

Rhodes v Presidential Towers Residence, Inc.
2018 NY Slip Op 33445(U)
November 20, 2018
Supreme Court, New York County
Docket Number: 150935/2017
Judge: David Benjamin Cohen
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DAVID BENJAMIN COHEN PART IAS MOTION 58EFM

Justice

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ROSELLA RHODES

Plaintiff,

- v -

PRESIDENTIAL TOWERS RESIDENCE, INC.,

Defendant.

INDEX NO. 150935/2017

MOTION DATE 07/17/2018

MOTION SEQ. NO. 001

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

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

Upon the foregoing documents:

In this personal injury action, plaintiff Rosella Rhodes moves, pursuant to CPLR 3025 (b), for an order granting her leave to amend the complaint to add two new parties, and to change the spelling of her name.

Plaintiff asserts a cause of action for negligence, which she alleges occurred on December 15, 2016 when she was on the premises of defendant Presidential Towers Residence, Inc., 315 W. 70th Street, New York NY 10023, and fell on a stairway at the premises, causing her to sustain personal injuries.

On December 6, 2017, defendant produced Becir Demirovic for an examination before trial, during which it was revealed that Akam Associates, Inc. owned, operated, maintained, controlled, managed, repaired, inspected and performed work, construction and alterations at the premises, prior to plaintiff's accident (*see* affirmation of James Baez, exhibit C).

On July 5, 2018, defendant served a response to plaintiff's post-deposition demands for discovery, in which it was revealed that Etna Contracting, Inc. owned, operated, maintained, controlled, managed, repaired, inspected and performed work, construction and alterations at the premises, prior to plaintiff's accident (*see id.*, exhibit D).

Plaintiff moves to amend the complaint to add Akam Associates, Inc. and Etna Contracting, Inc. as additional defendants in this action. Plaintiff also moves to amend the complaint to correct the spelling of her name from Rosella Rhodes to Rossella Rhodes. No opposition to plaintiff's motion has been filed.

Pursuant to CPLR 3025 (b), "[a] party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties." As a general proposition, leave to amend pleadings "should be freely granted" (*RBP of 400 W42 St., Inc. v 400 W. 42nd St. Realty Assoc.*, 27 AD3d 250, 250 [1st Dept 2006]). On a motion for leave to amend, plaintiff must establish "that the proffered amendment is not palpably insufficient or clearly devoid of merit" (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 500 [1st Dept 2010]; *see also Perotti v Becker, Glynn, Melamed & Muffly LLP*, 82 AD3d 495, 498-499 [1st Dept 2011]), and "does not prejudice or surprise the opposing party" (*Clark v Clark*, 93 AD3d 812, 816 [2d Dept 2012] [citation omitted]; *see also Miller v Cohen*, 93 AD3d 424, 425 [1st Dept 2012] [on a motion to amend a complaint, the plaintiff "need not establish the merit of the proposed new allegations, but must 'simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit']" [citation omitted]; *Loewentheil v White Knight, Ltd.*, 71 AD3d 581, 581 [1st Dept 2010] ["Leave to amend pleadings ... should be liberally granted"]). Indeed, "[t]he party opposing the

motion to amend must overcome a heavy presumption of validity in favor of the moving party” (*Otis El. Co. v 1166 Ave. of Ams. Condominium*, 166 AD2d 307, 307 [1st Dept 1990]).

“Mere lateness is not a barrier to the amendment. It must be lateness coupled with significant prejudice to the other side, the very elements of the laches doctrine” (*Edenwald Contr. Co. v City of New York*, 60 NY2d 957, 959 [1983] [citation omitted]; *accord Bishop v Maurer*, 83 AD3d 483, 484 [1st Dept 2011]).

Plaintiff’s motion to amend the complaint is granted, as plaintiff has demonstrated that the proposed amended complaint is not devoid of merit or palpably insufficient, as it merely adds new parties and a spelling correction, “without alleging new or different transactions” (*Sample v Levada*, 8 AD3d 465, 468 [2d Dept 2004]; *see also Martinez v Zhang*, 53 Misc 3d 1210[A], 2016 NY Slip Op 51583[U], *2 [Sup Ct, Queens County 2016] [“Here, the addition of Superworld Express Corp. as a party defendant is not palpably insufficient or devoid of merit”]).

Moreover, defendant has failed to demonstrate prejudice if plaintiff’s motion to amend is granted. Indeed, defendant has not filed any papers opposing the proposed amendment.

Accordingly, it is

ORDERED that plaintiff’s motion to amend the complaint is granted, and the caption shall be amended as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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ROSSELLA RHODES,

Plaintiff,

-against-

Index No. 150935/17

PRESIDENTIAL TOWERS RESIDENT, INC., AKAM ASSOCIATES, INC. and ETNA CONTRACTING, INC.,

Defendants.

-----X;

and it is further

ORDERED that plaintiff is directed to serve a copy of this order with notice of entry upon the Clerk of the Court and upon the Clerk of the General Clerk's office in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh), who are directed to amend their records to reflect the change in the caption herein.

11/20/2018
DATE


DAVID BENJAMIN COHEN, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE	<input type="checkbox"/>	

HON. DAVID B. COHEN
J.S.C.