

Bentley v Madison Ave. Realities, LLC

2016 NY Slip Op 31610(U)

August 23, 2016

Supreme Court, New York County

Docket Number: 155323/2014

Judge: Robert D. Kalish

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 29

-----X
Deborah J. Bentley

Plaintiff,

Index No. 155323/2014

-against-

Madison Avenue Realities, LLC., 314 Fifth Avenue, Inc.,
and Treatsa Pizza Corp. d/b/a Empire Pizza,
and All-Star Inc.

Defendant

-----X
Madison Avenue Realities, LLC.,
314 Fifth Avenue, Inc.,

Third-party Plaintiff,

-against-

Rock Music Factory Corp.

Third-party Defendant

-----X
KALISH, J.:

Upon the foregoing submitted papers the Plaintiff's motion to amend the caption naming 314 5th Enterprises, Inc. d/b/a Turntable Chicken Jazz and Rock Music Factory Corp as an additional Defendant and to serve and file a third supplemental summons and amended complaint naming 314 5th Enterprises, Inc. d/b/a Turntable Chicken Jazz and Rock Music Factory Corp as an additional Defendant is hereby granted without opposition as follows:

In the underlying action the Plaintiff is seeking damages for injuries she allegedly sustained on or about August 31, 2013 due to a ceiling that collapsed at the premises located at 314 Fifth Ave. in New York County.

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Plaintiff argues in support of the instant motion that on February 16, 2016, a witness for the Defendant Madison Avenue Realities, LLC. ("Madison"), Peter Palmisano, appeared for deposition and testified that the ceiling collapse was potentially caused by the negligence of the upstairs tenant Rock Music Factory Corp. Thereafter, on March 3, 2016, the Defendant Madison electronically commenced a third-party action against Rock Music Factory Corp. On May 20, 2016, the third-party Defendant 314 5th Enterprises, Inc. d/b/a Turntable i/s/h/a Rock Music Factory Corp. interposed an Answer to the third-party complaint with counterclaims against Madison. On June 14, 2016, Madison interposed an Answer to 314 5th Enterprises, Inc. d/b/a Turntable i/s/h/a Rock Music Factory Corp.'s counterclaims.

Analysis

Standard for amending pleadings pursuant to CPLR §3025(b)

Pursuant to CPLR §3025(b), "motions for leave to amend pleadings should be freely granted, absent prejudice or surprise resulting therefrom, unless the proposed amendment is palpably insufficient or patently devoid of merit" (MBIA Ins. Corp. v. Greystone & Co., Inc., 74 AD3d 499, 499-500 (NY App Div 1st Dept 2010) (internal citations omitted)). Moreover, on a motion for leave to amend, the movant is not required to establish the merit of the proposed new allegations "but simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit" (MBIA Ins. Corp. v. Greystone & Co., Inc., 74 AD3d 499, 500 (NY App Div 1st Dept 2010) (internal citations omitted)).

Upon review of the submitted papers, the Court finds that the Plaintiff has established that it is entitled to amend the caption naming 314 5th Enterprises, Inc. d/b/a Turntable Chicken Jazz and Rock Music Factory Corp as an additional Defendant and to serve and file a third supplemental summons and amended complaint naming 314 5th Enterprises, Inc. d/b/a Turntable Chicken Jazz and Rock Music Factory Corp as an additional Defendant. Specifically, 314 5th Enterprises, Inc. d/b/a Turntable Chicken Jazz and Rock Music Factory Corp. has been a party to the underlying

action since Madison served a third-party complaint upon 314 5th Enterprises, Inc. d/b/a Turntable Chicken Jazz and Rock Music Factory Corp. on March 3, 2016 and 314 5th Enterprises, Inc. d/b/a Turntable i/s/h/a Rock Music Factory Corp. interposed an Answer to the third-party complaint with counterclaims against Madison on May 20, 2016.

Conclusion

Accordingly and for the reasons so stated it is hereby

ORDERED that the Plaintiff's motion to amend the caption and to file a third supplemental summons and amended complaint is hereby granted without opposition. It is further

ORDERED that Plaintiff shall serve a third supplemental summons and amended complaint in the form attached to Plaintiff the moving papers as exhibit 15 within 20 days of the entry of this order. The caption on the third supplemental summons and amended complaint shall read as follows:

Deborah J. Bentley

against

Madison Avenue Realities, LLC,
314 Fifth Avenue, Inc., Treatsa Pizza Corp. d/b/a Empire Pizza; All-Star, Inc,
314 5th Enterprises, Inc. d/b/a Turntable Chicken Jazz
and Rock Music Factory Corp.

It is further

ORDERED that the Defendants are hereby granted leave to serve and file answers and/or amended answers to the third supplemental summons and amended complaint as per CPLR upon Plaintiff's service of the third supplemental summons and amended complaint.

The foregoing constitutes the ORDER and DECISION of the Court.

Dated: Aug 23, 2016

ENTER:

Robert D. Kalish, JSC
HON. ROBERT D. KALISH
J.S.C.