Rivera v Highgate Hotels LP
2020 NY Slip Op 34533(U)
January 11, 2020
Supreme Court, Kings County
Docket Number: 500334/2016
Judge: Bernard J. Graham

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: Part 36

Index No: 500334/2016
Motion Calendar No.
Motion Sequence No.

JOHANA RIVERA,

Plaintiff(s),

-against-

DECISION / ORDER

Present:
Hon. Judge Bernard J. Graham
Supreme Court Justice

HIGHGATE HOTELS LP, ROCKPOINT GROUP, and RP/HH MILFORD PLAZA GROUND TENANT, LP

Defendant(s).

Recitation, as required by CPLR 2219(a), of the papers considered on the review of this motion to: amend the caption pursuant to CPLR §3025(b)

Papers	**Numbered**
Notice of Motion and Affidavits Annexed.....	1-2
Order to Show cause and Affidavits Annexed.....	
Answering Affidavits	3
Replying Affidavits.....	4
Exhibits.....	
Other:	

Upon the foregoing cited papers, the Decision/Order on this motion is as follows:

Defendants, Highgate Hotels LP, RockPoint Group, and RP/HH Milford Plaza Ground Tenant, LP, have moved, pursuant to CPLR §3025(b), for an Order permitting the defendants to serve an amended answer to plaintiff's complaint. The defendants in moving for this relief, seek to amend their answer to deny each and every allegation contained in paragraph "24" of the Verified Complaint. The plaintiff has opposed the relief sought by the defendants, alleging that they would be prejudiced if the defendants were permitted to amend their answer, wherein RP/HH Milford Plaza Ground Tenant, LP

would deny ownership of the subject property, the result of which would be that the plaintiff would be unable to assert a claim against the newly named owner, as the statute of limitations has expired.

Background:

In the underlying matter, the plaintiff who had been employed as a housekeeper at the ROW Hotel seeks to recover for personal injuries allegedly sustained when she slipped and fell while walking through the employee entrance at the hotel located at 700 Eighth Avenue, New York, N.Y. on January 18, 2015 at approximately 8:00 A.M. As a result of the alleged injuries sustained by the plaintiff, an action was commenced on behalf of the plaintiff by the filing of a summons and verified complaint on or about January 6, 2016. Issue was joined by the service of a verified answer by defendants on or about April 21, 2016. The plaintiff served a response to defendant's Demand for a Verified Bill of Particulars on or about April 21, 2016. A deposition of the plaintiff was conducted on July 6, 2018.

The Note of Issue and Certificate of Readiness were filed by the plaintiff on or about February 26, 2018. By Court Order dated May 9, 2019, the Note of Issue was vacated.

Defendants' contention:

In support of their motion which seeks leave of Court to amend their answer, the defendants assert that the plaintiff will not be prejudiced by the proposed amended

answer, nor is there any evidence that the error in pleading their answer was in any way willful or intentional.

In the defendants' answer, there was an admission by defendants that RP/HH Milford Plaza LP owned the premises known as 700 8th Avenue, N.Y. Defendants now maintain that on January 18, 2015, the subject premises was owned by non-party Milford Holdings, LLC, and RP/HH Milford Plaza LP did not own the premises. This is confirmed by the public deed which is on file in the County Clerk's office. Defendants assert that prior to and including January 18, 2015, RP/HH Milford Plaza, LP was only a "sub-landlord" at the subject premises and was not responsible for sidewalk maintenance, repairs or inspection.

Defendants maintain that mere lateness is not a barrier to an amendment, as long as the lateness is not coupled with significant prejudice (see *Feinstein v. Goebel*, 97 AD2d 456, 467 NYS2d 423 (2nd Dept. 1983).

Plaintiff's contention:

In opposing the relief sought by the defendants, the plaintiff maintains that if the defendants were afforded the right to amend their answer which was served three years ago, they would be prejudiced by said amendment. On April 21, 2016, when the defendants served their answer, they admitted ownership of the subject premises. Milford Plaza was identified as the premises owner and as the party responsible for maintenance of the premises, which is inclusive of snow and ice removal. Since the

statute of limitations has expired, this change in ownership would be extremely inherently prejudicial to the plaintiff.

In addressing the argument of defendants that a simple ACRIS search would have led to the discovery of the ownership of the property, the plaintiff maintains that the argument overlooks the fact that there was no reason for an ACRIS search based upon the information that was provided by defendants' counsel. The plaintiff contends that they acted reasonably in reliance upon that information in commencing the within action.

The plaintiff asserts that since the statute of limitations has run, the plaintiff would be precluded from pursing an action against the entity the defendants now claim was the owner of the premises at the time of the incident.

Discussion:

This Court has considered the submissions of counsel for the respective parties, the arguments presented herein, as well as the applicable law, in making a determination with respect to the motion by defendants, which seeks leave of Court to amend their answer pursuant to CPLR §3025(b).

In the underlying matter, the defendants concede that they admitted that defendant RP/HH Milford Plaza, LP owned the subject premises (see paragraph #15 of the affirmation of Laura Efrati, Esq. in support of the Motion to Amend). Defendants, in seeking the within relief, maintain that it was an error that should be corrected and that it would not result in any prejudice to the plaintiff. In opposition, the plaintiff asserts that they would be prejudiced since the statute of limitations has expired, and they would

unable to assert claims against the party who would now be designated as the actual owner of the subject premises.

Leave to amend pleadings shall be freely given absent prejudice or surprise resulting directly from the delay (see Fahey v. County of Ontario, 44 NY2d 934). However, such relief is deemed to be inappropriate where there has been an unjustified delay by the moving party which has resulted in significant prejudice to the non-moving party (see Wyso v, City of New York, 91 AD2d 661, 457 NYS2d 112 (2nd Dept. 1982]. In determining whether the relief sought is appropriate, the Court should consider (1) how long the moving party was aware of the facts upon which the motion is predicated; (2) whether a reasonable excuse for the delay is offered; and (3) whether prejudice to the opposing party resulted from the delay (see *Sidor v. Zuhoski*, 257 AD2d 564, 683 NYS2d 590 [2nd Dept. 1991. In *Jennings v. Perkins*, 277 App. Div. 1143 [2nd Dept. 1950] and *Loueiro v. Long Is. R.R. Co.*, 22 AD2d 763 [2nd Dept. 1964], the Court held that where the party who wishes to amend has or should have knowledge of the facts which he wishes to put in his later pleadings but refrains from moving to amend for an inexcusably long period of time, the motion will be denied because of gross laches.

Here, the defendants knew or should have known from the outset of the litigation which entity owned the subject property, yet there has been a delay of nearly three years after joinder of issue before moving to amend the answer. The Second Department in *Zaffuto v. New Life Cmty. Church*, 161 AD2d 640, 555 NYS2d 419 [2nd Dept.1990], in reversing an Order of the lower Court which had granted a motion to amend the caption, determined that leave to serve an amended answer would be prejudicial where the

movant attempted to withdraw an admission that would have resulted in the plaintiff being remediless since the Statute of Limitations had expired and would have barred an action against the alleged responsible party.

The argument of the defendant that it was incumbent upon the plaintiff to perform an ACRIS search is likewise without merit. The plaintiff had no reason to believe that defendant RP/HH Milford Plaza, LP's admission of ownership was erroneous (see *Brown v. City of New York*, 12 Misc.3d 1178 (A) [Sup. Ct. Richmond County 2006]).

Conclusion:

The motion by defendants for leave of Court to amend their answer to plaintiff's complaint is denied.

This shall constitute the decision and order of this Court.

Dated: January 11, 2020
Brooklyn, New York

ENTER

Hon. Bernard J. Graham, Justice
Supreme Court, Kings County

HON. BERNARD J. GRAHAM