

Fernandez v Second & 103 LLC
2026 NY Slip Op 31786(U)
April 20, 2026
Supreme Court, New York County
Docket Number: Index No. 153487/2023
Judge: Leslie A. Stroth
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
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

-----X

ANDERSON C. FERNANDEZ,
Plaintiff,

- v -

SECOND AND 103 LLC,
Defendant.

-----X

SECOND AND 103 LLC
Plaintiff,

-against-

VITRUVIUS CONTRACTING CORP.,
Defendant.

-----X

INDEX NO. 153487/2023
MOTION DATE 07/01/2025
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

Third-Party
Index No. 595923/2024

The following e-filed documents, listed by NYSCEF document number (Motion 002) 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53

were read on this motion to/for LEAVE TO FILE

Plaintiff commenced this Labor Law action after suffering injuries at a construction site when he fell from an unsecured ladder while installing sheetrock at 1998 2nd Avenue on January 7, 2023. Plaintiff moves for an order under CPLR § 3025(b) granting leave to serve an amended summons and complaint, adding Bolivar Builders, LLC ("Bolivar Builders"), and G&B Construction, N.Y., Corp. ("G&B Construction") as defendants.

Pursuant to CPLR § 3025(b), "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. 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.”

“In general, motions for leave to amend a pleading should be granted unless the proposed amendment is palpably insufficient or patently devoid of merit, or where the delay in seeking the amendment would cause prejudice or surprise” (*Corwise v Lefrak Org.*, 93 A.D.3d 754 [2nd Dept 2012]). “Prejudice requires that the ‘[opposing party] has been hindered in the preparation of his case or been prevented from taking some measure in support of his position.’” (*RCLA, Inc. v 50-09 Realty, LLC*, 48 A.D.3d 538, 539, 852 NYS2d 211 [2d Dept 2008], quoting *Loomis v Civetta Corinno Constr. Corp.*, 54 NY2d 18, 23, 444 NYS2d 571, 429 N.E.2d 90 [Ct App 1981]).

In *MBIA Ins.*, the Court held that “on a motion for leave to amend, [a party] 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.*, 74 A.D.3d 499 [1st Dept 2010]; see also *Cruz v. Brown*, 129 A.D.3d 455 [1st Dept 2015]).

In his motion for leave to amend the summons and complaint to add two defendants, Plaintiff alleges, based on separate and third-party actions commenced by Defendant Second and 103 LLC, that Bolivar Builders was hired as the general contractor at the work site, and that G&B Construction was hired to perform work at the job site and was negligent in causing Plaintiff’s accident (Plaintiff’s Affirmation in Support of Motion, NYSCEF Doc. No. 44).

Plaintiff’s motion for leave to serve and amended summons and complaint is granted because it seeks to add two parties who are alleged to have been involved in Plaintiff’s accident, and because the allegations are not palpably insufficient or patently devoid of merit. Moreover,

there is no basis to find prejudice or surprise in adding Bolivar Builders and G&B Construction as Defendants, and there is no opposition to the instant motion. To the contrary, allowing the amendment ensures that all potentially responsible parties are before the Court, and promotes the full and fair adjudication of Plaintiff's claims.

Accordingly, it is hereby

ORDERED that Plaintiff's motion for leave to amend the complaint pursuant to CPLR § 3025(b) is granted; and it is further

ORDERED that the amended summons and amended verified complaint annexed to Plaintiff's moving papers shall be deemed served upon personal service of a copy of this order with notice of entry upon all parties who have appeared in the action; and it is further

ORDERED that a supplemental summons and amended complaint, in the form annexed to Plaintiff's moving papers, shall be served, in accordance with the Civil Practice Law and Rules, upon the additional parties in this action within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that the action shall bear the following caption:

-----X

ANDERSON C. FERNANDEZ,

Plaintiff,

- v -

SECOND AND 103 LLC, BOLIVAR BUILDERS, LLC, and
G&B CONSTRUCTION N.Y. CORP.,

Defendant.

-----X

SECOND AND 103 LLC

Third-Party Plaintiff,

-against-

VITRUVIUS CONTRACTING CORP.,

Third-Party Defendant.

-----X

VITRUVIUS CONTRACTING CORP.,

Second Third-Party Plaintiff,

-against-

G&B CONSTRUCTION N.Y. CORP.,

Second Third-Party Defendant.

-----X


And it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the Clerk of the General

Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the parties being added pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address [www.nycourts.gov/suptctmanh]).

The foregoing constitutes the decision and order of the Court.

<u>4/20/2026</u> DATE	 _____ LESLIE A. STROTH, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE