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

**PRESENT:** **HON. JUDY H. KIM** **PART** **05RCP**

***Justice***

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JOLENE CANDELARIO,

Plaintiff,

- v -

THE CITY OF NEW YORK, CRF-HOUSE EAST, LLC., LATHAM REALTY, LLC,

Defendants.

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**INDEX NO.** 150895/2021

**MOTION DATE** 04/26/2022

**MOTION SEQ. NO.** 002

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51

were read on this motion to AMEND PLEADINGS.

Upon the foregoing papers, plaintiff's motion to amend her complaint is denied without prejudice.

In 2020, plaintiff lived on the third floor of a building located at 4 East 28th Street, New York, New York (the "Building") in a room with a sink but no bathroom (NYSCEF Doc. No. 1 [Compl. at ¶19]). Plaintiff alleges that defendant the City of New York (the "City") was the owner and operator of the Building, that defendant CRF-House East, LLC ("CRF") leased and managed the Building, and that defendant Latham Realty, LLC ("Latham") owned the building (Id. at ¶¶9-11, 30, ¶51).

Plaintiff further alleges that, beginning on February 19, 2020, the communal bathrooms on the third and fourth floors of the Building were not working and were, in any event, locked (Id. at ¶19). The Building's elevators were also out of order during this period (Id.). As a result of this

situation, on February 25, 2020 she was forced to use the sink in her room to urinate (Id.). While doing so, she fell and sustained "serious and permanent personal injuries" (Id.).

Plaintiff contends that the defendants were negligent in the ownership, operation, and maintenance of the bathrooms of the third and fourth floor of the Building and were "further negligent in that they were aware at the time of her placement at her apartment in the Building that she had a high-risk pregnancy and had recently a cervical cerclage surgery related to her pregnancy in January of 2020" (Id. at ¶¶20, 41, 62).

Plaintiff now moves to amend her complaint solely to add a demand for "damages of a sum not to exceed $5,000,000.00 in compensatory damages for past and future economic losses, past and future non-pecuniary losses (including physical pain and suffering, emotional pain & suffering and inconvenience), as well as punitive damages as against the non-municipal defendants in the amount of $1,000,000.00, together with costs and reasonable attorney's fees" (Id. at ¶¶24, 45, 66 [emphasis added]).

CRF and Latham oppose the motion, arguing that the proposed amended complaint's allegations do not support a demand for punitive damages[1]. Latham also argues that CRF "has admitted that it leased and managed the building (including the room where plaintiff was living), and operated, managed, controlled, maintained, and was responsible for the maintenance of the premises and bathrooms" and therefore "there is no evidence to even suggest that Latham Realty engaged in conduct that would warrant a claim for punitive damages" (NYSCEF Doc. No. 35 [Burkhoff Affirm. in Opp. at ¶¶13-14]).

[1] The City also opposes the proposed amendment, arguing that it is not liable for punitive damages as a matter of law. However, plaintiff does not seek punitive damages against the City.

**DISCUSSION**

CPLR §3025(b) provides, in relevant part, that "[a] party may amend his pleading … at any time by leave of court or by stipulation of all parties" (CPLR §3025[b]). "Whether to grant the amendment is committed to the Court's discretion" (Heller v Louis Provenzano, Inc., 303 AD2d 20, 22 [1st Dept 2003] citing Edenwald Contr. Co. v City of New York, 60 NY2d 957 [1983]) but "[l]eave to amend … should be freely given and denied only if there is prejudice or surprise resulting directly from the delay [in amendment] or if the proposed amendment is palpably improper or insufficient as a matter of law" (McGhee v Odell, 96 AD3d 449, 450 [1st Dept 2012] [internal citations and quotations omitted]).

Plaintiff's motion is denied on two separate and independent grounds. First, the proposed amendment is palpably improper, as the proposed amendment violates CPLR §3017. This statute dictates that:

> In an action to recover damages for personal injuries or wrongful death, the complaint, …shall contain a prayer for general relief but shall not state the amount of damages to which the pleader deems himself entitled …"

(CPLR §3017[c]). Despite this, plaintiff has included a demand for punitive damages in the specific amount of one million dollars. While plaintiff asserts that a claim for punitive damages is exempt from this mandate, the Court finds no basis in law to support this claim. The motion to amend is, therefore, denied (See Castillo v Kings County Hosp. Ctr., 149 AD3d 896, 897 [2d Dept 2017] [Supreme Court properly denied motion for leave to amend medical malpractice to specify an amount of damages in the ad damnum clause]).

Even ignoring the foregoing, plaintiff's motion must be denied because the proposed amendment is insufficient as a matter of law, as the proposed amended complaint does not include facts supporting a demand for punitive damages. Punitive damages are appropriate only for:

> exceptional misconduct which transgresses mere negligence, as when the wrongdoer has acted maliciously, wantonly, or with a recklessness that betokens an improper motive or vindictiveness ... or has engaged in outrageous or oppressive intentional misconduct or with "reckless or wanton disregard of safety or right. Such recklessness must be close to criminality.

(Camillo v Geer, 185 AD2d 192, 194 [1st Dept 1992] [internal citations and quotations omitted]).

While the Court does not discount the distressing circumstances in which plaintiff allegedly found herself—pregnant without ready access to a bathroom—the Court concludes that the proposed amended complaint does not allege facts satisfying this standard. This action arises, fundamentally, out of defendants' alleged failure to repair the bathrooms in the Building yet "a failure to make repairs despite being aware that such repairs were necessary, is not" in and of itself "outrageous enough to support a … [demand for] punitive damages" (Salvator v 55 Residents Corp., 195 AD3d 495 [1st Dept 2021]). Although punitive damages may lie where a property owner fails to repair a defective condition which condition then directly harms plaintiff (See Gruber v Craig, 208 AD2d 900, 901 [2d Dept 1994] [imposition of punitive damages appropriate in action stemming from stove explosion where defendant failed to fix gas leak in stove, despite being alerted to same by plaintiff]), the indirect, attenuated connection between defendants' negligence alleged here—failing to fix the bathrooms on the third and fourth floor of the Building—and the harm to plaintiff—injuries from falling off the sink in her room—does not support an inference of willful or wanton behavior on the part of defendants (See Anderson v Nottingham Vil. Homeowner's Ass'n, Inc., 37 AD3d 1195, 1198 [4th Dept 2007] [motion to amend to add punitive damages demand based on health problems arising from mold in apartment created by roof leak properly denied]).

To the extent that plaintiff suggests that defendants were aware of her pregnancy and therefore could or should have anticipated her use of her sink as a bathroom, and her resulting

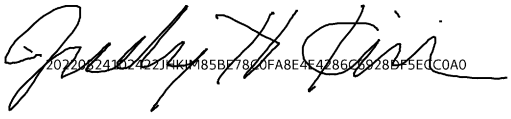
injury, this argument is unavailing. The fact that a resulting harm may have been reasonably foreseeable is not, in and of itself, sufficient to sustain a demand for punitive damages (See 164 Mulberry St. Corp. v Columbia Univ., 4 AD3d 49, 51 [1st Dept 2004] [allegations that defendant university professor had, as part of experiment, mailed letters to plaintiff restaurants falsely accusing them of giving him food poisoning did not support punitive damages—despite defendant's failure to foresee likely consequences of his actions, there was no suggestion that ill-considered research project was intended to maliciously hurt restaurants included in his study]).

Accordingly, as the proposed amended complaint "does not allege intentional and malicious treatment of plaintiff or wanton dishonesty suggestive of criminal indifference to civil obligations sufficient to support an award of punitive damages," plaintiff's motion must be denied (Jean v Chinitz, 163 AD3d 497, 497-98 [1st Dept 2018] [internal citations omitted]).

In light of the foregoing, it is

**ORDERED** that plaintiff's motion to amend her complaint is denied without prejudice.

This constitutes the decision and order of the Court.



8/24/2022
DATE

HON. JUDY H. KIM, J.S.C.

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| CHECK ONE: | | CASE DISPOSED | | X | NON-FINAL DISPOSITION | | |
| | | GRANTED | X DENIED | | GRANTED IN PART | | OTHER |
| APPLICATION: | | SETTLE ORDER | | | SUBMIT ORDER | | |
| CHECK IF APPROPRIATE: | | INCLUDES TRANSFER/REASSIGN | | | FIDUCIARY APPOINTMENT | | REFERENCE |