

<b>Martin v 251 Pas LLC</b>
2026 NY Slip Op 31976(U)
May 6, 2026
Supreme Court, New York County
Docket Number: Index No. 161360/2023
Judge: Richard Tsai
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. RICHARD TSAI PART 21

*Justice*

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JANICE MARTIN,

Plaintiff,

- v -

251 PAS LLC, NEW YORK CITY TRANSIT AUTHORITY,  
METROPOLITAN TRANSPORTATION AUTHORITY and  
THE CITY OF NEW YORK,

Defendants.

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INDEX NO. 161360/2023

MOTION DATE 03/18/2026

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 31-45  
were read on this motion to/for AMEND CAPTION/PLEADINGS.

In this action, plaintiff Janice Martin alleges that on February 3, 2023 at about 4:30 p.m., she was injured by “an upraised sidewalk caused by an improper repair along the metal subway grate” in front of 251 Park Avenue in Manhattan (exhibit C in support of motion [NYSCEF Doc. No. 35], bill of particulars ¶¶ 5-6).

On March 18, 2026, plaintiff e-filed this motion for leave to amend the complaint, pursuant to CPLR 3025, to add Jeffrey Management Corp. (Jeffrey Management) as a defendant, whom plaintiff asserts is the managing agent to defendant 251 PAS LLC (251 Pas), the owner of the abutting premises at 251 Park Avenue. 251 Pas opposes the motion on the ground that any claims against Jeffrey Management are barred by the statute of limitations, which expired on February 3, 2026 (affirmation in opposition to motion [NYSCEF Doc. No. 40] ¶¶ 3-4).

Plaintiff acknowledges that the relevant statute of limitations is three years, but argues that her claims against 251 Park Avenue are timely pursuant to the relation back doctrine, as codified under CPLR 203 (affirmation in support of motion [NYSCEF Doc. No. 32] ¶ 17 et seq.).

**DISCUSSION**

CPLR 3025 (b) provides that a party may amend its pleadings “at any time by leave of [the] court,” which “shall be freely given upon such terms as may be just”. It further provides that “[a]ny 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” (*id.*).

“As a general rule, leave to amend a pleading should be freely granted in the absence of prejudice to the nonmoving party where the amendment is not patently lacking in merit . . . , and the decision whether to grant leave to amend a complaint is committed to the sound discretion of the court” (*Davis v South Nassau Communities Hosp.*, 26 NY3d 563, 580 [2015] [internal quotation marks omitted]; see also *Y.A. v Conair Corp.*, 154 AD3d 611 [1st Dept 2017] [holding that leave should be granted “absent . . . surprise resulting therefrom”]).

“[P]laintiff 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., Inc.*, 74 AD3d 499, 500 [1st Dept 2010]). Nonetheless, “a proposed amendment generally is considered patently devoid of merit if it is time-barred under the applicable statute of limitations” (*Great Neck Lib. v Kaeyer, Garment & Davidson Architects, P.C.*, 236 AD3d 873, 875-76 [2d Dept 2025]).

Plaintiff does not dispute that it is now seeking to assert claims against Jeffrey Management more than three years after the incident, but plaintiff argues that such claims are timely pursuant to the relation back doctrine. In order to assert claims against a “subsequent defendant”, like Jeffrey Management, on the ground that such claims “relate back to claims asserted against another defendant”, like 251 Pas, the party seeking such relief must satisfy the following three conditions:

“(1) both claims must arise out of the same conduct, occurrence, or transaction; (2) the new party must be “united in interest” with the original defendant, and by reason of that relationship can be charged with such notice of the institution of the lawsuit such that he will not be prejudiced in maintaining his 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 him as well” (*Kingstone Ins. Co. v Marion Pharm. Inc.*, 224 AD3d 501, 502 [1st Dept 2024]).

Here, there is no dispute that the claims arise out the same conduct, thereby satisfying the first prong (affirmation in opposition ¶¶ 10-11).

As to the second prong, plaintiff argues that 251 Pas and Jeffrey Management are united in interest because their defense are identical, as liability of both defendants derives from the same affirmative act (affirmation of plaintiff’s counsel in support of motion ¶ 22 [NYSCEF Doc. No. 32]). Plaintiff points out that 251 Pas had produced an employee of Jeffrey Management as its own representative for the deposition (*id.*). Additionally, plaintiff argues that notice to 251 Pas may be imputed to Jeffrey Management (*id.*).

As to the third prong, plaintiff asserts that it first became aware that Jeffrey Management was a potential defendant on February 12, 2026 when 251 Pas “produced

Barry Zimmerman for deposition who testified as a property manager for proposed Defendant JEFFREY MANAGEMENT CORP” (affirmation in support of motion ¶ 10).

Zimmerman testified that, around sometime between 2019, Jeffrey Management “determined that the sidewalk was old and in need of repair and replacement” and thus, “did construction and built a brand-new concrete sidewalk” (exhibit E in support of motion [NYSCEF Doc. No. 37], Zimmerman EBT tr at 17, line 22 through 18, line 9). Zimmerman testified that in 2019, the portion replaced was:

“All of the 20th Street section and all of the Park Avenue South section with the exception of the area that's the MTA grating and little sidewalk portion around the grating. That is the MTA's responsibility that we're not allowed to touch. All of the rest was replaced” (id. at 18, line 22 through 19, line 6).

Zimmerman further testified that he was the person who decided that the sidewalk needed to be replaced and who hired the contractor to do the work, and no one from 251 Pas was consulted regarding the decision to replace the sidewalk (*id.* at 19, line 16 through 20, line 15).

251 Pas does not dispute that the second prong is satisfied; 251 Pas argues only that plaintiff “cannot satisfy the third requirement” because the failure to timely add Jeffrey Management “was due to Plaintiff’s own lack of diligence in prosecution of the action” (affirmation in opposition ¶¶ 10-11). Alternatively, 251 Pas argues that Jeffrey Management is not responsible for the area where plaintiff tripped and fell (*id.* ¶¶ 22-25).

For purposes of this motion, where the standard is that the amendment is “not palpably insufficient or clearly devoid of merit” (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 500 [1st Dept 2010]), plaintiff has sufficiently established the third prong. As plaintiff also points out, plaintiff had previously demanded the disclosure of “[a] copy of any contracts, directives, memoranda, permits, cut forms, agreements and/or work orders between Defendant(s) and or third parties for the work being performed on the area of the accident at the time of the occurrence”, and in addition to objecting to the demand, defendants stated that it was “not in possession of documents responsive to this demand with respect to the subject accident location (exhibit E in support of motion” [NYSCEF Doc. No. 37], defendant’s February 21, 2025 responses to plaintiff’s combined demands at response 6).

In any event, any mistake in not ascertaining Jeffrey Management’s identity sooner was just that: “a mistake and not ... the result of a strategy to obtain a tactical advantage” (*May v Buffalo MRI Partners, L.P.*, 151 AD3d 1657, 1659 [4th Dept 2017] [internal quotation marks omitted]; see also *Ramirez v Elias-Tejada*, 168 AD3d 401, 404 [1st Dept 2019] [“To establish he made a mistake in not bringing the Fairway defendants into the action sooner, Polanco explains that certain important information was not available to him until well into 2016 because of the delay in depositions”]).

Indeed, Zimmerman's testimony and the fact that 251 Pas claimed to lack information about the 2019 sidewalk repair suggest that Jeffrey Management's control of the day-to-day operations for 251 Pas would have been so extensive that it would have known but for plaintiff's "mistake", that plaintiff's claims would have been timely asserted against Jeffrey Management (see *Bisono v Mist Enterprises, Inc.*, 231 AD3d 134, 143 [2d Dept 2024] [holding that "there is a fair reading of the record" for which the lower court should have found that the third prong of the relation-back doctrine was satisfied "under the circumstances of this case" and granted the motion for leave to amend the complaint]).

251 Pas's argument that Jeffrey Management was not responsible for the area where plaintiff fell is unavailing. To the extent that 251 Pas argues that plaintiff's claim against Jeffrey Management is patently meritless on that ground, it has not been conclusively shown, on this motion, that the specific area where plaintiff fell was within the 12 inches from the alleged subway grate such that the owner of the grating would have a non-delegable duty to maintain the grating per 34 RCNY 2-07 (b) (see generally *Fajardo v City of New York*, 197 AD3d 456, 459 [2d Dept 2021]; see also *Garrett v City of New York*, 222 AD3d 554, 556 [1st Dept 2023]). Neither has 251 Pas established that Jeffrey Management did not cause or create the alleged defect that is allegedly within 12 inches of the grate.

### CONCLUSION

Accordingly, it is **ORDERED** that plaintiff's motion seeking leave to amend the Summons and Complaint to add Jeffrey Management Corp. as a defendant is **GRANTED**; and it is further

**ORDERED** that the proposed amended verified complaint annexed to the papers as Exhibit F (NYSCEF Doc. No. 38) is deemed served the defendants who have appeared in this action, upon service of a copy of this order with notice of entry; and it is further

**ORDERED** that the defendants who have appeared in this action, shall each serve a verified answer to the amended complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

**ORDERED** that a supplemental summons and amended complaint, the latter being in the form annexed to the motion papers, as Exhibit F (NYSCEF Doc. No. 38), shall be served, in accordance with the Civil Practice Law and Rules, upon the additional party 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 caption is amended to read as follows:

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 JANICE MARTIN

Plaintiff(s),

-against-

251 PAS LLC, NEW YORK CITY TRANSIT  
 AUTHORITY, METROPOLITAN TRANSPORTATION  
 AUTHORITY, THE CITY OF NEW YORK and JEFFREY  
 MANAGEMENT CORP.

Defendant(s).  
 -----X

and it is further

**ORDERED** that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk and the Clerk of the General Clerk's Office, who are directed to amend their records to reflect such change in the caption herein; and it is further

**ORDERED** that 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 Section J of the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at <https://www.nycourts.gov/LegacyPDFS/courts/1jd/suptctmanh/Efil-protocol.pdf>).<sup>1</sup>

Counsel for the parties are reminded that this matter is scheduled for a status

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<sup>1</sup> Pursuant to Section J, in order for the Clerk of the General Clerk's Office to effectuate this order, the movant must e-file a copy of the order "using the **NYSCEF document type 'Service on Supreme Court Clerk (Genl. Clerk) w/Copy of Order'**" and the filer must provide "as additional information (in the 'Additional Document Information' field) a brief description of the type of order being submitted (e.g., 'Order of Consolidation' . . . ) (emphasis added).

Plaintiff's counsel must select the correct document type to ensure that the order will be delivered electronically to the General Clerk's To-Do list.

Likewise, pursuant Section J, in order for the County Clerk to effectuate this order, the movant must serve a copy of this order on the County Clerk "by filing with NYSCEF a completed Notice to the County Clerk - CPLR § 8019 (c) (NYSCEF Form EF-22, available on the NYSCEF site)" (*id.*)

conference on **July 9, 2026**, at **10:30 a.m.** before this court (Part 21) in courtroom **280** at 80 Centre Street, New York, NY.

**ENTER:**



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<u>5/6/2026</u>			<u>RICHARD TSAI, J.S.C.</u>
<b>DATE</b>			
<b>CHECK ONE:</b>	<input type="checkbox"/>	<b>CASE DISPOSED</b>	<input checked="" type="checkbox"/>
	<input checked="" type="checkbox"/>	<b>GRANTED</b>	<input type="checkbox"/> <b>DENIED</b>
<b>APPLICATION:</b>	<input type="checkbox"/>	<b>SETTLE ORDER</b>	<input type="checkbox"/> <b>NON-FINAL DISPOSITION</b>
<b>CHECK IF APPROPRIATE:</b>	<input type="checkbox"/>	<b>INCLUDES TRANSFER/REASSIGN</b>	<input type="checkbox"/> <b>GRANTED IN PART</b>
			<input type="checkbox"/> <b>OTHER</b>
			<input type="checkbox"/> <b>SUBMIT ORDER</b>
			<input type="checkbox"/> <b>FIDUCIARY APPOINTMENT</b>
			<input type="checkbox"/> <b>REFERENCE</b>