

Santos-Bremme v Riverside Ctr. Site 5 Owner LLC

2018 NY Slip Op 32825(U)

November 7, 2018

Supreme Court, New York County

Docket Number: 151538/2015

Judge: Debra A. James

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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. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

-----X

ADRIANA SANTOS-BREMME,

Plaintiff,

- v -

RIVERSIDE CENTER SITE 5 OWNER LLC, TISHMAN
CONSTRUCTION CORPORATION OF NEW YORK, PETER
SCALAMANDRE & SONS, INC., MORETRENCH AMERICAN
CORPORATION, MORETRENCH ENVIRONMENTAL SERVICES,
INC., MORETRENCH SYSTEMS, INC.,

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 77, 78

were read on this motion to/for

DISMISSAL

ORDER

Upon the foregoing documents, it is

ORDERED that the motion of defendant ARCHEOLOGY & HISTORIC RESOURCE SERVICES, LLC to dismiss the "VERIFIED SECOND AMENDED COMPLAINT" herein is granted and such complaint is dismissed in its entirety as against such defendant, with costs and disbursements to such defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of such defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that the cross motion of plaintiff ADRIANA SANTOS-BREMME to serve the "VERIFIED SECOND AMENDED COMPLAINT" to add ARCHEOLOGY & HISTORIC RESOURCE SERVICES, LLC, as defendant, is DENIED; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein [If this is an e-filed case, add the following:

; 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 "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh)].

DECISION

Defendant ARCHEOLOGY & HISTORIC RESOURCE SERVICES, LLC (AHRs) moves to dismiss the "Verified Second Amended Complaint"

against it based on the statute of limitations defense pursuant to CPLR 3211(1)(7).


There is no dispute that plaintiff claims she was injured arising from defendants' negligence on December 12, 2014, and that under the applicable three-year statute of limitations, her time to interpose a complaint expired on December 13, 2017. The "Verified Second Amended Complaint" was not served on defendant AHRS until July 19, 2018.

In its cross motion for an order granting her leave to serve such amended complaint against AHRS, plaintiff argues that since a third-party action was timely brought against her employer Langan Engineering, and because Langan Engineering is "united in interest" with AHRS, this court should find based on the "relation back" doctrine that the amended complaint against AHRS is timely.

This court disagrees with plaintiff's argument. First, because plaintiff did not (and could not, due to the Worker's Compensation bar) commence an action against Langan Engineering, her employer, the relation back theory on the grounds of "united in interest" is inapplicable. The third-party action against Langan Engineering does not accrue until there is a judgment in the first party action, and such action was commenced after the expiration of the three year statute of limitations in the first party action. Thus, the limitation period for the third-party

action does not set forth a basis for the application of the relation back doctrine.

Second, though any negligent acts on the part of Karen French, as employee of AHRS, would be imputed to her employer AHRS, under no theory of liability would AHRS's agent, subconsultant Langan, be vicariously liable for the acts of its principal AHRS. Thus, even assuming arguendo, that Langan was a direct defendant, there would be no relation back as to claims interposed against AHRS, since Langan could not be vicariously liable for the acts of AHRS, its principal. See Mercer v 203 East 72nd Street Corp., 300 AD3d 105 (1st Dept. 2002).

<u>11/7/2018</u> DATE	 DEBRA A. JAMES, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE