Pacific Indem. Co. v Lendlease (US) Constr. LMB Inc.
2019 NY Slip Op 33402(U)
November 15, 2019
Supreme Court, New York County
Docket Number: 155486/2018
Judge: W. Franc Perry
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. W. FRANC PERRY **PART** IAS MOTION 23EFM

Justice

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INDEX NO. 155486/2018

MOTION DATE 05/23/2019, 05/23/2019, 05/23/2019

MOTION SEQ. NO. 001 002 003

PACIFIC INDEMNITY COMPANY A/S/O GARY FEGEL, PACIFIC INDEMNITY COMPANY A/S/O POLYS HAJIONNAOU, PACIFIC INDEMNITY COMPANY A/S/O MARK D. BRODSKY, CHUBB NATIONAL INSURANCE COMPANY A/S/O ANTHONY BUCKINGHAM & A. SOSNOWSKA, PACIFIC INDEMNITY COMPANY A/S/O XUE FANG, PACIFIC INDEMNITY COMPANY A/S/O HARVEY SANDLER AND PHYLLIS SANDLER, PACIFIC INDEMNITY COMPANY A/S/O TOWER 85, LLC,NATIONAL SURETY CORPORATION A/S/O LAPUSNY, INC.,NATIONAL SURETY CORPORATION A/S/O LLC PARK VIEW NORTH LLC,

Plaintiff,

- v -

LENDLEASE (US) CONSTRUCTION LMB INC. F/K/A BOVIS LEND LEASE LMB, INC.,EXTELL DEVELOPMENT COMPANY, ASCO VALVE, INC.,ROSEMOUNT PRODUCTS INC.,PAR PLUMBING CO., POST ROAD IRON WORKS, INC.,PINNACLE INDUSTRIES, INC.,AFK ENGINEERS LLP, RWDI USA LLC,RWDI CANADA, WSP USA INC. F/N/A PARSONS BRINKERHOFF, INC.,VIDARIS INC. F/K/A ISRAEL BERGER, LEND LEASE (US) SERVICES, INC.,BOVIS LEND LEASE LMB, INC.,EXTELL WEST 57TH STREET LLC,ROSEMOUNT INC.,PINNACLE INDUSTRIES II, LLC,ABC CORPORATION

Defendant.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 84

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 82, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81

were read on this motion to/for AMEND CAPTION/PLEADINGS.

Motion sequence numbers 001, 002, and 003 are hereby consolidated for disposition.

In this subrogation action to recover damages for negligence, strict products liability, and breach of warranty, in motion sequence number 001, defendant WSP USA Inc., f/k/a Parsons Brinkerhoff, Inc. (WSP USA Inc.), moves pursuant to CPLR 3211(a)(1) and (a)(7), to dismiss the amended complaint and all cross claims as asserted against it, or, in the alternative, for summary judgment pursuant to CPLR 3211(c) and 3212.

In motion sequence number 002, defendants RWDI USA, LLC and RWDI Canada move pursuant to CPLR 3211(a)(1) and (a)(7), to dismiss the amended complaint and all cross claims as asserted against them, or, in the alternative, for summary judgment pursuant to CPLR 3211(c) and 3212.

In motion sequence number 003, plaintiffs move, pursuant to CPLR 305(c), 203(f), 3025(b), and/or 1024, for leave to amend the supplemental summons and amended complaint to add WSP USA Buildings, Inc. f/k/a Cantor Seinuk (WSP USA Buildings, Inc.) as a defendant in this action.

BACKGROUND

157 West 57th Street is a mixed-use hotel and residential building in Manhattan (the Premises). Plaintiffs allege that, on or before June 18, 2015, a slosh tank located on the 90th, 91st, 92nd, and/or 93rd floors of the Premises malfunctioned, releasing thousands of gallons of water, which resulted in significant property damage to the condominium units owned by their respective insureds at the Premises.

In this action, plaintiffs, as subrogees of their respective insureds, seek to recover monies they paid pursuant to the insurance policies issued to their respective insureds. Plaintiffs commenced this action by filing a summons and complaint on June 11, 2018. On June 15, 2018,

they filed a supplemental summons and amended complaint as of right pursuant to CPLR 3025 (a), asserting claims of negligence, strict products liability, and breach of warranty.

DISCUSSION

I. WSP USA Inc.'s Motion Sequence Number 001 to Dismiss the Amended Complaint and All Cross Claims against WSP USA.

Defendant WSP USA Inc. moves to dismiss the amended complaint and all cross claims as asserted against it pursuant to CPLR 3211(a)(1) and (7) or, in the alternative, for summary judgment pursuant to CPLR 3211(c) and 3212. WSP USA Inc. maintains that it has no connection to the Premises and was, therefore, improperly named as a defendant in this action.

A motion to dismiss may be granted pursuant to CPLR 3211(a)(1) if the defendant asserts "a defense . . . founded upon documentary evidence" (CPLR 3211[a][1]). Dismissal is warranted "only if the documentary evidence submitted utterly refutes plaintiff's factual allegations and conclusively establishes a defense to the asserted claims as a matter of law" (*Amsterdam Hospitality Group, LLC v Marshall-Alan Assoc., Inc.*, 120 AD3d 431, 433 [1st Dept 2014] [internal quotation marks and citations omitted]). "A paper will qualify as 'documentary evidence' only if it satisfies the following criteria: (1) it is 'unambiguous'; (2) it is of 'undisputed authenticity'; and (3) its contents are 'essentially undeniable'" (*VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC*, 171 AD3d 189, 193 [1st Dept 2019], quoting *Fontanetta v John Doe 1*, 73 AD3d 78, 86 [2d Dept 2010]). "Judicial records, such as judgments and orders, would qualify as documentary, as should the entire range of documents reflecting out-of-court transactions, such as contracts, deeds, wills, mortgages, and even correspondence" (*Amsterdam Hospitality Group, LLC v Marshall-Alan Assoc., Inc.*, 120 AD3d at 432 [internal quotation marks and citation omitted]). "Factual affidavits . . . do not constitute documentary evidence within the meaning of the statute" (*Art & Fashion Group Corp. v Cyclops Prod., Inc.*, 120 AD3d 436, 438 [1st Dept 2014]).

A motion to dismiss may be granted pursuant to CPLR 3211(a)(7) if "the pleading fails to state a cause of action" (CPLR 3211[a][7]). "[T]he pleading is afforded a liberal construction, facts as alleged in the complaint are accepted as true, plaintiffs are afforded the benefit of every possible favorable inference, and the motion court must only determine whether the facts as alleged fit within any cognizable legal theory" (*D.K. Prop., Inc. v National Union Fire Ins. Co. of Pittsburgh, Pa.*, 168 AD3d 505, 506 [1st Dept 2019]). Where a motion under CPLR 3211(a)(7) "is not converted to a summary judgment motion, affidavits may be received for a limited purpose only, serving normally to remedy defects in the complaint, although there may be instances in which a submission by plaintiff will conclusively establish that he has no cause of action" (*Rovello v Orofino Realty Co.*, 40 NY2d 633, 636 [1976]). "[A]ffidavits submitted by the defendant will seldom if ever warrant the relief he seeks unless too the affidavits establish conclusively that plaintiff has no cause of action" (*id.*).

As relevant here, the amended complaint alleges that WSP USA Inc. was "in the business of testing and/or engineering concrete used for building slosh tank [sic] and was hired to do so for the" Premises (Amended Complaint at ¶¶ 63-64). In support of its motion, WSP USA Inc. submits the affidavit of its General Counsel, Stephen Dale, wherein Dale disputes this allegation, stating:

> 2. I have reviewed the complaint in this action that alleges that WSP USA Inc. . . . was retained to perform certain work at the building known as 157 West 57th Street (the 'Project'). This is not accurate.
>
> 3. WSP USA Inc. . . . provides services related to transportation and infrastructure, like those involving public transit or bridges, the environment and water. Such services are not alleged to be at issue in this action.
>
> 4. Based upon knowledge gained through employment and through a review of materials in response to receiving this complaint, there are no contracts involving WSP USA Inc. . . . at the Project

(NYSCEF Doc. No. 36). Dale further states that it appears the allegations in the amended complaint are in reference to an agreement that WSP Cantor Seinuk Structural Engineers executed with the owner of the Premises (the WSP Cantor Seinuk agreement) (*id.* at ¶ 5). Dale attaches a copy of the agreement, dated June 18, 2009, to his affidavit. It indicates that the owner of the Premises retained WSP Cantor Seinuk Structural Engineers to perform structural engineering services in connection with the construction of the Premises.

Contrary to WSP USA Inc.'s contention, the agreement does not dispositively demonstrate that WSP USA Inc. lacked any involvement with the Premises. In other words, the fact that WSP Cantor Seinuk Structural Engineers contracted with the owner to perform certain services associated with the slosh tanks does not preclude the possibility that WSP USA Inc. was also involved in some aspect of the slosh tanks.

The statement in Dale's affidavit, which is based upon his personal knowledge, contradicts the allegations in the complaint that WSP USA Inc. was hired to test and/or engineer concrete used for building the slosh tanks. However, given WSP USA's apparent affiliation with WSP Cantor Seinuk Structural Engineers, it is possible that discovery may reveal evidence supporting a conclusion that WSP USA Inc. performed some aspect of the work alleged without having been hired by the owner or having entered into a contract to do so. Indeed, the nature of the relationship between these entities, as well as whether and/or to what extent their employees are intermingled is unclear at this juncture. Under the circumstances, plaintiffs are entitled to disclosure on the issue (*see* CPLR 3211[d]; *Cerchia v V.A. Mesa, Inc.*, 191 AD2d 377, 378 [1st Dept 1993]). Thus, WSP USA Inc.'s motion to dismiss is denied in accordance with CPLR 3211 (d) without prejudice to renew upon the completion of discovery.

II. The RWDI Defendants' Motion Sequence Number 002 to Dismiss.

Defendants RWDI USA, LLC and RWDI Canada (together the RWDI defendants) move to dismiss the amended complaint and all cross claims insofar as asserted against them pursuant to CPLR 3211(a)(1) and (7) or, in the alternative, for summary judgment pursuant to CPLR 3211(c) and 3212. For the reasons that follow, their motion is denied.

The amended complaint alleges that the RWDI defendants were "in the business of designing, testing and/or engineering, building slosh tank [sic] and [were] hired to so for the" Premises (Amended Complaint at ¶¶ 60 and 61). The RWDI defendants argue that RWDI USA LLC did not contract to perform work at the Premises and RWDI Canada is a non-existent entity. Therefore, they were improperly named as defendants in this action.

In support of their motion, they rely on the affidavit of Rob Tonin, the Director of Finance for Rowan Williams Davies & Irwin, Inc. (Rowan), wherein Tonin states that Rowan was the entity retained to design, test and/or otherwise engineer the slosh tanks and related components located at the Premises (NYSCEF Doc. No. 58, at ¶ 4). Tonin avers that Rowan's offices are located in Canada, and that it is a separate entity from RWDI USA LLC (*id.* at ¶¶ 2-3). He also maintains that "RWDI USA LLC never contracted to perform damper slosh tank work or any other work on the project" and that "RWDI CANADA does not exist and never did" (*id.* at ¶¶ 5-6).

In further support of their motion the RWDI defendants rely on a proposal, dated February 17, 2009, submitted by Rowan to perform "damping design consulting services" for the Premises (NYSCEF Doc. No. 59). They also rely on a proposal, dated May 18, 2010, submitted by Rowan to perform "tuned sloshing damper construction consultation & commission" for the Premises (NYSCEF Doc. No. 60). Finally, they rely on a "Supplemental Provisions Rider,"

between Rowan and the owner of the Premises, which appears to modify and supplement the May 18, 2019 proposal (NYSCEF Doc. No. 61).

The RWDI defendants assert that these three documents, along with Tonin's affidavit, evince that Rowan was the entity engaged to provide engineering services to the project, and that it, alone, was the entity that entered into the contract and delivered services in connection with the project. They argue that since Rowan's name and address appear throughout the three documents, with no mention of "RWDI USA LLC" or "RWDI Canada," the documentary evidence establishes that an entirely different entity was involved in the project. This, they assert, utterly refutes the allegations in the complaint and, therefore, all claims and cross claims should be dismissed insofar as asserted against them. The court finds these arguments unavailing.

As plaintiffs point out, the RWDI defendants did not authenticate the copies of the documents upon which they rely (*see Bou v Llamoza,* 173 AD3d 575, 576 [1st Dept 2019]). In any event, assuming the authenticity of the copies, the documents do not dispositively demonstrate that RWDI USA LLC lacked any involvement in the design, testing, and/or engineering of the slosh tanks, as alleged in the complaint. In other words, the fact that Rowan contracted to perform certain consultation and commissioning services associated with the slosh tanks does not preclude the possibility that RWDI USA LLC was also involved in some aspect of the design, testing and/or engineering of the slosh tanks.

Tonin's affidavit, which does not constitute documentary evidence within the meaning of CPLR 3211(a)(1) (*see Art & Fashion Group Corp. v Cyclops Prod., Inc.*, 120 AD3d at 438), also does not conclusively establish that plaintiffs have no cause of action against the RWDI defendants so as to warrant dismissal pursuant to CPLR 3211(a)(7) (*see Rovello v Orofino Realty Co.*, 40 NY2d at 636). Tonin's statements that RWDI Canada does not exist and that RWDI

USA LLC "never contracted to perform damper slosh tank work or any other work on the project" are wholly conclusory. He does not provide any basis for these assertions and does not claim to have personal knowledge of these facts. Indeed, he does not state that he is in any way affiliated with RWDI USA LLC. Rather, he states that he is the Director of Finance for Rowan, which he describes as a "separate entit[y]" from RWDI USA LLC. Thus, the RWDI defendants' motion is denied.

III. Plaintiffs' Motion Sequence Number 003 to Amend the Supplemental Summons and Amended Complaint to Add WSP USA Buildings, Inc., As A Defendant.

Plaintiffs move for leave to amend the supplemental summons and amended complaint to add WSP USA Buildings, Inc. (f/k/a Cantor Seinuk) as a defendant in this action. Plaintiffs do not dispute that the statute of limitations applicable to their claims against the proposed defendant had expired by the time they made the instant cross motion (*see* CPLR 214 [4]; UCC § 2-725). They contend that they should be permitted to include it as a defendant in this action on the basis of the relation-back doctrine.

Pursuant to CPLR 3025, a party may amend a pleading "at any time by leave of court" (CPLR 3025 [b]). While leave to amend pleadings is "freely given upon such terms as may be just" (CPLR 3025[b]), where the statute of limitations has run against a proposed additional defendant, the plaintiff bears the burden of demonstrating the applicability of the relation-back doctrine (*see Rivera v Wyckoff Hgts. Med. Ctr.*, 175 AD3d 522, 523-524 [2d Dept 2019]; *Garcia v New York-Presbyt. Hosp.*, 114 AD3d 615, 615 [1st Dept 2014]).

As codified in CPLR 203, "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'" (*Buran v Coupal*, 87 NY2d 173, 177 [1995], quoting CPLR

203[b]). The relation-back "doctrine . . . gives courts the sound judicial discretion to identify cases that justify relaxation of limitations strictures . . . to facilitate decisions on the merits if the correction will not cause undue prejudice to the plaintiff's adversary" (*id.* [internal quotation marks and citations omitted]).

"The Court of Appeals has recognized that a more relaxed standard applies where a plaintiff seeks to use the relation-back doctrine by adding a new claim against a defendant who is already a party to litigation as opposed to adding a new defendant" (*O'Halloran v Metropolitan Transp. Auth.*, 154 AD3d 83, 86 [1st Dept 2017]). In order to invoke the relation-back doctrine to join new parties after the statute of limitations has expired, a plaintiff must establish the following:

> First, the plaintiff must show that the claims against the new defendants arise from the same conduct, transaction, or occurrence as the claims against the original defendants. Second, the plaintiff must show that the new defendants are united in interest with the original defendants, and will not suffer prejudice due to lack of notice. Third, the plaintiff must show that the new defendants knew or should have known that, but for the plaintiff's mistake, they would have been included as defendants

(*Higgins v City of New York*, 144 AD3d 511, 513 [1st Dept 2016] [internal quotations marks and citations omitted]). "All three features must be met for the statutory relation back remedy to be operative" (*Mondello v New York Blood Ctr.--Greater N.Y. Blood Program*, 80 NY2d 219, 226 [1992]).

Here, the claims asserted against the original defendants and the claims to be added against the proposed defendant WSP USA Buildings, Inc. arose out of the same conduct, transaction, or occurrence. Therefore, plaintiffs satisfied the first requirement.

However, plaintiffs fail to satisfy the second prong of the test. The unity of interest requirement is:

> more than a notice provision. The test is whether the interest of the parties in the subject-matter is such that they stand or fall together and that judgment against one will similarly affect the other. Thus, 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. Unity of interest fails if there is a possibility that the new defendants may have a defense unavailable to the original defendants

(*Higgins v City of New York*, 144 AD3d at 513 [internal quotations marks and citations omitted]; *see Lord Day & Lord, Barrett, Smith v Broadwall Mgt. Corp.*, 301 AD2d 362, 363 [1st Dept 2003]). "[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" (*see Valmon v 4 M & M Corp.*, 291 AD2d 343, 344 [1st Dept 2002]; *see Jaliman v D.H. Blair & Co. Inc.*, 105 AD3d 646, 648 [1st Dept 2013]; *Raymond v Melohn Props., Inc.*, 47 AD3d 504, 505 [1st Dept 2008]).

Records from the New York State Department of State, Division of Corporations demonstrate that the existing defendant WSP USA Inc., and the proposed defendant WSP USA Buildings, Inc., have the same Chief Executive Officer (Gregory A. Kelly) and designate the same location where the Department of State should mail process if accepted on their behalf, as well as the same Principal Executive Office and Registered Agent (NYSCEF Doc. Nos. 75 & 76). In addition, plaintiffs point to the fact that WSP USA Inc. included with its moving papers an agreement entered into by WSP USA Buildings, Inc. They assert that this evinces that WSP USA Inc. has access to WSP USA Building, Inc.'s records.

The foregoing clearly demonstrates that WSP USA Inc. and WSP USA Buildings, Inc. are related entities. However, it does not establish that there is a relationship between them giving rise to the vicarious liability of one for the conduct of the other, or that their interests will stand or fall together. Therefore, plaintiffs have not established that these entities are united in interest. Accordingly, they cannot rely on the relation-back doctrine, regardless of whether they satisfied the third prong of the test.

Alternatively, plaintiffs assert that curing a misnomer by amendment is permitted under CPLR 305(c) after the statute of limitations has run. They contend in this regard that since there is no real prejudice to WSP USA Building, Inc., this court should permit them to amend the complaint to name it as a defendant in place of WSP USA Inc. This argument is also unavailing.

Pursuant to CPLR 305 (c), an amendment to correct the misnaming of a defendant "'should be granted even if the statute of limitations has run where '(1) *there is evidence that the correct defendant (misnamed in the original process) has in fact been properly served*, and (2) the correct defendant would not be prejudiced by granting the amendment sought'" (*New Found., LLC v Ademi*, 140 AD3d 1038, 1039 [2d Dept 2016][emphasis added], quoting *Ober v Rye Town Hilton*, 159 AD2d 16, 19-20 [2d Dept 1990]; *see Rivera v Beer Garden, Inc.*, 51 AD3d 479, 479 [1st Dept 2008]; *Foley v Chase Manhattan Banking Corp.*, 212 AD2d 448, 449 [1st Dept 1995]). "While CPLR 305 (c) may be used to cure a misnomer in the description of a party defendant, it cannot be used after the expiration of the statute of limitations as a device to add or substitute an entirely new defendant who was not properly served" (*Associated Geriatric Info. Network, Inc. v Split Rock Multi-Care Ctr., LLC*, 111 AD3d 861, 862 [2d Dept 2013]; *see Smith v Garo Enters., Inc.*, 60 AD3d 751, 752 [2d Dept 2009] ["A plaintiff may not invoke CPLR 305 (c) to proceed against an entirely new defendant, who was not served, after the expiration of the statute of limitations"]).

In this case, while no prejudice to WSP USA Buildings, Inc. has been demonstrated, plaintiffs cannot rely on CPLR 305(c) because they have not submitted evidence establishing that this party was properly served. CPLR 311(a)(1) provides that personal service upon a domestic or foreign corporation shall be made by delivering the summons "to an officer, director, managing or general agent, or cashier or assistant cashier or to any other agent authorized by appointment or by law to receive service," and that a business corporation may also be served

pursuant to Business Corporation Law §§ 306 or 307, by serving the Secretary of State on behalf of the corporation (CPLR 311 [a] [1]).

In this case, the affidavit of service attached to plaintiffs' motion papers does not substantiate their assertion that proper service was made on WSP USA Buildings, Inc. Plaintiffs attach an affidavit of service indicating that on July 12, 2018, they served WSP USA Inc. by delivering a copy of the pleadings to the Secretary of State (NYSCEF Doc. No. 19). However, since the summons and complaint did not name WSP USA Buildings, Inc. as a defendant, jurisdiction was not obtained over it. Rather, jurisdiction was only obtained over the named parties (*see Ciafone v Queens Ctr. for Rehabilitation & Residential Healthcare*, 126 AD3d 662, 663 [2d Dept 2015] ["Jurisdiction over Queens Center was not obtained by delivery of the summons and complaint to the Secretary of State, because the summons and complaint misstated Queens Center's name"]; *Smith v Giuffre Hyundai, Ltd.*, 60 AD3d 1040, 1042 [2d Dept 2009] ["by serving on the Secretary of State a summons and complaint naming Giuffre Brooklyn as the defendant, the plaintiff did not thereby also obtain jurisdiction over the entirely separate corporate entity of Giuffre White Plains, despite their having the same forwarding address. Upon receipt of the summons by the Secretary of State, service was complete and jurisdiction was obtained only over the named party. . .. Moreover, the Secretary of State's forwarding of process properly served on it for Giuffre Brooklyn did not thereby confer jurisdiction over Giuffre White Plains"]). Therefore, plaintiffs are not entitled to relief under CPLR 305 (c).

Finally, plaintiffs identify CPLR 1024 as an alternate ground for relief. CPLR 1024 provides:

> A party who is ignorant, in whole or in part, of the name or identity of a person who may properly be made a party, may proceed against such person as an unknown party by designating so much of his name and identity as is known. If the name or remainder of the name becomes known all subsequent proceedings shall be taken

under the true name and all prior proceedings shall be deemed amended accordingly.

"In order to employ the procedural mechanism made available by CPLR 1024, a plaintiff must show that he or she made timely efforts to identify the correct party before the statute of limitations expired" (*Comice v Justin's Rest.*, 78 AD3d 641, 642 [2d Dept 2010]; *see Bumpus v New York City Tr. Auth.*, 66 AD3d 26, 29-30 [2d Dept 2009]; *Goldberg v Boatmax://, Inc.*, 41 AD3d 255, 256 [1st Dept 2007]; *Opiela v May Indus. Corp.*, 10 AD3d 340, 341 [1st Dept 2004]; *Tucker v Lorieo*, 291 AD2d 261, 261 [1st Dept 2002]).

Here, since plaintiffs have not addressed whether they conducted a diligent inquiry into the actual identity of the intended defendant before the expiration of the statutory period, they cannot rely on CPLR 1024 as a shield from the statute of limitations. Thus, notwithstanding the fact that the motion is unopposed, plaintiffs are not entitled to the relief they seek and their motion is denied without prejudice to renewal upon the completion of discovery.

CONCLUSION

For the foregoing reasons, it is hereby

ORDERED that defendant WSP USA Inc., f/k/a Parsons Brinkerhoff, Inc.'s motion to dismiss the complaint and all cross claims asserted against it (Mot. Seq. No. 001) is denied, in accordance with CPLR 3211(d), without prejudice to renew upon the completion of discovery; and it is further

ORDERED that the motion of defendants RWDI USA LLC and RWDI Canada to dismiss the amended complaint and all cross claims insofar as asserted against them (Mot. Seq. No. 002) is denied; and it is further

ORDERED that plaintiffs' motion to amend the supplemental summons and amended complaint to add WSP USA Buildings, Inc. f/k/a Cantor Seinuk as a defendant in this action

(Mot. Seq. No. 003) is denied without prejudice to renewal upon the completion of discovery; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 307, 80 Centre Street, on January 7, 2020, at 9:30 AM.

Any requested relief not otherwise discussed has nonetheless been considered by the Court and is hereby denied and this constitutes the decision and order of the Court.

Hon. Deborah A. Kaplan
Administrative Judge
Supreme Court, New York County
Civil Branch

11/15/2019
DATE

W. FRANC PERRY, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE