

Erez v Partnership 92 W., L.P.

2013 NY Slip Op 31898(U)

August 12, 2013

Sup Ct, NY County

Docket Number: 153754/13

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: CYNTHIA S. KERN
Justice
J.S.C.

PART _____

Dina & Udi Erez
Partnership 92 West, et al.

INDEX NO. 153754-13

MOTION DATE _____

MOTION SEQ. NO. 001

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):

Dated: 8/12/13

CK, J.S.C.

CYNTHIA S. KERN

- 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
DINA EREZ and UDI EREZ,

Plaintiffs,

Index No. 153754/13

-against-

DECISION/ORDER

PARTNERSHIP 92 WEST, L.P., BLDG MANAGEMENT
CO., INC., 53 WEST 72nd STREET CAFÉ LLC,
individually and d/b/a THE DAKOTA BAR and "THE
DAKOTA BAR,"

Defendants.

-----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>
Answering Affidavits.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Plaintiffs Dina and Udi Erez commenced the instant action against defendants Partnership 92 West, L.P. ("Partnership"), BLDG Management Co, Inc. ("BLDG"), 53 West 72nd Street Café LLC, individually and d/b/a The Dakota Bar and The Dakota Bar ("Dakota") to recover for injuries allegedly arising from a trip and fall on the sidewalk in front of defendants' premises. Defendants now move for an Order pursuant to CPLR § 3024 compelling plaintiffs to provide a more definite statement on the ground that the allegations and the causes of action in the complaint are vague and ambiguous such that defendants cannot reasonably be required to frame a response thereto. For the reasons set forth below, defendants' motion is denied.

The relevant facts are as follows. On or about April 25, 2013, plaintiffs commenced the instant action with the filing of a summons and complaint. As a first cause of action, the complaint alleges, *inter alia*, “[t]hat on the 13th day of August, 2012, at approximately 9:00 p.m., while the plaintiff was lawfully traversing on the sidewalk on Columbus Avenue in front of or adjacent to the [defendants’] premises, she was caused to trip and fall, thereby causing her to sustain severe injuries....” The complaint further alleges “[t]hat the defendants were at all times...under a duty to keep the aforesaid sidewalk, in a safe, proper and secure manner, in good repair and free from obstruction and defect” and that said defendants failed to do so causing plaintiff to sustain “severe and serious injuries” requiring her “to seek and maintain medical care and attention” and that plaintiff “will be compelled to do so in the future.” The complaint alleges that as a result of defendants’ failure to repair and/or secure the sidewalk at issue, the “plaintiff, Dina Erez, has been damaged in” an unspecified sum. As a second cause of action on behalf of plaintiff Udi Erez, the complaint alleges, *inter alia*, that Mr. Erez “has been deprived of the comfort, society and companionship of the plaintiff, Dina Erez and...will be so deprived in the future” and that Mr. Erez “has been caused to incur medical expenses on behalf of the plaintiff, Dina Erez, and...will be so compelled to do so in the future.”

Based on the above allegations, defendants now move for an Order pursuant to CPLR § 3024 compelling a more definite statement on the ground that the allegations and the causes of action in the complaint are vague and ambiguous such that defendants cannot reasonably be required to frame a response thereto. In response to the motion and in addition to their opposition, plaintiffs filed and served an amended complaint which changed Paragraph 39 of the complaint to read that plaintiff tripped and fell “on a broken, raised and/or defective sidewalk.”

Pursuant to CPLR § 3024(a), “[i]f a pleading is so vague or ambiguous that a party cannot reasonably be required to frame a response he may move for a more definite statement.” On a motion by defendant to require the complaint to be made definite and certain, the question is whether one or more of the allegations is *so* indefinite or uncertain that its precise meaning or application is not apparent. *See Role v. McLaughlin*, 195 A.D. 413 (1st Dept 1921)(emphasis added).

In the instant action, defendants’ motion for an Order pursuant to CPLR § 3024 compelling plaintiffs to provide a more definite statement is denied as defendants have not established that any of the allegations in the complaint are *so* indefinite or uncertain that their precise meaning or application is not apparent. Defendants assert that the complaint is vague and ambiguous on the grounds that (a) it is short; (b) the first cause of action contains no delineation or heading; (c) it is not clear which plaintiff was allegedly injured in the trip and fall; (d) there is no indication of the type of injuries that plaintiff sustained; (e) there is no indication as to which allegations apply to which defendants; and (f) the allegations made in the second cause of action are asserted “in conclusory form.” However, such assertions are insufficient to establish that the complaint is so vague that defendants cannot form a response thereto. As an initial matter, defendants have not established that a complaint must be of a certain length or contain any delineations or headings in order to be considered sufficient. Additionally, it is perfectly clear from both the original complaint and the amended complaint that it was Dina Erez who tripped and fell as the first cause of action states that “she” was caused to trip and fall and Paragraph 43 states that due to such trip and fall, “plaintiff, Dina Erez, has been damaged.” To the extent defendants seek information such as the types of injuries Ms. Erez sustained, which allegations

apply to which defendants and any further information regarding Mr. Erez's cause of action for loss of companionship and society, defendants' "remedy is to seek amplification of the claim[s] through a bill of particulars or discovery." *Dong Wook Park, PNP Grpup, Inc. V. Michael Parke Dori Group, Inc.*, 12 Misc.3d 1182 (Sup. Ct. Nassau Cty. 2006); *see also* Siegel, *New York Civil Practice* § 230.

Accordingly, defendants' motion for an Order pursuant to CPLR § 3024 compelling plaintiffs to provide a more definite statement is denied. The amended complaint attached to plaintiffs' opposition papers is deemed served *nunc pro tunc*. This constitutes the decision and order of the court.

Dated: 8/12/13

Enter: _____ *CK*

J.S.C.

CYNTHIA S. KERN
J.S.C.