

27 A.D.3d 323

Supreme Court, Appellate Division,  
First Department, New York.

MANHATTAN REAL ESTATE EQUITIES

GROUP LLC, Plaintiff–Appellant,

v.

PINE EQUITY NY, INC., et  
al., Defendants–Respondents,  
Tali Geva, et al., Defendants.

March 21, 2006.

### Synopsis

**Background:** In action for breach of non-competition agreement, the Supreme Court, New York County, Herman Cahn, J., denied plaintiff's cross motion for partial summary judgment and leave to amend its complaint, and plaintiff appealed.

**[Holding:]** The Supreme Court, Appellate Division, held that plaintiff could not amend its complaint to add non-signatory.

Affirmed.

West Headnotes (2)

### [1] Pleading

⇒ Leave of Court to Amend

### Pleading

⇒ Affidavits and other proofs

### Pleading

⇒ Form and sufficiency of amended pleading in general

Leave to amend pleading should generally be freely granted, but party seeking amendment has burden of establishing merit of proposal, and leave to amend should be denied where claim is palpably insufficient.

1 Cases that cite this headnote

### [2] Parties

⇒ Persons who may be brought in, and grounds in general

### Parties

⇒ Mode of bringing in parties

Employer charging former employees with violating non-competition agreement could not amend its complaint to add non-signatory, absent allegation that proposed additional party would be bound by agreement.

2 Cases that cite this headnote

### Attorneys and Law Firms

\*29 Starr Associates LLP, New York (Evan R. Schieber of counsel), for appellant.

The Brown Law Group, P.C., New York (Ryan J. Whalen of counsel), for Pine Equity NY, Inc., Pine Equity International, LLC, Worldwide Properties LLC, Roy Investment NY Corp., Oxford Capital, LLC, Manhattan Landmark Realty LLC, Oren Yerushalmy and Ofer Resles, respondents.

Esther S. Trakinski, New York, for Ben Friedman, respondent.

TOM, J.P., GONZALEZ, SWEENEY, CATTERSON, MALONE, JJ.

### Opinion

Order, Supreme Court, New York County (Herman Cahn, J.), entered April 4, 2005, which denied plaintiff's cross motion for partial summary judgment and leave to amend its complaint, unanimously affirmed, with costs.

[1] [2] Plaintiff's motion for summary judgment was premature, since issue had not yet been joined (CPLR 3212[a]; *Costalas v. Amalfitano*, 305 A.D.2d 202, 204, 760 N.Y.S.2d 422 [2003]). As to the branch of the motion seeking to add a party defendant, leave to amend a pleading should generally be freely granted, but the party seeking amendment has the burden of establishing the merit of the proposal. Leave to amend a complaint should be denied where the claim is

palpably insufficient (*Bencivenga & Co. v. Phylfe*, 210 A.D.2d 22, 619 N.Y.S.2d 33 [1994] ). Here, plaintiff failed to allege facts indicating the proposed additional party would be bound by an agreement to which it was not a signatory. Conclusory assertions that the proposed additional party was simply an extension of one of the defendants did not sufficiently allege a basis for a departure from the general rule that nonparties to an agreement are not bound thereby (*National Survival*

*Game of N.Y. v. NSG of LI Corp.*, 169 A.D.2d 760, 565 N.Y.S.2d 127 [1991]; *see also Brainstorms Internet Mktg. v. USA Networks*, 6 A.D.3d 318, 775 N.Y.S.2d 844 [2004] ).

**Parallel Citations**

27 A.D.3d 323, 815 N.Y.S.2d 28, 2006 N.Y. Slip Op. 02141

---

**End of Document**

© 2015 Thomson Reuters. No claim to original U.S. Government Works.