

Delvalle v City of New York

2023 NY Slip Op 32149(U)

June 30, 2023

Supreme Court, New York County

Docket Number: Index No. 154333/2021

Judge: Judy H. Kim

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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. JUDY H. KIM **PART** **05RCP**

Justice

-----X

MIRIAM DELVALLE,

Plaintiff,

- v -

THE CITY OF NEW YORK, PORT AUTHORITY OF NEW
YORK & NEW JERSEY

Defendant.

-----X

INDEX NO. 154333/2021

MOTION DATE 03/22/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

were read on this motion to AMEND CAPTION/PLEADINGS.

Upon the foregoing documents, plaintiff’s motion to amend her notice of claim and complaint is granted for the reasons set forth below.

On or about June 25, 2020 plaintiff served the City with a notice of claim asserting that on May 8, 2020 she tripped and fell at “178th Street and Fort Washington Avenue” in Manhattan due to “a defective sidewalk, and broken street sign, containing a raised metal piece about 1-3” off the ground” (NYSCEF Doc. No. 33 [Notice of Claim]). Plaintiff then commenced this action on May 4, 2021, also asserting that she fell at the “terminal on 178th Street, between Broadway and Fort Washington Avenue, New York, New York” (NYSCEF Doc. No. 1 [Compl. at ¶11]).

Defendant Port Authority of New York and New Jersey moved to dismiss the complaint as against it. In connection with her opposition to that motion, plaintiff submitted an affidavit on August 25, 2021, stating that the location of her accident was 179th Street between Broadway and Fort Washington Avenue (NYSCEF Doc. No. 14). Plaintiff also filed a Bill of Particulars on

November 16, 2021 stating the location of the accident as 179th Street between Broadway and Fort Washington Avenue (NYSCEF Doc. No. 21).

Plaintiff now moves to amend her notice of claim and complaint to change the location of her trip and fall from 178th Street between Broadway and Fort Washington Avenue, New York, New York to 179th Street between Broadway and Fort Washington Avenue, New York, New York. Plaintiff's counsel maintains that no prejudice would result from such an amendment because the City was notified that this was the correct location of plaintiff's fall at her GML § 50-h hearing on January 11, 2021 and that pictures of the location of the defective condition were attached to the original notice of claim.

In opposition, the City argues that plaintiff's motion must be denied because it is time-barred by the one-year-and-ninety day statute of limitations of GML §50-e(5) and, in any event, permitting this amendment would prejudice the City in its investigation of the subject incident.

DISCUSSION

That branch of plaintiff's motion seeking to amend her notice of claim is granted. As an initial matter, the City's argument that the instant motion is barred for plaintiff's failure to make such a motion before the expiration of one-year-and-ninety-day statute of limitations is incorrect. An application to amend the Notice of Claim solely to correct good faith and non-prejudicial technical mistakes, omissions, or defects under GML § 50-e(6) has no such restriction (See Seise v City of New York, 212 AD2d 467 [1st Dept 1995]). The amendment sought here, to correct the location of the accident is a technical mistake, and the Court may permit plaintiff to make this amendment at any time unless the City would be prejudiced as a result (See Barrios v City of New York, 300 AD2d 480 [2d Dept 2002]).

In addition, plaintiff has established that no prejudice is present here. Where “the notice of claim was accompanied by photographs from which the correct location of the accident site could have been ascertained, and the City of New York was advised of the correct location at the hearing pursuant to General Municipal Law § 50-h, which took place approximately [eight] months after the accident,” which information was reinforced by plaintiff’s subsequent affidavit and Bill of Particulars, there is no indication the City’s ability to investigate the claim has been impeded by the defective notice, making amendment now impermissible (Barrios v City of New York, 300 AD2d 480, 481 [2d Dept 2002] [internal citations omitted]; Gonzalez v New York City Hous. Auth., 107 AD3d 471 [1st Dept 2013]; Ciaravino v City of New York, 110 AD3d 511 [1st Dept 2013]). In light of the foregoing, the two-and-a-half year distance between the date of plaintiff’s fall and the instant motion does not alter this conclusion (See Seise v City of New York, 212 AD2d 467 [1st Dept 1995]).

That branch of plaintiff’s motion seeking to amend her complaint to add the correct site of her fall is also granted. A party may amend “her pleading ... at any time by leave of court or by stipulation of all parties” and such “[l]eave shall be freely given upon such terms as may be just” (CPLR §3025). Leave to amend pleadings under this section should be liberally granted unless the amendment plainly lacks merit or would prejudice or surprise the other parties (See e.g., MBIA Ins. Corp. v Greystone & Co., 74 AD3d 499 [1st Dept 2010]). The amendment does not, as discussed supra, prejudice plaintiff, and is not patently without merit.

Accordingly, it is

ORDERED that plaintiff’s motion is granted; and it is further

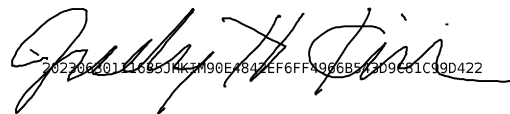
ORDERED that plaintiff’s amended notice of claim, in the form annexed to the moving papers (NYSCEF Doc. No. 35), is deemed timely served, nunc pro tunc, and it is further

ORDERED that plaintiff’s amended complaint, in the form annexed to her moving papers (NYSCEF Doc. No. 36) is deemed timely served nunc pro tunc; and it is further

ORDERED that within fifteen days of the date of this decision and order counsel for the movant shall serve a copy of this decision and order, with notice of entry, upon defendant as well as the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119),; and it is further

ORDERED that such service upon the Clerk of the Court 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 “Efiling” page on this Court’s website at the address www.nycourts.gov/suptmanh).

This constitutes the decision and order of the Court.



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6/30/2023

DATE

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

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE