

<b>Estrada v IGI-GGP Renwick LLC</b>
2017 NY Slip Op 31627(U)
August 3, 2017
Supreme Court, New York County
Docket Number: 150156/2017
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED, J.S.C.  
*Justice*

PART 2

-----X

GERSON ESTRADA,

INDEX NO. 150156/2017

Plaintiff,

MOTION DATE 6/28/2017

- v -

MOTION SEQ. NO. 001

IGI-GGP RENWICK LLC, GGP RENWICK LLC.

**DECISION AND ORDER**

Defendant.

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The following e-filed documents, listed by NYSCEF document number 5, 6, 7, 8, 9, 10  
were read on this application to/for Amend Caption/Pleadings

Upon the foregoing documents, it is  
**ordered that the motion is granted without opposition.**

Plaintiff Gerson Estrada, moves, pursuant to CPLR 3025(b), for an order permitting him to amend the caption and summons and complaint to add USA Interiors, LLC (hereinafter “the new defendant”) as an additional defendant. Plaintiff also moves for leave to amend the summons and complaint to add a new cause of action against the new defendant and further requests leave to file and serve an amended summons and complaint on counsel for the new defendant. No

opposition has been submitted to the motion. After a review of the motion papers, all relevant statutes and case law, this Court **grants** the motion.

This action arises from a construction accident at 15 Renwick Street, County, City, and State of New York, on December 23, 2015, in which plaintiff was allegedly injured when he was caused to fall from a height as a result of the negligence of, and Labor Law violations by, defendants. Plaintiff commenced this action on or about January 6, 2017. NYSCEF Doc. 1.<sup>1</sup> Issue was joined on May 1, 2017, with the service of defendants' answer. Id. Doc. 4.

During the course of discovery, plaintiff learned that USA Interiors, LLC, the proposed new defendant, was in charge of the construction project and, thus, may have been responsible for his injuries. Plaintiff now seeks to amend the caption and the complaint to add a new cause of action against the new defendant and submits a proposed supplemental summons and an amended verified complaint setting forth these allegations. See Exhibit B.

Pursuant to CPLR 3025(b), a party may amend its pleading at any time by leave of court, and leave shall be freely given upon such terms as may be just. It is

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<sup>1</sup> Unless otherwise noted, all references are to the documents filed on NYSCEF in this matter.

within the court's discretion whether to permit a party to amend its complaint. *See Peach Parking Corp. v 345 W. 40<sup>th</sup> Street, LLC*, 43 AD3d 82 (1<sup>st</sup> Dept 2007). On a motion for leave to amend, a plaintiff need not establish the merit of its proposed new allegations (*see Lucindo v Mancuso*, 49 AD3d 220, 227 [1<sup>st</sup> Dept 2008]), but must show that the proffered amendment is not palpably insufficient and not clearly devoid of merit. *See Pier 59 Studios, L.P. v Chelsea Piers, L.P.*, 40 AD3d 363, 366 (1<sup>st</sup> Dept 2007); *MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499 (1<sup>st</sup> Dept 2010). Here, plaintiff has established that the claims against the additional new defendant have a colorable basis (*see NAB Construction Corp. v Metropolitan Transportation Authority*, 167 AD2d 301 [1<sup>st</sup> Dept 1990]) based upon plaintiff counsel's representation, under oath, that the new defendant may have been responsible for the plaintiff's injury and that it is necessary to add the new defendant to protect plaintiff's rights. The absence of any prejudice to the new defendant is evident from its' failure to oppose the instant motion despite being served with the same.

Therefore, in accordance with the foregoing, it is hereby:

**ORDERED** that plaintiff's motion for leave to amend the summons and complaint to add USA Interiors, LLC as an additional defendant is granted; and it is further,

**ORDERED** that plaintiff's counsel shall serve a copy of this order with notice of entry upon all parties and upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158) and the Clerks are directed to mark the court's records to reflect the additional party; and it is further,

**ORDERED** that the amended summons and complaint, in the proposed form annexed to the moving papers as Exhibit B (NYSCEF Doc. 8), shall be deemed served upon 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 an amended summons and complaint, in the form annexed to the motion papers, shall be served, in accordance with the CPLR, on USA Interiors, LLC, the newly added defendant 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 hereinafter bear the following caption:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
GERSON ESTRADA,

Plaintiff,

-against-

Ind. No. 150156/17

IGGI-GGP RENWICK LLC, GGP RENWICK LLC,  
and USA INTERIORS, LLC,

Defendants.

-----X

And it is further,

**ORDERED** that this constitutes the decision and order of this Court.

HON. KATHRYN FREED  
JUSTICE OF SUPREME COURT



8/3/2017  
DATE

HON. KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED  
 GRANTED  
 SETTLE ORDER  
 DO NOT POST

DENIED

NON-FINAL DISPOSITION  
 GRANTED IN PART  
 SUBMIT ORDER  
 FIDUCIARY APPOINTMENT

OTHER

APPLICATION:

CHECK IF APPROPRIATE:

REFERENCE