

Alberico v Log Bldrs. LLC

2018 NY Slip Op 33051(U)

November 30, 2018

Supreme Court, New York County

Docket Number: 154621/2016

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

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

PRESENT:	<u>HON. KATHRYN E. FREED</u>	PART	IAS MOTION 2
	<i>Justice</i>		
-----X		INDEX NO.	<u>154621/2016</u>
AMANDA ALBERICO,		MOTION DATE	<u>11/09/2018</u>
Plaintiff,		MOTION SEQ. NO.	<u>003</u>
- v -			

LDG BUILDERS LLC, ATC PLUMBING & MECHANIC INC., ATC
 CONSTRUCTION GROUP, RIVERSIDE UNIT C, LLC, AE DESIGN
 INC. D/B/A ANDRES ESCOBAR & ASSOCIATES, NEST
 SEEKERS INTERNATIONAL LLC, HALSTEAD MANAGEMENT
 COMPANY, LLC, LEV ASSET MANAGEMENT, LLC, A.T.C.
 CONSTRUCTION GROUP CORP.,

DECISION AND ORDER

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 99, 100, 101, 102, 103, 104

were read on this motion to/for AMEND CAPTION/PLEADINGS

Plaintiff Amanda Alberico moves for an order, pursuant to CPLR 3025(b), for leave to amend the caption herein to add as additional party defendants Anthony Thomas Chau, Construction Group Corp., March Chadwick, M. Arch Architects, Marchitects Inc., March Associates, Architects and Planners, P.C., A.T.C. Contracting Corp., Muraflex and John Doe. Plaintiff requests leave to file and serve an amended summons and complaint either on the defendants or on counsel, where known, for the new defendants. 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 which occurred on November 19, 2015, in which plaintiff was allegedly caused to be seriously injured by a wooden decorative plank which fell on her while she was working at her desk inside the office of Nest Seekers International at the subject premises known as 100 Riverside Boulevard, County and State of New York. Plaintiff commenced this action on or about June 1, 2016. NYSCEF Doc. No. 1.¹ Plaintiff served a supplemental summons and amended complaint adding in additional defendants, Defendants Baruch LLC, Nest Seekers International Fifth LLC and A.T.C. Construction Group. Issue was subsequently joined by named defendants'. Docs. No. 5, 9, 21, 32, 40, 41,42, 44, and 57. Additionally, several stipulations of discontinuance were also executed with various defendants. Docs. No. 10, 11, 12,13, 22. Plaintiff also annexes loan documents, contracts of sale, deeds, land records and any other documents relating to the ownership of the subject property. Doc. No. 102. Plaintiff notes that thus far, documentation has not been provided to indicate who installed the wooden plank that injured plaintiff.

During the course of discovery, information was provided by defendant A.T.C. Construction Corp., that it had certificates of liability insurance for general liability in the name of Anthony Thomas Chau and Construction Group Corp. Doc. No. 103. Plaintiff now seeks to amend the caption and the complaint to add a new

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

cause of action against these new defendants. Additionally, plaintiff's employer, Nest Seekers International, LLC., provided information that indicated that March Chadwick, M. Arch Architects, Marchitects Inc., March Associates, Architects and Planners, P.C., A.T.C. Contracting Corp., and Muraflex may also have been involved or responsible for the injury to plaintiff and plaintiff also seeks to amend the caption and the complaint to add a new cause of action against those new defendants. Additionally, because plaintiff is still unsure who was responsible for the falling plank and because depositions are still proceeding and because the statute of limitations is about to run out, plaintiff seeks to add the name of "John Doe" to preserve plaintiff's interests. Plaintiff now seeks to amend the caption and the complaint to add a new cause of action against the new defendants and submits a proposed supplemental summons and amended complaint setting forth these allegations. See Doc. No. 104.

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 within the court's discretion whether to permit a party to amend its complaint. See *Peach Parking Corp. v 345 W. 40th Street, LLC*, 43 AD3d 82 (1st 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 [1st 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 (1st Dept 2007); *MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499 (1st 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 [1st Dept 1990]) based upon plaintiff counsel's representation, under oath, that the new defendants managed, operated, maintained and/or controlled the subject premises and that it is necessary to add the new defendants to protect plaintiff's rights.

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

ORDERED that plaintiff's motion for leave to amend the summons and complaint to add as additional defendants Anthony Thomas Chau, Construction Group Corp., March Chadwick, M. Arch Architects, Marchitects Inc., March Associates, Architects and Planners, P.C., A.T.C. Contracting Corp., Muraflex and John Doe 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 parties; and it is further,

ORDERED that the amended summons and complaint, in the proposed form annexed to the moving papers as Exhibit D (NYSCEF Doc. No. 104), 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 Anthony Thomas Chau, Construction Group Corp., March Chadwick, M. Arch Architects, Marchitects Inc., March Associates, Architects and Planners, P.C., A.T.C. Contracting Corp., Muraflex and John Doe, the newly added defendants 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
AMANDA ALBERICO,

Plaintiff,

-against-

LDG BUILDERS LLC, ATC CONSTRUCTION
GROUP, RIVERSIDE UNIT C, LLC,
AE DESIGN INC. D/B/A ANDRES ESCOBAR
& ASSOCIATES, NEST SEEKERS INTER-
NATIONAL LLC, HALSTEAD MANAGEMENT
COMPANY, LLC, LEV ASSET MANAGEMENT,
LLC, A.T.C. CONSTRUCTION GROUP CORP.
ANTHONY THOMAS CHAU, CONSTRUCTION
GROUP CORP., MARCH CHADWICK, M. ARCH
ARCHITECTS, MARCHITECTS INC., MARCH
ASSOCIATES, ARCHITECTS AND PLANNERS,
P.C., A.T.C. CONTRACTING CORP., MURAFLEX,
AND JOHN DOE,

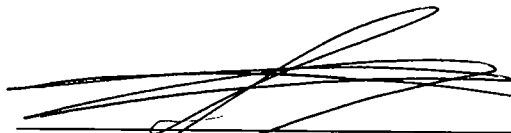
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Defendants.

-----X
And it is further,

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

11/30/2018
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE