demonstrate any concrete, case-dispositive hindrance to the proposed defendant's ability to investigate, prepare a defense, or otherwise litigate the matter on the merits.

Because plaintiff concedes that the statute of limitations would otherwise bar the claims against the proposed additional defendant, the central question becomes whether the amendment is timely under CPLR §§ 203(b) and (c).

The Court of Appeals has articulated a three-part framework for relation-back: (1) the claims against the new party arise out of the same conduct, transaction, or occurrence; (2) the new party is "united in interest" with a timely sued defendant; and (3) the new party knew or should have known that, but for a mistake by plaintiff as to identity, it would have been named in the original action (*Buran v Coupal*, 87 NY2d 173, 178–80 [1995]; *see also O'Halloran*, 154 AD3d at 86–88).

Here, the first element is satisfied. Plaintiff's proposed claims arise from the identical fire occurrence and the same alleged chain of negligence already described in the original pleading—work performed after the first fire, alleged failure to remediate known code violations, and the ensuing May 26, 2017 fire (*O'Halloran*, 154 AD3d at 86 [the salient inquiry is whether the original pleading gives notice of the transactions/occurrences to be proved by the amended pleading]; *Giambrone v Kings Harbor Multicare Ctr*., 104 AD3d 546 [1st Dept 2013]).

Next, unity of interest applies. Unity of interest exists where the defendants' interests in the subject matter are such that they stand or fall together and a judgment against one will similarly affect the other; it commonly applies where parties are alleged to be jointly responsible for the same wrong arising from the same occurrence. Here, plaintiff alleges coordinated or overlapping repair/restoration responsibilities and shared responsibility for the same hazardous condition culminating in the same loss. On this record, plaintiff has sufficiently demonstrated unity of interest for relation-back purposes at the amendment stage (*Buran*, 87 NY2d at 178–80).

The third element is also satisfied. The Court of Appeals has made plain that relation-back requires only a "mere mistake," not an "excusable" mistake (*Buran*, 87 NY2d at 179–80). Recently, the Court further clarified that the "mistake" component includes a simple oversight or a mistake of law—such as failing to recognize another entity as a legally necessary party (M*atter of Nemeth v K-Tooling*, 40 NY3d 405, 412 [2023]).

Plaintiff's showing—that prior counsel's pleadings omitted the proposed additional defendant due to a mistaken assessment of who was legally necessary and potentially liable for the restoration work and resulting loss—fits within the "mere mistake" standard. Further, the record

as presented supports that the proposed additional defendant knew or should have known, based on the occurrence and the overlap of allegations in the consolidated litigation, that it would have been named but for that mistake (*Buran*, 87 NY2d at 177–80; *Matter of Nemeth*, 40 NY3d at 412; see also *Ellis v Newmark & Co. Real Estate, Inc.*, 209 AD3d 520 [1st Dept 2022]; *Ramirez v Elias–Tejada*, 168 AD3d 401 [1st Dept 2019].)

Finally, the policy animating statutes of limitations—fairness to defendants and protection against stale claims—does not warrant denial here on the showing made, as the amendment concerns the same occurrence already in litigation and is not accompanied by a demonstrated loss of evidence or other concrete disadvantage (*see Duffy v Horton Mem. Hosp.*, 66 NY2d 473 [1985] [limitations policy concerns]; *Buran*, 87 NY2d at 177–78 [courts have discretion to relax limitations where doing so promotes decisions on the merits without undue prejudice]).

Accordingly, the court exercises its discretion to permit amendment, and deems the claims against the additional defendant timely under CPLR §§ 203(b) and (c).

Accordingly, it is hereby:

ORDERED that plaintiff's motion for leave to amend the complaint herein is granted, and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that defendant shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that counsel are directed to appear for a status conference in Room 308, 80 Centre Street, on Tuesday March 10, 2026, at 2:15 PM.

This constitutes the decision and order of the court.

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2/3/2026		HASA A. KINGO, J.S.C.
DATE		

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION	
	[X]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[ ] OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER	
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ] REFERENCE