

<b>Domino v West St. Equities Corp.</b>
2022 NY Slip Op 31669(U)
May 20, 2022
Supreme Court, New York County
Docket Number: Index No. 159250/2017
Judge: Frank P. Nervo
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. FRANK NERVO PART 04**

*Justice*

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CHRISTOPHER DOMINO,

Plaintiff,

- v -

WEST STREET EQUITIES CORP., 50 WEST  
DEVELOPMENT LLC, HUNTER ROBERTS  
CONSTRUCTION GROUP, L.L.C.,

Defendant.

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INDEX NO. 159250/2017

MOTION DATE 03/21/2022

MOTION SEQ. NO. 004

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157

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

Plaintiff seeks an order granting him leave in amend the summons and complaint to add third-party defendant PI Management (hereinafter "PI") and second third-party defendant Tractel Ltd (hereinafter "Tractel"). The motion is unopposed as to Tractel. Accordingly, the motion is granted without opposition as to Tractel. However, PI opposes, contending, inter alia, that it was not a subcontractor on the project upon which plaintiff was injured and that discovery has not revealed the existence of a signed subcontract, a bid by PI to perform work on the project, approval as a subcontractor by the project

owner, nor insurance coverage under the Tractel's Contractor Controlled Insurance Program covering subcontractors.<sup>1</sup>

CPLR § 1009 authorizes a plaintiff to amend the complaint to assert claims against a third-party without leave of court, provided that such amendment occurs within 20 days after service of the answer. Thereafter, the requirements of CPLR § 3025 must be met. CPLR § 3025(b) governs permissive leave to amend a pleading upon terms which are just. Leave is to be freely given absent a showing that amendment would cause surprise or prejudice (*Fahey v. County of Ontario*, 44 NY2d 934 [1978]; *170 W. Vil. Assoc. v. G & E Realty, Inc.*, 56 AD3d 372 [1st Dept 2008]; *Lanpont v. Savvas Cab Corp., Inc.*, 244 AD2d 208 [1st Dept 1997]). However, “[i]n order to conserve judicial resources, an examination of the underlying merits of the proposed causes of action is warranted. Where a court concludes that an application to amend a pleading clearly lacks merit, leave is properly denied” (*Eight Ave. Garage Corp. v. HKL Realty Corp.*, 60 AD3d 404 [1st Dept 2009] [internal citation omitted]).

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<sup>1</sup> The parties previously sought similar relief by stipulation. The Court declined to so-order such stipulation as so-ordering same deprived the Clerk's Office of the notice necessary to effectuate the appropriate modifications to the caption and did not provide the proposed amended complaint, depriving the Court of the ability to perform an inquiry regarding the merits of the proposed complaint.

In the instant matter, plaintiff alleges he was injured when a suspended scaffold upon which he was working, referred to as a BMU by the parties, malfunctioned. As relevant here, and contrary to PI's assertions that it did not perform work on the subject project, defendant Hunter Roberts testified that PI performed monitoring and labor services at the subject project:

Typically, [PI] would have a trained employee stationed at the base of the BMU which is on the roof, and that individual would be monitoring environmental conditions and helping make judgments as to whether the environment was safe to use the BMU, for example, wind speed. They would also be there as additional assistance to operate the BMU from the controls at the base of the BMU should the controls in the basket of the BMU stop working, or in the case of power loss, help to assist the basket of the BMU to go down to the ground safely.

(NYSCEF Doc. No. 142 at p. 69-70).

Furthermore, PI submitted various documents to the Department of Buildings regarding the subject BMU (*see e.g.* reports signed by Alvarado, an employee of PI, NYSCEF Doc. Nos. 146 and 147; *see also* Work Permit issues to Alvarado and PI Management NYSCEF Doc. No. 148).

Upon review of the proposed amended complaint (NYSCEF Doc. No. 138), which asserts violations of the Labor Law §§ 200, 240, and 241(6) against Tractel and PI, the Court finds the proposed amendments do not prejudice or

surprise Tractel and PI. The Court further finds that proposed amended complaint does not clearly lack merit.

Accordingly, it is

ORDERED that the plaintiff's motion for leave to amend the complaint is granted; and it is further

ORDERED that the amended complaint, in the form annexed to the motion papers, 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 a supplemental summons and amended complaint, in the form annexed to the motion papers, shall be served, in accordance with the Civil Practice Law and Rules, upon the additional parties in this action within 30 days after service of a copy of this order with notice of entry; and it is further

[continued on following page]

ORDERED that the action shall bear the following caption:

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CHRISTOPHER DOMINO,  
*Plaintiff,*

*-against-*

WEST STREET EQUITIES CORP., 50 WEST  
DEVELOPMENT LLC, HUNTER ROBERTS  
CONSTRUCTION GROUP, L.L.C., PI  
MANAGEMENT, LLC and TRACTEL, LTD.,  
*Defendants,*

\_\_\_\_\_X

WEST STREET EQUITIES CORP., 50 WEST  
DEVELOPMENT LLC, and HUNTER ROBERTS  
CONSTRUCTION GROUP, L.L.C.,  
*Third-party Plaintiffs,*

*-against-*

PI MANAGEMENT, LLC,  
*Third-party Defendant,*

\_\_\_\_\_X

PI MANAGEMENT, LLC,  
*Second Third-party Plaintiff,*

*-against-*

TRACTEL LTD.,  
*Second Third-party Defendant.*

\_\_\_\_\_X

; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being added pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made 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](http://www.nycourts.gov/supctmanh))); and it is further

ORDERED that counsel for the parties shall confer regarding outstanding discovery in light of this Decision and Order, including further depositions and medical exams, and shall file a single-joint letter to Judge and proposed conference order, via NYSCEF and courtesy copy to chambers, by August 5, 2022, and such letter and proposed order shall comply with the Part Rules; and it is further

ORDERED that the note of issue deadline is extended to December 30,  
2022.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

5/20/2022  
DATE

  
HON. FRANK P. NERVO

CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

NON-FINAL DISPOSITION

J.S.C.

APPLICATION:

SETTLE ORDER

GRANTED IN PART

OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE