

Garcia v 184th W. 10th St. Corp.
2018 NY Slip Op 30085(U)
January 16, 2018
Supreme Court, New York County
Docket Number: 153436/2016
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED

PART 2

Justice

-----X

LETICIA GARCIA,

Plaintiff,

INDEX NO. 153436/2016

- v -

184TH WEST 10TH STREET CORP.,

Defendant.

MOTION SEQ. NO. 002

DECISION AND ORDER

-----X

184TH WEST 10TH STREET CORP.,

Third-Party Plaintiff,

-v-

EMPELLON LLC and SADA ONE LLC,

Third-Party Defendants.

-----X

Upon the foregoing documents, it is ordered that the motion is granted in part.

In this personal injury action, plaintiff Leticia Garcia moves, pursuant to CPLR 3025 (b), to amend the complaint to add third-party defendants Empellon LLC and Sada One LLC as direct defendants. Third-party defendants Empellon LLC and Sada One LLC oppose the motion. After oral argument, and after a review of the parties' papers and the relevant statutes and case law, the motion is granted in part.

FACTUAL AND PROCEDURAL BACKGROUND:

Plaintiff was allegedly injured on July 19, 2014 when she slipped and fell on an allegedly dangerous condition on steps located at 230 West 4th Street New York, New York (“the premises”). Docs. 30, 31.¹ In her verified complaint, filed July 8, 2015, plaintiff alleged that the premises were owned, maintained, operated, and/or controlled by defendant 184th West 10th Street Corp. (“184th”), and that she was injured due to the negligence of that entity. Doc. 1. 184th joined issue by service of its answer filed July 11, 2016. Doc. 6. On or about September 12, 2016, 184th commenced a third-party action against Empellon LLC (“Empellon”) and Sada One LLC (“Sada One”). Doc. 10. 184th claimed that Empellon and/or Sada One were tenants at the premises.

At her deposition on May 18, 2017, plaintiff testified, inter alia, that she was last employed on the date of her accident, at which time she worked for Empellon Taqueria. Doc. 34, at p. 15. After a hearing conducted on May 31, 2017, the State of New York Workers’ Compensation Board (“WCB”) issued a notice of decision dated June 5, 2017 awarding plaintiff workers’ compensation benefits in connection with the alleged accident. Doc. 35. The notice of decision reflected that plaintiff was employed by Sada One as of the date of the alleged incident. Doc. 35.

Plaintiff now moves, pursuant to CPLR 3025(b), to amend the caption and complaint to name Empellon and Sada One as direct defendants. Doc. 29. In support of the motion, plaintiff argues that it is entitled to name Empellon and Sada One as direct defendants since 184th claims that it had a “full net-net lease” with those entities and therefore denied all liability for the alleged accident. Doc. 29, Wilson Aff. In Support, at par. 11. Plaintiff further asserts that it “only became fully aware of the full lease and [184th’s] testimony [at] the court ordered depositions of May 22, 2017.” (emphasis provided). Doc. 29, Wilson Aff. In Support, at par. 8. Plaintiff also claims

¹ All references are to the documents filed with NYSCEF in this matter.

that there has been no inordinate delay in seeking the amendment and that the amendment will not result in prejudice to Empellon or Sada One.

In opposition, Empellon and Sada One argue, inter alia, that the motion must be denied because the claims against them are barred by Workers' Compensation Law § 11, i.e., that plaintiff cannot sue her employer, whom she stated at her deposition was Empellon. Empellon and Sada One further assert that plaintiff's direct claims cannot be brought against them because plaintiff failed to allege intentional conduct, which would constitute an exception to the workers' compensation bar. In opposition to the motion, Empellon and Sada One submit the June 5, 2017 decision of the WCB awarding workers' compensation benefits to plaintiff as an employee of Sada One. Doc. 35.

In reply, Sada One concedes that it cannot be named as a direct defendant due to the workers' compensation bar. Doc. 38, at par. 13. However, it insists that Empellon, an entity shown by records of the New York State Department of State to be an entity separate from Sada One, can be named as a direct defendant and that the caption should thus be amended to name Empellon as a direct defendant.

LEGAL CONCLUSIONS:

Pursuant to CPLR 3025(b), leave to amend a pleading is freely given unless it would result in prejudice or surprise. *McGhee v Odell*, 96 AD3d 449 (1st Dept 2012). "The movant need not establish the merit of her proposed new allegations, but only that 'the proffered amendment is not palpably insufficient or clearly devoid of merit.'" *Fairpoint Cos., LLC v Vella*, 134 A.D.3d 645 (1st Dept 2015) quoting *MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 500 (1st Dept

2010). This Court has the discretion to determine whether to grant such leave to amend. *Edenwald Contracting Co. v City of New York*, 60 NY2d 957, 959 (1983).

The proposed amended verified complaint contains claims against Empellon which this Court does not deem to be “palpably insufficient or clearly devoid of merit.” *MBIA Ins. Corp.*, 74 AD3d, at 500. Plaintiff pleads claims against Empellon for negligence which relate to the facts pleaded. Doc. 30. Additionally, Empellon has not demonstrated that it would be prejudiced by the amendment. Thus, this Court grants plaintiff leave to amend the caption and the complaint to name Empellon as a direct defendant.

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

ORDERED that plaintiff’s motion for leave to amend the summons and complaint to name Empellon LLC and Sada One LLC as a direct defendant is granted, in part, as follows: plaintiff is granted leave to amend the summons and complaint to assert a direct claim against Empellon LLC and, to this extent, the amended complaint in the form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry; and it is further

ORDERED that lave to amend the complaint is denied with respect to the proposed third cause of action by plaintiff directly against third-party defendant Sada One LLC; 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 direct claim by plaintiff as against defendant Empellon LLC; and it is further,

ORDERED that direct defendants 184th West 10th Street Corp. and Empellon LLC shall answer the amended complaint or otherwise respond thereto within twenty (20) days from the date of service thereof, with notice of entry; and it is further

ORDERED that the action shall hereinafter bear the following caption under Index Number 153436/2016:

LETICIA GARCIA,

Plaintiff,

v

184th WEST 10th STREET CORP. and EMPELLON
LLC,

Defendants.

184th WEST 10th STREET CORP.,

Third-Party Plaintiff,

v

EMPELLON LLC and SADA ONE LLC,

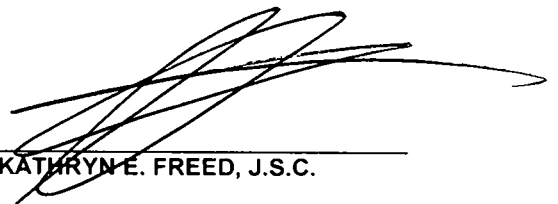
Third-Party Defendants.

And it is further,

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

1/16/2018

DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

CASE DISPOSED
GRANTED
SETTLE ORDER
DO NOT POST

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE