

Crandley v Farrell Lines, Inc.
2017 NY Slip Op 31020(U)
May 12, 2017
Supreme Court, New York County
Docket Number: 190033/2017
Judge: Peter H. Moulton
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: Hon. Peter H. Moulton **PART 50**
Justice

JOSEPH J. CRANDLEY

Plaintiff

v.

FARRELL LINES, INC., *et al.*

Defendants

INDEX NO. 190033/2017

MOTION DATE _____

MOTION SEQ. NO. 001

DECISION AND ORDER

PETER H. MOULTON, J.S.C.:

Plaintiff Joseph J. Crandley (“plaintiff”) seeks an order, unopposed, granting plaintiff leave to file Plaintiff’s First Amended Verified Complaint adding both Marine Transport Lines, Inc. and Mormac Transport, Inc. individually as defendants in this proceeding.

Plaintiff commenced this action by filing a complaint on February 2, 2017, alleging his exposure to various asbestos products while serving as a merchant marine aboard the shipowner defendants’ vessels. In the original complaint, plaintiff named “Crowley Maritime Corporation, individually and as successor in interest to Mormac Marine Transport, Inc., and Marine Transport Lines, Inc.” Marine Transport Lines, Inc. (“MTL”) is a subsidiary of Crowley Maritime Corporation (“Crowley”).

Crowley accepted service of the complaint on March 1, 2017. Plaintiff avers that he intended to file suit against “Defendants . . . whom JOSEPH J. CRANDLEY sailed for as a merchant mariner, as specified in his Vessel Service History which is attached to [the] Complaint.”

Plaintiff states that MTL is one of those shipowner employers specified in his Certificates of Discharge. Plaintiff concedes that he never sailed aboard a vessel owned or operated by Crowley, and in fact, Plaintiff filed a Stipulation of Discontinuance with regard to Crowley on March 28, 2017.

Both Crowley and MTL are parties involved in thousands of cases filed in OHIO and consolidated on the MDL-875 docket in the Eastern District of Pennsylvania. In those cases, both Crowley and MTL are represented by the law firm, Thompson Hine LLP. Furthermore,

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

both Crowley and MTL are represented by the law firm, Freehill Hogan & Mahar LLP in maritime cases filed in the Supreme Court of the State of New York, County of New York.

Plaintiff contends that both entities continue to be represented by the same counsel.

Plaintiff argues that MTL will not be prejudiced if added as a defendant to the instant action because the action is still in its infancy, and discovery in the action has not yet commenced. Additionally, plaintiff contends that it should not come as a surprise to MTL that plaintiff intended to name MTL as a defendant in the original complaint because plaintiff mistakenly named Crowley Maritime Corporation as the successor in interest to MTL. Finally, plaintiff avers that MTL had constructive notice of this fact because counsel for Crowley is the same as counsel for MTL.

Plaintiff states that, upon information and belief, Mormac Marine Transport, Inc. ("Mormac") is a Delaware corporation that is void because it either failed to file its annual report or is delinquent on taxes and has not filed dissolution papers. Plaintiff further states that, upon information and belief, Mormac is an active corporation in the State of Connecticut and has its principal place of business there.

Plaintiff argues that Mormac will not be prejudiced if added as a defendant to the instant action because the action is still in its infancy, and discovery in the action has not yet commenced.

DISCUSSION

"The joinder of an additional defendant by the filing of a supplemental summons and amended complaint may be accomplished only with prior judicial permission, and noncompliance renders the pleadings jurisdictionally defective" (*Perez v. Paramount Comm., Inc.*, 92 NY2d 749, 753 [1999] [citing CPLR §1003; *Crook v. E.I. DuPont De Nemours & Co.*, 81 NY2d 807 [1993]). CPLR §1002(b) provides the standard for the permissive joinder of defendants. "Defendants. Persons against whom there is asserted any right to relief jointly, severally, or in the alternative, arising out of the same transaction, occurrence, or series of transactions or occurrences, may be joined in one action as defendants if any

common question of law or fact would arise” CPLR §1002(b).

CPLR §1003 provides:

Nonjoinder of a party who should be joined under section 1001 is a ground for dismissal of an action without prejudice unless the court allows the action to proceed without that party under the provisions of that section. Misjoinder of parties is not a ground for dismissal of an action. Parties may be added at any stage of the action by leave of court or by stipulation of all parties who have appeared, or once without leave of court within twenty days after service of the original summons or at anytime before the period for responding to that summons expires or within twenty days after service of a pleading responding to it. Parties may be dropped by the court, on motion of any party or on its own initiative, at any stage of the action and upon such terms as may be just. The court may order any claim against a party severed and proceeded with separately.

As such, CPLR §1003 permits the court to join a nonparty at any stage of the action. It is well settled law that motions for leave to amend the pleadings are to be freely granted, as long as there is no prejudice or surprise to the adversary (see *Wirhouski v. Armoured Car & Courier Serv.*, 221 AD2d 523 [2d Dept. 1995]).

Here, MTL and Mormac will not be prejudiced if added as defendants to the instant action because the action is still in its infancy. Plaintiff’s original complaint was filed on February 2, 2017, four months ago. As such, discovery in the action has not commenced in earnest.

Additionally, as it relates to MTL, the instant action should not come as a surprise because plaintiff mistakenly named Crowley Maritime Corporation as the successor in interest to MTL. While MTL is a subsidiary to Crowley, it is an independent corporation.

Accordingly, it is hereby

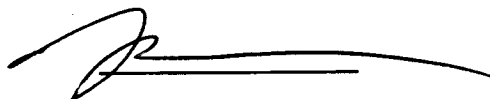
ORDERED that plaintiff’s motion for leave to amend the complaint to add both Marine Transport Lines, Inc. and Mormac Transport, Inc. individually as defendants in this proceeding is granted, and the amended complaint in the proposed form annexed to

plaintiff's 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 defendants shall serve answers to the amended complaint or otherwise respond thereto within 20 days from the date of service.

This Constitutes the Decision and Order of the Court.

Dated: 5/12/, 2017
New York, New York



HON. PETER H. MOULTON

1. Check one: Case Disposed Non-Final Disposition J.S.C.
2. Check as Appropriate: Motion is: Granted Denied Granted in Part Other