Nunez v 608-614 W. 189th St. LLC

2021 NY Slip Op 32315(U)

November 16, 2021

Supreme Court, New York County

Docket Number: Index No. 158901/2014

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT:	HON. DEBRA JAMES	PART 59	
	Justice		
	X	INDEX NO.	158901/2014
IRIS NUNEZ	, ,	MOTION DATE	08/07/2020
	Plaintiff,	MOTION SEQ. NO.	004
	- V -		
608-614 WEST 189TH STREET LLC,		DECISION + ORDER ON MOTION	
	Defendant.	MOTION	
	X		
608-614 WE	ST 189TH STREET LLC	Third-I	
	Plaintiff,	Index No. 595125/2016	
	-against-		
B07 CONST	RUCTION CORP.,		
Defendant.			
	X		
126, 127, 128	e-filed documents, listed by NYSCEF document nu , 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, , 150, 151, 154, 155, 156, 157, 158, 159, 160		
were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL			RIAL .
	ORDER		
Upon	the foregoing documents, it is		
ORDE	CRED that plaintiff's motion to	amend the comp	laint to
add third	d-party defendant BO7 Constr. Co	rp. as a direc	t
defendant	and the amended complaint in t	he proposed fo	rm annexed
to the mo	oving papers shall be deemed ser	ved upon servi	ce of a
copy of t	this order with notice of entry	thereof; and i	t is

further

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ORDERED that the defendants shall serve an answer to the amended complaint within twenty (20) days of such service; and it is further

ORDERED to the extent plaintiff seeks to consolidate this action with <u>Nunez v BO7 Constr. Corp.</u> (New York Supreme Court, New York County, Index No. 159323/2019), such motion is DENIED; and it is further

ORDERED that counsel shall post on NYSEF a proposed Status Conference Order or competing proposed Status Conference Orders on January 18, 2022.

DECISION

Plaintiff moves to amend the complaint to add third-party defendant BO7 Construction Corp. as a direct defendant pursuant to CPLR 3025 and 203 and to consolidate this action with <u>Nunez v</u> <u>BO7 Constr. Corp.</u> (Index No. 159323/2019). The court shall grant the former relief and deny the latter.

The general rule is that absent prejudice, a party, upon application, should be freely granted the right to assert claims against parties, such as third-party litigants, present in the litigation absent a showing of prejudice to the parties sought to be claimed against. As stated by the Court:

"[t]hus, from the time of the service of the third-party complaint, the third-party defendants were fully parties to the action with full notice that they may ultimately be charged with the complete liability. In the circumstances, we think that it is desirable to permit the plaintiffs'

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amended complaint as against the third-party defendants to relate back at least to the time of the service of the third-party complaint, thus enabling the court to render complete justice among all the parties."

Holst v Edinger, 93 AD2d 313, 316 (1st Dept 1983). Third-party defendant BO7 Constr. Corp. has not demonstrated any prejudice sufficient to justify denying plaintiff's application to add it as a direct defendant and to deem the interposed claims arising out of the incident as timely (CPLR 203). Therefore, the court shall grant plaintiff the right to amend her pleading.

However, with respect to plaintiff's motion to consolidate, the court in its discretion shall deny the relief sought at this late juncture as unnecessary. By Order dated September 22, 2020, the court in the other action (Index No. 159323/2019, NYSCEF Doc. No. 62, Freed, J.) granted dismissal of plaintiff's complaint against all the corporate defendants except for B07 Constr. Corp. and, by subsequent Order dated June 9, 2021 (Index No. 159323/2019, NYSCEF Doc. No. 74, Hom, J.), granted default judgments against defendants MD Ashraf Ali and Ashraf Ali, P.E. P.C. As plaintiff can pursue the claims against BO7 Constr. Corp. herein by amendment and plaintiff's direct claims against the other proposed consolidated defendants have been determined in the other action, consolidation does not appear to be appropriate at this late juncture.

Verra A-Janes

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