

<b>Scharf v Grange Assoc., LLC</b>
2018 NY Slip Op 31747(U)
April 4, 2018
Supreme Court, New York County
Docket Number: 157025/2017
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

ARNOLD SCHARF,
Plaintiff,

INDEX NO. 157025/2017

- v -

GRANGE ASSOCIATES, LLC, GATSBY ENTERPRISES, LLC,
ASHRAF CORP., MARK J. HELLER PERSONAL RESIDENCE
TRUST BY PETER TOUMBEEKIS, TRUSTEE,

MOTION SEQ. NO. 001

Defendants.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 16, 17, 18, 19, 20, 21, 22, 23, 24

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

In this personal injury action, plaintiff Arnold Scharf moves, pursuant to CPLR 3025, to amend the Summons and Complaint to add as new defendants Bhaghiana General Construction, Inc. and Bhaghiana, Inc. ("new defendants") and to reflect the proper address for defendant Mark J. Heller Personal Residence Trust by Peter Toumbekis, Trustee, as well as to permit service at that address pursuant to CPLR 306-b. Plaintiff also moves for leave to amend the summons and complaint to add a new cause of action against the new defendants and further requests leave to file and serve an amended summons and complaint on counsel 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.

A summons and complaint in this action were filed on August 4, 2017. Issue was joined on October 23, 2017, when defendants Grange Associates, LLC and Gatsby Enterprises, LLC served their answers, and additionally, on November 9, 2017, when defendant Ashraf Corp., served its answer. In a letter dated October 12, 2017, Ashraf Corp., informed plaintiff of the existence of the new defendants as general construction companies which performed work at the construction site where the alleged accident occurred and, thus, may have been responsible for his injuries. Doc. No. 19. 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 an amended verified complaint setting forth these allegations. Doc. No. 23.

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. 40<sup>th</sup> Street, LLC*, 43 AD3d 82 (1<sup>st</sup> 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 [1<sup>st</sup> 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

(1<sup>st</sup> Dept 2007); *MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499 (1<sup>st</sup> Dept 2010). Here, plaintiff has established that the claims against the additional new defendants have a colorable basis (*see NAB Construction Corp. v Metropolitan Transportation Authority*, 167 AD2d 301 [1<sup>st</sup> Dept 1990]) based upon plaintiff counsel's representation, under oath, that the new defendant may have been responsible for the plaintiff's injury and that it is necessary to add the new defendant to protect plaintiff's rights. Additionally, plaintiff appends copies of a Buildings Department printout which includes a copy of the work permit for the site naming the new defendant, Bhaghiana General Construction, Inc., as a general construction company at the site (Doc. No. 20) and a copy of a printout from the Secretary of State website which also reveals the name of an additional company under the name of Bhaghiana, Inc. Doc. No. 21.

Additionally, the amended summons and complaint is further amended to correct the address of defendant, Mark J. Heller Personal Residence Trust by Peter Toumbekis, Trustee, to wit 396 Meadow Lane, Southampton, NY, 11968. A copy of the deed reflecting this address is appended. (Doc. No. 23)

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

**ORDERED** that plaintiff's motion for leave to amend the summons and complaint to add Bhaghiana General Construction, Inc. and Bhaghiana, Inc. as additional defendants is granted; and it is further,

**ORDERED** that plaintiff's motion to correct the address of defendant, Mark J. Heller Personal Residence Trust by Peter Toumbekis, Trustee, to now read as 396 Meadow Lane, Southampton, NY; 11968 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 E (NYSCEF Doc. 22), 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 USA Interiors, LLC, the newly added defendant 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  
ARNOLD SCHARF,

Plaintiff,

-against-

Ind. No. 157025/17

GRANGE ASSOCIATES, LLC, GATSBY ENTERPRISES, LLC, ASHRAF CORP., MARK J. HELLER PERSONAL RESIDENCE TRUST BY PETER TOUMBEEKIS, TRUSTEE, BHAGHIANA GENERAL CONSTRUCTION, INC., and BHAGHIANA, INC.

Defendants.


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And it is further,

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

4/4/2018

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:

DO NOT POST

FIDUCIARY APPOINTMENT

REFERENCE