

Pacific Indem. Ins. Co. v Fischl

2012 NY Slip Op 31555(U)

June 12, 2012

Supreme Court, New York County

Docket Number: 110336/10

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: _____
Justice

PART _____

Index Number : 110336/2010
FISCHL, RUTH
vs.
CAMPANELLA, EDWARD S.
SEQUENCE NUMBER : 002
AMEND SUPPLEMENT PLEADINGS

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

is decided in accordance with the annexed decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

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JUN 13 2012

FILED

MOTION SUPPORT OFFICE
NYS SUPREME COURT - CIVIL

JUN 13 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 6/12/12

CRK J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

-----X
PACIFIC INDEMNITY INSURANCE COMPANY
a/s/o ROBERT and JANE SHAPIRO,

Plaintiff,

Index No. 110336/10

-against-

DECISION/ORDER

RUTH FISCHL,

Defendant.

-----X
RUTH FISCHL,

Third-Party Plaintiff,

-against-

FILED

EDWARD S. CAMPANELLA and BOARD OF
MANAGERS OF THE HERITAGE AT TRUMP
CONDOMINIUM,

JUN 13 2012

Third-Party Defendants.

NEW YORK
COUNTY CLERK'S OFFICE

-----X
HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Affirmations in Opposition.....	<u>2,3</u>
Replying Affidavits.....	<u>4</u>
Exhibits.....	<u>5</u>

This action arises out of water damage to an apartment located at 240 Riverside
Boulevard, New York, New York (the "building"). Defendant and third-party plaintiff Ruth

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Fischl now moves pursuant to Civil Practice Law and Rules (“CPLR”) § 3025(b) for leave to amend the third-party complaint to assert a sixth cause of action for damages against her former tenant, third-party defendant Edward S. Campanella. For the reasons set forth below, Ms. Fischl’s motion is granted.

The relevant facts are as follows. This action arises out of a water leak that occurred on February 6, 2009 in apartment unit 15C (the “apartment”), which was owned by Ms. Fischl. At the time of the incident, the apartment was occupied by Ms. Fischl’s former tenant, Mr. Campanella. In Ms. Fischl’s third-party complaint, she asserted claims against Mr. Campanella and third-party defendant Board of Managers of the Heritage at Trump Condominium (“Board of Managers”) for claims brought against her for water damage caused to other units in the building by Pacific Indemnity Insurance Company, the plaintiff in the instant action. Specifically, Ms. Fischl alleged in her complaint that Mr. Campanella was negligent as the tenant in the apartment and that the water leak was due to his negligence. Soon after the incident, Ms. Fischl sold her apartment and gave a credit to the apartment’s purchasers in the amount of \$11,500.00 for the water damage caused to the floor of her apartment. Ms. Fischl now moves for leave to amend her third-party complaint to add a cause of action against Mr. Campanella for damages to the floor of her own apartment, in the amount of \$11,500.00, as she failed to include said claim in her original complaint.

Pursuant to CPLR 3025(b), “[m]otions for leave to amend pleadings should be freely granted, absent prejudice or surprise resulting therefrom, unless the proposed amendment is palpably insufficient or patently devoid of merit. On a motion for leave to amend, plaintiff need not establish the merit of its proposed new allegations, but simply show that the proffered

amendment is not palpably insufficient or devoid of merit.” *MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 A.D.3d 499, 499-500 (1st Dept 2010) (internal citations omitted). Moreover, it is well-settled that a party may be permitted to amend a complaint to allege a new cause of action even where the cause of action would be time-barred standing alone, “if the new cause [of action] relates back to the facts, circumstances and proof underlying the original complaint.” *39 College Point Corp. v. Transpac Capital Corp.*, 27 A.D.3d 454, 454-55 (2d Dept 2006); see also *Bellini v. Gersalle Realty Corp.*, 120 A.D.2d 345, 347 (1st Dept 1986) (“amendment may relate back to the earlier pleading so long as the earlier pleading gave the adverse party sufficient notice of the transaction out of which the new claim arises.”)

Here, Ms. Fischl’s motion for leave to amend her third-party complaint to assert a new cause of action against Mr. Campanella for damages to the floor of her apartment is granted. As an initial matter, the proposed amendment is not palpably insufficient or devoid of merit. Further, there is no unfair prejudice or surprise to the other parties as Ms. Fischl’s original complaint contained allegations supporting a cause of action sounding in negligence against Mr. Campanella for damage to neighboring apartments in the building. Specifically, both the Third and Fourth Causes of Action in Ms. Fischl’s complaint allege that the water damage stemming from the water leak could only have been caused by “the negligence and/or carelessness of Edward S. Campanella.” Moreover, because the proposed amendment relates back to the facts, circumstances and proof underlying the original complaint, it is not time-barred by the three-year statute of limitations for negligence actions. The alleged damage to the floor of Ms. Fischl’s apartment was caused by the same water leak which caused the damage to neighboring apartments in the building. Further, it is likely that Mr. Campanella had knowledge of the

damage to the floor of Ms. Fischl's apartment, as he was the apartment's tenant and was in possession of the apartment at the time of the leak.

Accordingly, the motion for leave to amend the third-party complaint to assert a sixth cause of action against Mr. Campanella for damages to Ms. Fischl's apartment is granted.

This constitutes the decision and order of the Court.

Dated: 5/12/12

Enter: CK
J.S.C.

FILED
JUN 13 2012
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