

New York Mar. & Gen. Ins. Co. v Ciampa Crescent, LLC
2018 NY Slip Op 31539(U)
June 7, 2018
Supreme Court, Queens County
Docket Number: 707519/15
Judge: Jr., Rudolph E. Greco
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SHORT FORM ORDER

NEW YORK SUPREME COURT : QUEENS COUNTY

Present: Hon. Rudolph E. Greco, Jr.
Justice

IAS Part 32

-----x Index No. 707519/15
NEW YORK MARINE & GENERAL INSURANCE
COMPANY a/s/o ASTORIA 30th STREET, LLC, NORTH Motion Date:
SHORE, LLC and TECHNOLOGY INSURANCE
COMPANY a/s/o ASTORIA 30th STREET, LLC and Motion Seq. No. 3, 4, 5, 6, 8
NORTH SHORE LLC,

Plaintiff,

-against-

CIAMPA CRESCENT, LLC, CIAMPA 24 LLC, CIAMPA
S2, LLC, CIAMPA S3 LLC, CIAMPA S4 LLC, CIAMPA
MANAGEMENT CORP., CIAMPA ORGANIZATION, JCJ
CONSTRUCTION, LLC, BRONZING ENGINEERING,
P.C., A SANITA CONCRETE & CONSTRUCTION, INC.,
DE NARDIS ENGINEERING, LLC, OIL SOLUTIONS,
INC., SOIL MECHANICS DRILLING CORPORATION,
JOHN V. DINAN ASSOCIATES, INC. and
HAUBENREICH, HESS & SHAW, L.S., P.E., P.C.,

Defendants.

-----x
CIAMPA CRESCENT, LLC, CIAMPA 23 LLC, CIAMPA
S2 LLC, CIAMPA S3, LLC, CIAMPA S4 LLC, CIAMPA
MANAGEMENT CORP., CIAMPA ORGANIZATION and
JCJ CONSTRUCTION, LLC.

Third-Party Plaintiffs,

-against-

A. SANITA CONCRETE & CONSTRUCTION, INC., DE
NARDIS ENGINEERING, LLC, SOIL SOLUTIONS, SOIL
MECHANICS DRILLING CORPORATION, JOHN V.
DINAN ASSOCIATES, INC., HAUBENREICH, HESS &
SHAW, L.S., P.E., P.C.,

The following papers E107 ti E218 were read on six motions for Summary Judgment of Dismissal as per CPLR § 3211(a)(5).

	<u>Papers Numbered</u>
<u>Seq. 3</u>	
Notice of Motion, Affirmation, Affidavit, Exhibits.....	E107 - E109
Opposing Affirmation and Exhibit.....	E154 - E158
Reply Law Memorandum.....	E189
<u>Seq. 4</u>	
Notice of Motion, Affirmation, Affidavit, Exhibits.....	E110 - E129
Opposing Affirmation and Exhibit.....	E159 - E163
Reply Affirmation.....	E187 - E188
<u>Seq. 5</u>	
Notice of Motion, Affirmation, Affidavit, Exhibits.....	E105 - E135
Opposing Affirmation and Exhibit.....	E164 - E168
Reply Affirmation.....	E190 - E191
<u>Seq. 6</u>	
Notice of Motion, Affirmation, Affidavit, Exhibits.....	E136
Opposing Affirmation and Exhibit.....	E169 - E173
Reply Affirmation.....	E185 - E186
<u>Seq. 8</u>	
Notice of Motion, Affirmation, Affidavit, Exhibits.....	E151 - E153
Opposing Affirmation and Exhibit.....	E179 - 183
Reply Affirmation.....	E192
<u>Seq. 9</u>	
Notice of Motion, Affirmation, Affidavit, Exhibits.....	E194 - E205
Opposing Affirmation and Exhibit.....	E206
Opposing Affirmation and Exhibit.....	E207 - 208
Opposing Affirmation and Exhibit.....	E209
Opposing Affirmation and Exhibit.....	E210
Opposing Affirmation and Exhibit.....	E211
Reply Affirmation and Exhibit.....	E212 - E213
Opposing Affirmation and Exhibit.....	E214 - E218
Reply Affirmation	

Upon the foregoing papers and after a Court conference during which all counsel argued orally these motions are determined as follows:

BACKGROUND FACTS

These six motions by defendants/third-party-defendants for CPLR § 3211(a)(5) dismissal of “Subrogation Plaintiffs” Amended Verified Complaint arise out of one incident where an existing building was undermined during excavation of property adjoining: 41-41 24th Street, Long Island City, NY owned by New York Marine & General Insurance Company (“NYMGIC”) who commenced this action on June 26, 2015. The alleged damage occurred on June 26, 2014. All movants were first served with an Amended Verified Complaint filed on November 12, 2017 which they all claim is beyond the three year statute of limitations for property damage as per CPLR § 214(4).

Two other actions arising from the same basic facts were initiated under Index No. 705532/2014 and 708472/2015 which were consolidated with this action by a Court Order dated April 13, 2016.

In similar terms the subrogee “NYMGIC” sued the property owner/general contractor “Ciampa defendants” the overall engineer Branzino and numerous others whom it considered as possibly liable for the mishap.

The property owner of the construction site “Ciampa defendants” who were also the general contractors, as third- party plaintiffs, sued the six movants herein as third-party defendants.

ARGUMENTS

The movants cite the authority of CPLR § 214(4) which sets a three year time bar for property damage actions.

The respondent subrogee plaintiff “NYMGIC” asserts that the amended complaint is not time barred because it falls under the “Related Back exceptions as set forth in CPLR § 203(f) and the N.Y. Court of Appeals decision in Buran v Coupal, 661 N.E.2d 978, 87 NY2d 173, 638 N.Y.S.2d 405, 1995 N.Y. Lexis 4748.

DECISION

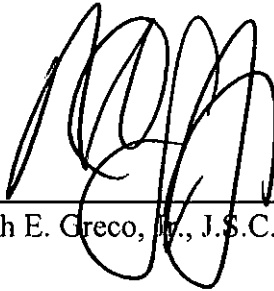
The facts are clear. The amended complaint is time barred as per CPLR 214(4) which sets a three year statute of limitations for cases of property damage. Livichusca v. M & T Mortgage Co., 49 A.D.3d 822(2d Dep’t. 2008); Jemison v Crichlow, 139 A.D.2d 232 (2d Dep’t 1988; Liberty Mutual Ins. Co. V. Claric, 296 A.D.2d 442(2d Dep’t 202) and Nationwide Mutual Ins. Co. v. MVAIC, 190 A.D.2d 798 (2d Dep’t. 10993).

The “Related Back” exception does not apply here because CPLR § 203(f) sets forth an exception where “...the original pleading does not give notice of the transactions, occurrences, or series of transactions or occurrences, or series of transactions, or occurrences, to be proved pursuant to the amended pleading.”

This Court finds that the movants here were not casually connected to the original alleged tortfeasor or the alleged tort itself. Their presence in this matter was a result of prudent pleading which follows "Sue them all let the Court sort them out" rule of advocacy or the title of the Beatles song "With a Little Help from My Friends".

In the interest of justice and judicial economy as well as the merits the six instant motions are granted in full. As to the six movants this matter is dismissed. The fishing expedition is over. It is time to decide the issues among the possible proper parties without distraction. The amended and verified complaint is dismissed.

Dated: June 7, 2018



Rudolph E. Greco, Jr., J.S.C.