

Scholastic Inc. v Pace Plumbing Corp.

2011 NY Slip Op 32015(U)

July 14, 2011

Sup Ct, NY County

Docket Number: 115155/08

Judge: Debra A. James

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: DEBRA A. JAMES
Justice

PART 59

SCHOLASTIC INC.,
Plaintiff,

Index No.: 115155/08

Motion Date: 09/03/10

- v -

Motion Seq. No.: 03

PACE PLUMBING CORP. P.J.P. MECHANICAL
CORP., P.J. MECHANICAL CORP., LUNA
MECHANICAL, INC., LUNA MECHANICAL
ENTERPRISES INC., and LUNA MECHANICAL &
SONS, INC.,

Defendants.

FILED

SEP 10 2010

NEW YORK
COUNTY CLERK'S OFFICE

The following papers, numbered 1 to 3 were read on this motion to amend.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits	No (s) .	1
Answering Affidavits - Exhibits	No (s) .	2
Replying Affidavits - Exhibits	No (s) .	3

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion is

The court shall grant the plaintiff's motion pursuant to CPLR 3025 only to the extent of allowing the caption to be modified to change the name of "P.J.P. Mechanical Corp." to "PJP Mechanical Corp." and shall otherwise deny the motion.

Plaintiff seeks to amend the complaint to add "P.J. Mechanical Service & Maintenance Corp." (P.J. Maintenance) as a party and assert claims that the negligent maintenance of certain water pumps by the proposed defendant caused or contributed to

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .. MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

plaintiff's damages. It is undisputed that plaintiff's claims against the proposed defendant are time-barred unless plaintiff's claims come within the relation-back doctrine codified in CPLR 203 (f) which states

A claim asserted in an amended pleading is deemed to have been interposed at the time the claims in the original pleading were interposed, unless the original pleading does not give notice of the transactions, occurrences, or series of transactions or occurrences, to be proved pursuant to the amended pleading.

Plaintiff argues that P.J. Maintenance shares the same business address, ownership and certain employees with the current P.J. defendants and therefore the court should allow the amendment. Defendants oppose the motion arguing that plaintiff's added claims do not relate to the allegations of negligence as reflected in the current bill of particulars and that the proposed defendant is an independent corporate entity separate and apart from the current defendants.

As stated by the Court

As codified in New York's Civil Practice Law and Rules, what is commonly referred to as the relation back doctrine allows a claim asserted against a defendant in an amended filing to relate back to claims previously asserted against a codefendant for Statute of Limitations purposes where the two defendants are "united in interest."

* * *

Under this standard, the three conditions that must be satisfied in order for claims against one defendant to relate back to claims asserted against another are that: (1) both claims arose out of same conduct, transaction or occurrence, (2) the new party is 'united in interest' with the original defendant, and by reason of that relationship can be charged with such notice of the

institution of the action that he will not be prejudiced in maintaining his defense on the merits and (3) the new party knew or should have known that, but for an excusable mistake by plaintiff as to the identity of the proper parties, the action would have been brought against him as well.

Buran v Coupal, 87 NY2d 173, 177 -178 (1995) (citations and internal quotations omitted). Further,

The question of unity of interest requires consideration of (1) the jural relationship of the parties whose interests are said to be united and (2) the nature of the claim asserted against them. In a negligence action, the defenses available to two defendants will be identical, and thus their interests will be united, only where one is vicariously liable for the acts of the other. Underlying the doctrine of vicarious liability is the notion of authority or control over the alleged wrongdoer.

Hilliard v Roc-Newark Associates, 287 AD2d 691, 692 (2d Dept 2001) (citations and internal quotations omitted). "[U]nity of interest is a question of law." Connell v Hayden, 83 AD2d 30, 44 (2d Dept 1981).

Plaintiff here has failed to demonstrate a unity of interest. "The mere existence of a parent-subsidary corporate relationship is insufficient to establish a unity of interest between the two corporations . . . related corporations are united in interest only where one corporation is vicariously liable for the acts of the other. In order for vicarious liability to exist, the parent corporation must exercise complete dominion and control over the subsidiary's daily operations."

Feszczyszyn v General Motors Corp., 248 AD2d 939, 940 (4th Dept

1998). Here, plaintiff comes forward with no evidence to rebut the affidavit of the president of P.J. Mechanical that his company neither operates nor directs the work of proposed defendant P.J. Maintenance. Therefore, plaintiff fails to demonstrate that defendant P.J. Mechanical exercises complete dominion and control over the work of proposed defendant P.J. Maintenance, which would render P.J. Mechanical vicariously liable for the negligence of such proposed defendant. Nor is there any evidence in the record that proposed defendant P.J. Maintenance exercises any control over the work of P.J. Mechanical. The fact that there is common ownership between them is insufficient to establish unity of interest. "[H]aving common shareholders and officers is not dispositive on the issue of unity of interest and such unity of interest will not be found unless there is some relationship between the parties giving rise to the vicarious liability of one for the conduct of the other." Valmon v 4 M & M Corp., 291 AD2d 343, 344 (1st Dept 2002).

Accordingly, it is

ORDERED that plaintiff's motion to amend the complaint is GRANTED only to the extent of correcting the caption to change the name of "P.J.P. Mechanical Corp." to "PJP Mechanical Corp." and the Clerks of the Court and of the Trial Support Office are directed to modify the caption upon filing of a copy of this

Order with proof of service of notice of entry with such Clerks;
and it is further

ORDERED that the other relief sought in the motion is
DENIED.

This is the decision and order of the court.

Dated: July 14, 2011

ENTER:

~~Debra A. James~~
DEBRA A. JAMES J.S.C.

FILED

JUL 14 2011

NEW YORK
COUNTY CLERK'S OFFICE