

<b>Lewis v 240 W. 98th St Co. LLC</b>
2015 NY Slip Op 31460(U)
August 4, 2015
Supreme Court, New York County
Docket Number: 152199/2013
Judge: Eileen A. Rakower
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  
COUNTY OF NEW YORK: PART 15

-----X

JUANITA LEWIS,

Plaintiff,

- v -

Index No.  
152199/2013

**DECISION  
and ORDER**

Mot. Seq. #005

240 WEST 98TH ST CO. LLC, WEINREB  
MANAGEMENT LLC, 240 WEST 98 STREET  
ASSOCIATES and RADIO CLINIC INC. d/b/a RCI  
DISCOUNT APPLIANCE INC.,

Defendants.

-----X

HON. EILEEN A. RAKOWER, J.S.C.

Plaintiff, Juanita Lewis (“Plaintiff”), brings this action for personal injuries allegedly sustained in a slip and fall accident (the “Accident”) on June 18, 2012, on the sidewalk located in front of the appliance store, defendant, Radio Clinic Inc. d/b/a RCI Discount Appliance Inc. (“RCI”), located at 2597 and 2599 Broadway, New York, New York, which street address is also referred to in New York City property records as 240 West 98th Street, New York, New York (the “Premises”). Plaintiff claims that defendants, 240 West 98th St Co. LLC and 240 West 98 Street Associates, own the building (the “Building”) located at the Premises, and that defendant, Weinreb Management LLC (“Weinreb”) (and together with 240 West 98th St Co. LLC and 240 West 98 Street Associates, the “Building Defendants”), is the manager of the subject Building.

Plaintiff commenced this action on March 11, 2013, by summons and complaint. Plaintiff filed an amended complaint on January 1, 2014.

Plaintiff now moves for an Order, pursuant to CPLR §§ 305 and 3026, granting Plaintiff leave to amend Plaintiff’s complaint to add proposed defendants Broadway 98 Condominium, Orsid Realty Corp., and 240 W. 98th St. Co. II LLC, as defendants in this case; changing the spelling of defendant 240 West 98th St Co. LLC to 240 W 98th St Co. LLC; and, amending the caption to reflect the change in

parties and spelling and deeming Plaintiff's third amended complaint<sup>1</sup> in the proposed form annexed to Plaintiff's moving papers timely filed. In support, Plaintiff submits: the attorney affirmation of Geoffrey Liu, Esq., dated May 8, 2015, and the exhibits annexed thereto, including a copy of Plaintiff's third amended complaint in the proposed form.

Building Defendants oppose. No opposition is submitted by RCI.

CPLR § 3025 permits a party to amend or supplement its pleading "by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties." (CPLR § 3025[b]). Pursuant to CPLR § 3025(b), such "leave shall be freely given upon such terms as may be just including the granting of costs and continuances." (CPLR § 3025[b]; *Konrad v. 136 East 64th Street Corp.*, 246 A.D.2d 324, 325[1st Dep't 1998]). In addition, pursuant CPLR § 1003, parties may be added at any stage of the action by leave of court. (CPLR § 1003).

Here, Plaintiff seeks leave to amend the complaint to add Broadway 98 Condominium, Orsid Realty Corp., and 240 W. 98th St. Co. II LLC, as additional defendants herein. In the attorney affirmation of Liu, Liu affirms that, "there has been much confusion, thus far, about who actually owned the Building, on the date of the accident (June 18, 2012)." (Liu Affirm. ¶ 5). Liu further affirms:

On April 9, 2015, Klein's office produced Jacob Weinreb as its EBT witness (see EBT transcript, dated April 9, 2015, annexed hereto as Exhibit D2). Mr. Weinreb repeatedly and unequivocally testified that, at the time of the accident (June 18, 2012), the Building was owned by "Broadway 98 Condominium" and managed by "Orsid Realty Corp." ("Orsid"). Further, Mr. Weinreb testified that "240 W. 98th ST. CO. II LLC" "owned the commercial space" (part of which RCI leased) of the Building, on the date of the accident. Based upon this testimony, plaintiff now seeks to add these three entities as additional party defendants.

---

<sup>1</sup> Plaintiff previously moved for leave to amend Plaintiff's first amended complaint to reflect changes as set forth in Plaintiff's proposed second amended complaint. Plaintiff's prior motion to amend was withdrawn.

(*Id.* ¶ 9).

Additionally, with respect to the proposed amendment to change the spelling of the defendant currently named as 240 West 98th St Co. LLC, Liu affirms:

Plaintiff further seeks to amend the caption to correct the mis-spelling of the defendant currently named as “240 West 98th St Co. LLC”. That entity is registered with the NYS Department of State, Division of Corporations as “240 W 98th St Co. LLC” (see Exhibit G, annexed hereto, which is a printout from the online database of the NYS Department of State, Division of Corporations).

(*Id.* ¶ 22).

Accordingly, Plaintiff’s third amended complaint in the proposed form is accepted and Plaintiff is permitted to amend the complaint to add Broadway 98 Condominium, Orsid Realty Corp., and 240 W. 98th St. Co. II LLC, as defendants in this case, and to amend the caption to reflect the correct spelling of defendant, 240 W 98th St Co. LLC.

Wherefore, it is hereby,

ORDERED that Plaintiff’s motion is granted; and it is further

ORDERED that the amended caption shall appear as follows:

-----X  
JUANITA LEWIS,

Index No.  
152199/2013

Plaintiff,

- against -

240 W 98TH ST CO. LLC, WEINREB MANAGEMENT  
LLC, 240 WEST 98 STREET ASSOCIATES, RADIO CLINIC  
INC. d/b/a RCI DISCOUNT APPLIANCE INC., BROADWAY  
98 CONDOMINIUM, ORSID REALTY CORP., and  
240 W. 98TH St. CO. II LLC,

Defendants.

-----X

and it is further

ORDERED that Plaintiff shall serve a copy of this decision upon the Clerk,  
who is directed to amend the caption accordingly; and it is further

ORDERED that the third amended summons and complaint in the proposed  
form annexed to the moving papers shall be deemed served upon service of a copy  
of this Order with a notice of entry thereof.

This constitutes the Decision and Order of the Court. All other relief  
requested is denied.

DATED: August 4, 2015

**AUG 04 2015**

  
\_\_\_\_\_  
EILEEN A. RAKOWER, J.S.C