

**Meaders v Ramirez**

2009 NY Slip Op 31870(U)

August 19, 2009

Supreme Court, Richmond County

Docket Number: 103570/06

Judge: Philip G. Minardo

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND**

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LEIGH H. MEADERS,

*Plaintiff,*

*-against-*

ROSE RAMIREZ,

*Defendant,*

-----X

ROSE RAMIREZ,

*Third-Party Plaintiff,*

*-against-*

OTIS V. VOILS, P.L.S. and WOHL & O'MARA, L.L.P.,

*Third-Party Defendants.*

-----X

OTIS V. VOILS, P.L.S. and WOHL & O'MARA, L.L.P.,

*Second Third-Party Plaintiffs,*

*-against-*

LOCKMAN ASSOCIATES, LLC,

*Second Third-Party Defendants.*

-----X

The following papers numbered 1 to 3 were marked fully submitted on the 18<sup>th</sup> day of June 2009:

	Pages Numbered
Notice of Motion for Summary Judgment by Third-Party Defendants Otis V. Voils, P.L.S. and Wohl & O'Mara, L.L.P., with Supporting Papers and Memorandum of Law.....	1
Affidavit in Opposition by Defendant/Third-Party Plaintiff Rose Ramirez, with Supporting Papers and Memorandum of Law.....	2
Reply Affirmation by Third-Party Defendants Otis V. Voils, P.L.S. and Wohl & O'Mara, L.L.P.....	3

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Upon the foregoing papers, the motion of third-party defendants Otis V. Voils, P.L.S. and Wohl & O'Mara, L.L.P. for summary judgment dismissing the third-party complaint is denied.

DCM Part 6  
Present:  
Hon. Philip G. Minardo

**DECISION AND ORDER**

Index No. 103570/06  
Motion No. 3773-001

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Plaintiff Leigh M. Meaders (hereinafter “Meaders”) commenced this action pursuant to article 15 of the Real Property Actions and Proceedings Law to compel the determination of an adverse claim to real property located at 276 Harbor Road, Staten Island, New York. More specifically, Meaders seeks a judgment declaring that she is the owner of a certain portion of the parcel, i.e., an approximate 100 square foot area (hereinafter, the “Disputed Area”) situated on the rear boundary between her property (hereinafter, the “Meaders Property”) and the adjoining property of defendant/third-party plaintiff Rose Ramirez (hereinafter, “Ramirez”) located at 283 Lockman Avenue, Staten Island, New York (hereinafter, the “Ramirez Property”). To this end, a survey map was prepared on behalf of plaintiff which allegedly indicates that said Disputed Area lies wholly within the boundaries of the Meaders Property. Ramirez, on the other hand, has submitted a second survey map which was prepared by third-party defendants Otis V. Voils, P.L.S. and Wohl & O’Mara, L.L.P. (hereinafter, collectively “Voils”) at the request of the builder, Lockman Associates, LLC (hereinafter “Lockman”) in 2003, and certified to Ramirez on September 27, 2004 in advance of her acquiring title to the property on November 18, 2004. Voils are professional licensed engineers and land surveyors. Their survey allegedly indicates that the Disputed Area lies wholly within the boundaries of the Ramirez Property.

In her third-party complaint against Voils, Ramirez asserts causes of action for breach of express warranty (the first), breach of implied warranty (the second), breach of contract (the third), and negligence (the fourth). With regard to the fourth cause of action, Ramirez maintains that in the event the Court determines that some or all of the

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Disputed Area lies within the boundaries of the Meaders Property, then Voils' "Revised Survey" was prepared negligently, and wrongly describes the limits of her parcel, thereby causing her to be damaged by "fail[ing] to receive the quantity of land reflected [thereon]."

In moving to dismiss the third-party complaint, Voils maintain that the third-party claims asserted against them are time-barred, i.e., that the third-party action was commenced three days beyond the applicable three-year Statute of Limitations, on October 3, 2004. According to Voils, the undisputed documentary evidence establishes that they completed their work and professional services relating to the survey at issue when it was certified to Ramirez on September 27, 2004 and delivered to the developer, Lockman, on September 30, 2004. As a result, it is claimed that any purported cause of action against Voils for professional malpractice and/or negligence could not have accrued later than September 30, 2004, and is untimely (*see* CPLR 214). Additionally, movants contend that a claim for indemnification may not be maintained against them as a matter of law since the underlying action is to quiet title to the Disputed Area rather than for damages from defendant Ramirez.

In opposition to the motion, Ramirez concedes that she had no "professional-client" relationship with Voils. Nevertheless, she maintains that the continuous representation doctrine is applicable in this case to toll the Statute of Limitations until at least June of 2006, since the documentary evidence before the Court indicates that Voils was engaged by the builder on an ongoing basis relating to the subdivision and development of the former Lockman property until June 2006. This work included

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preparing surveys of the entire Lockman subdivision and dividing them into individual lots, such as that purchased by Ramirez. For additional support, Ramirez points to the admission of movant's employee, William Trang, during his deposition testimony that a surveyor's services are not complete until a Certificate of Occupancy is issued. Here, it is undisputed the Certificate of Occupancy for the Ramirez Property was not issued until October 26, 2004. Accordingly, the third-party action would be timely.

Movants also maintain that dismissal of plaintiff's breach of contract and warranty causes of action is required due to the lack of privity between themselves and Ramirez. Moreover, they claim that the doctrine of continuous representation cannot, as a matter of law, be applied to extend the Statute of Limitations as it relates to a third-party.

The motion for summary judgment based on the Statute of Limitations is denied. With regard to the claim of negligence, a triable issue of fact has been raised by the deposition testimony of William Trang as to the date upon which said cause of action accrued. Although he has recanted his deposition testimony in his affidavit in support of Voils' (his employer's) motion, this merely raises an issue of credibility for the finder of facts to resolve. In this regard, it is worthy to note that the survey map "Certified to Rose M. Ramirez" is consistent with Trang's deposition testimony as it states, in pertinent part:

"3.) SURVEYOR'S CONTRACTUAL LIABILITY SHALL RUN ONLY TO THOSE  
PARTIES TO WHOM THIS SURVEY IS CERTIFIED."

Accordingly, it may be found that the person to whom the survey is certified may be an

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intended third-party beneficiary of the surveyor's contract with the developer.

Alternatively, Ramirez may be found to be an implied beneficiary of Voils' contract with Lockman, the second third-party defendant (*see* Espinal v Melville Snow Contrs., 98 NY2d 136). Either way, summary dismissal of the third-party plaintiff's breach of contract and warranty causes of action at this juncture would also be premature.

Finally, this Court rejects Voils' argument that no legal basis exists for an indemnification claim against them. To the contrary, the initial claim asserted against defendant Ramirez in the primary ("Meaders") action is legally sufficient "to warrant [a] judgment over" for monetary damages (*see* Real Property Actions and Proceedings Law §1521[1]; *cf.* Fladerer v Needleman, 30 AD2d 371, 373) in the event that Ramirez is required to forfeit any part of the Disputed Area. Notably, a cause of action for indemnification accrues not at the time of the act complained of, but upon the "discharge of the obligation" upon which indemnification is sought (*id.*).

Accordingly, it is

ORDERED, that the third-party defendants' motion for dismissal of the third-party complaint is denied.

E N T E R,

Dated: August 19, 2009

s/ Philip G. Minardo  
J.S.C.

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