

Doscher v Town of Eastchester
2019 NY Slip Op 34664(U)
October 12, 2019
Supreme Court, Westchester County
Docket Number: Index No. 66073/2016
Judge: Lawrence H. Ecker
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

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

-----X
KATHERINE DOSCHER and DWIGHT DOSCHER,

Plaintiffs,

-against-

TOWN OF EASTCHESTER,
CONSOLIDATED EDISON
COMPANY OF NEW YORK, INC.,
PERSICO CONTRACTING & TRUCKING, INC.,
VERIZON NEW YORK, INC.,
ALTICE USA, INC.,
LEVEL 3 COMMUNICATIONS, LLC,
UNITED WATER CORPORATION,
CHARTER COMMUNICATIONS INC.,
AT&T CORP. and
PCT CONTRACTING LLC,

Defendants.

-----X
ECKER, J.

**Index No. 66073/2016
DECISION/ORDER**

Motion date: 08/28/2019

Motion Seqs. 1,2,3,4,5,6

The following papers were considered on: the motion by defendant PCT CONTRACTING LLC (PCT) [Mot. Seq. 1], for an order, pursuant to CPLR 3025, dismissing the second amended complaint filed by plaintiffs KATHERINE DOSCHER and DWIGHT DOSCHER (plaintiffs) as filed without leave of court, or, in the alternative, dismissing the second amended complaint pursuant to CPLR 214(5) and 3211(a) (5), (3) based on expiration of the statute of limitations; the motion of defendant AT&T CORP.(ATT) [Mot. Seq.2], for an order, pursuant to CPLR 3212, granting ATT summary judgment dismissing the complaint and all cross-claims asserted against it and imposing sanctions and attorneys' fees as against plaintiffs; the motion by plaintiffs [Mot. Seq. 3], pursuant to CPLR 2004, for an order extending the time, *nunc pro tunc*, for plaintiffs to file an amended complaint under CPLR 2004, from the date of the last responsive pleading to December 31, 2018, so as to deem the second amended complaint to be filed as of right under CPLR 3015, or granting leave to file the second amended complaint *nunc pro tunc*, or granting leave to file the second amended complaint and deeming the prior service the second amended complaint on defendant PERSICO CONTRACTING & TRUCKING, INC. (Persico Contracting) as service on PCT and denying PCT's motion; the motion of plaintiffs [Mot. Seq. 4], for an order, should PCT's motion to dismiss be granted, granting plaintiffs leave to file an amended

complaint correcting the complaint and substituting PCT instead of Persico Contracting or, in the alternative, granting plaintiffs default judgment against Persico Contracting and setting the matter down for an inquest; the motion of defendant UNITED WATER CORPORATION (SUEZ WATER WESTCHESTER, INC.) (Suez) [Mot. Seq. 5], made pursuant to CPLR 3212, for an order granting Suez summary judgment dismissing all causes of action and cross-claims asserted against it; and the motion of defendant CHARTER COMMUNICATIONS INC. (Charter) [Mot. Seq. 6], made pursuant to 3211 and 3212, for an order granting Charter summary judgment dismissing all causes of action and cross-claims asserted against it:

PAPERS

Mot. Seq. 1 (PCT)

Notice of Motion, Affirmation, Exhibits A-Q [PTC]

Affirmation in Opposition [Town]

Affirmation in Opposition to PCT's Motion and in Support of Plaintiffs' Cross-Motion [plaintiffs]

Affidavit in Further Support of PCT's Motion and in Opposition to Plaintiffs' Cross-Motion [PCT]

Reply Affirmation [PCT]

Mot. Seq. 2 (ATT)

Notice of Motion, Affirmation, Exhibits A-F

Mot. Seq. 3 (plaintiffs)

Notice of Cross-Motion, Affirmation in Opposition to PTC's Motion and in Support of Plaintiffs' Cross-Motion (repeat), Exhibits 1-11

Affidavit in Opposition (repeat) [Town]

Affidavit in Further Support of PTC's Motion and in Opposition to Plaintiffs' Cross-Motion (repeat) [PCT]

Reply Affirmation

Mot. Seq. 4 (plaintiffs)

Notice of Cross-Motion, Affidavit, and Exhibits 12-14

Affidavit in Further Support of PTC's Motion and in Opposition to Plaintiffs' Cross-Motion (repeat) [PCT]

Reply Affirmation

Mot. Seq. 5 (Suez)

Notice of Motion, Affidavit, Exhibits A-G

Affirmation in Opposition (Town)

Affirmation in Opposition (plaintiffs)

Affirmation in Reply

Mot. Seq. 6 (Charter)

Notice of Motion, Affidavit in Support and Exhibits A-I

Upon the foregoing papers, the court determines as follows:

This personal injury action arises out of plaintiff's alleged trip and fall in a hole in the sidewalk area located at 497 New Rochelle Road, Bronxville, N.Y. on July 1, 2015. Plaintiff was walking on the northerly side of the sidewalk (the Accident Site).

Persico Contracting is a construction company that was incorporated in Scarsdale, New York. Robert Perisco personally was designated as agent, located at 67 Woodford Road, Scarsdale, N.Y. 10583. The certificate was filed on May 23, 1980. [NYSCEF No. 63].

On June 1, 2006, Persico Realty Corp. (Persico Realty) and Persico Contracting entered into a lease agreement (the Persico Contracting Lease) for a building located at 550 Franklin Ave. Mount Vernon, N.Y. (the Building). [NYSCEF No. 64]. Persico Contracting leased, among other space, the second floor office space, basement space, garage space, work area and exterior parking spots to be used as a construction facility. The Persico Contracting Lease term was from July 30, 2006 to June 30, 2007, with automatic renewals thereafter. Persico signed the Lease as "President" of Persico Realty and as "President" of Persico Contracting.

As part of its construction business, Persico Contracting entered into agreements with Con Ed to install gas distribution facilities, backfill, and to restore sidewalk and roadway openings in various locations. [NYSCEF No. 65].

On October 4, 2010, PCT was incorporated with service of process designated at the Building's address. [NYSCEF No. 66]. Scott J. Schuster, at 283 Washington Avenue, Albany N.Y., signed the certificate of incorporation as "Sole Organizer." It appears that PCT and Persico Contracting both had offices in the Building and were operating with Persico as an officer doing the same type of construction.

On August 1, 2011, PCT and Persico Contracting entered into "Corporate Asset Purchase Agreement" (Asset Agreement). [NYSCEF No. 67]. The addresses of PCT and Persico Contracting listed in the agreement were at the Building. Persico signed the agreement as "Operating Member" of PCT and as "President" of Persico Contracting.

In the Asset Agreement, PCT agrees to buy all the assets and property of Persico Contracting for a purchase price of \$410,000. The Asset Agreement includes an indemnification clause pursuant to which Persico Contracting agrees, in essence, to indemnify PCT and to hold PCT harmless for any of Persico Contracting's liabilities.

PCT entered into an agreement with Con Ed to provide gas installation services on various construction projects, including sidewalks, over a one year period, from February 12, 2012 to February 12, 2013. [NYSCEF No. 68]. On August 13, 2012, PCT entered into another contract with Con Ed, which expired on August 1, 2014 with a one year extension option, for \$5,251,900. [NYSCEF No. 69]. Although it is not clear, it appears plaintiffs allege that, as part of this agreement, work at the Accident site was performed by PCT and Con Ed.

Plaintiffs submit a "Dig Safety " Report that lists Perisco Contracting as filing a digging report in Eastchester on or about May 14, 2013. [NYSCEF No. 93].

On April 10, 2013, Persico Realty and PCT entered into a lease for the Building(the PCT Lease). PCT leased the office space, garage, storage space and parking areas in exchange for \$120, 000. in yearly rent. [NYSCEF No. 70]. Although it is not clear from the document, it appears that Persico signed the PCT Lease as an officer of Persico Realty and as an officer of PCT.

Plaintiff allegedly tripped and fell in a hole on the sidewalk area at the Accident Site in Bronxville, N.Y. on July 1, 2015. On October 24, 2016, plaintiffs filed a summons and complaint against the Town and Con Ed. [NYSCEF No. 1].

On or about October 26, 2016, Persico Contracting dissolved by proclamation and annulment of authority, filed with the Secretary of New York State Department of State-Division of Corporations. [NYSCEF Nos. 94, 95].

The Town joined issue on March 2, 2017, and Con Ed filed an answer on or about March 9, 2017.

Plaintiffs filed a stipulation to amend the pleadings on or about July 23, 2018. On July 31, 2018, plaintiffs filed an amended complaint (first amended complaint) naming additional defendants Persico Contracting, Verizon New York Inc. (Verizon), Altice USA, Inc. (Altice), Level 3 Communications, LLC (Level 3), Suez, Charter and ATT. In relevant part, plaintiffs alleged that Con Ed and Persico Contracting worked on the sidewalk before plaintiff's fall and created or had notice of the alleged defect that caused her fall. [NYSCEF No. 10].

On October 26, 2018, ATT and Altice filed an answer. On October 31, 2018, Level 3 filed an answer. Verizon filed an answer on November 6, 2018. The Town filed an answer on November 13, 2018, and an amended answer on November 29, 2018. The Town filed an answer to the cross-claims of Verizon, Con Ed, Altice and Level 3 on December 5, 2018.

On December 6, 2018, an attorney working "inhouse at Persico" emailed plaintiffs' attorney, stating that Persico Contracting is a defunct entity and the proper party is PCT. [NYSCEF No. 96]. The attorney asked plaintiffs to dismiss as to the defunct entity and re-serve the complaint against PCT as the proper party.

On December 31, 2018, without leave of court or by stipulation, plaintiffs filed a second amended complaint (the second amended complaint). [NYSCEF No. 33]. In the second amended complaint, plaintiffs added new defendant PCT. PCT was not served with the pleading until March 7, 2019. [NYSCEF No. 50]. In the first amended complaint, plaintiffs allege that Persico Contracting is liable since it maintained and performed work to the sidewalk "generally in front of 497 New Rochelle Road, Bronxville, NY." In the second amended complaint, plaintiff claims that PCT was "known as Persico" Contracting and that PCT was the "successor in business" of Persico

Contracting, controlled work upon the sidewalk, caused the alleged defect or was on notice thereof.

The appropriateness of the filing of this second amended complaint on PCT is at the heart of the motions at issue herein.¹ On April 26, 2019, PCT filed its pre-answer motion [Mot. Seq.1] to dismiss the complaint.

DISCUSSION

Motions without opposition:

Mot. Seq. 2

The motion of ATT [Mot. Seq.2], for an order, pursuant to CPLR 3212, granting ATT summary judgment dismissing the complaint and all cross-claims asserted against it and imposing sanctions and attorneys' fees as against plaintiff is granted without opposition with the exception that the request for attorneys' fees is denied (see generally *Marx v Rosalind & Joseph Gurwin Jewish Geriatric Ctr. of Long Is., Inc.*, 148 AD3d 696 [2d Dept 2017]; *Hutter v Citibank, N.A.*, 142 AD3d 1049 [2d Dept 2016]).

Mot. Seq. 6

The motion of Charter [Mot. Seq. 6], made pursuant to 3211 and 3212, for an order granting Charter summary judgment dismissing all causes of action and cross-claims asserted against it is granted without opposition.

Motions with opposition:

Mot. Seqs. 1, 3, 4

[Mot. Seq. 1] PTC's motion for an order, pursuant to CPLR 3025, dismissing the second amended complaint as filed without leave of court, or, in the alternative, dismissing the second amended complaint pursuant to CPLR 214(5) and 3211(a) (5), (3) based on expiration of the statute of limitations.

[Mot. Seq. 3] plaintiffs' motion, pursuant to CPLR 2004, for an order extending the time, *nunc pro tunc*, for plaintiffs to file an amended complaint from the date of the last responsive pleading to December 31, 2018, so as to deem the second amended complaint to be filed as of right under CPLR 3015, or granting leave to file the second amended complaint *nun pro tunc*, or granting leave to file the second amended complaint and deeming the prior service the second amended complaint on Persico Contracting as service on PTC and denying PTC's motion.

¹Con Ed filed an answer on January 16, 2019, Verizon on January 17, 2019, and Altice on January 22, 2019. ATT filed an answer on February 11, 2019. The Town filed an answer to the second amended complaint on February 20, 2019, and to the cross-claims of ATT on February 15, 2019.

Charter filed an answer to the second amended complaint on February 15, 2019, and Suez filed its answer on February 22, 2019. The Town filed answers to Suez's and Verizon's cross-claims on March 11, 2019.

[Mot. Seq. 4] plaintiffs' motion for an order, should PCT's motion to dismiss be granted, granting plaintiffs leave to file an amended complaint correcting the complaint and substituting PCT instead of Persico Contracting or, in the alternative, granting plaintiffs default judgment against Persico Contracting and setting the matter down for an inquest.

Plaintiffs concede that the second amended complaint was served untimely. [NYSCEF No. 88, p.2, ¶2].

Plaintiffs argue that leave to amend is appropriately granted because PCT will not suffer prejudice by the amendment. In contrast, plaintiffs would suffer significant prejudice should the amendment not be granted as a negligent defendant will have been released from the litigation. PCT counters, in sum, that the amendment would be prejudicial to it because, as a consequence of granting leave to amend, PCT would be held liable for the actions of a separate entity. As such, in essence, the issue to be determined on these motions before the court is whether there is a basis for granting plaintiffs an extension in the time to serve the late served amended pleading.

The court's analysis begins with the basic tenet of CPLR 3025(b), which provides, that at any time during the proceeding, leave to amend pleadings shall be freely given upon such terms as may be just including the granting of costs and disbursements. In the absence of prejudice or surprise to the opposing party, amendment of pleadings shall be freely granted, as prescribed in CPLR 3025, unless the proposed amendment is proposed amendment is palpably insufficient or patently devoid of merit (*Silverman v Potruch & Daab, LLC*, 142 AD3d 660 [2d Dept 2016]; *North Am. Sav. Bank, FSB v Esposito-Como*, 141 AD3d 706 [2d Dept 2016]) or the proposed amended complaint would be futile (*Castillo v Starrett City, Inc.*, 4 AD3d 320 [2d Dept 2004]; *Saferstein v Mideast Sys., Ltd.*, 143 AD2d 82 [2d Dept 1988]). Thus, a party opposing leave to amend must overcome a heavy presumption of validity in favor of permitting amendment (*Cortes v Jing Jeng Hang*, 143 AD3d 854 [2d Dept 2016]; *Gioio v Ching Fu Lin*, 173 AD3d 982 [2d Dept 2019]).

PCT argues that the proposed amendment is palpably insufficient and patently devoid of merit because the statute of limitations for plaintiffs' negligence cause of action as alleged against PCT has expired.

In seeking to assert the statute of limitations as a bar to a claim, a moving defendant bears the initial burden of demonstrating, *prima facie*, that the time within which to commence the cause of action has expired (*Collins Bros. Moving Corp. v Pierleoni*, 155 AD3d 601 [2d Dept 2017]). If the moving defendant satisfies its burden, the burden shifts to the plaintiff to raise a question of fact as to whether the statute of limitations is tolled or is otherwise inapplicable (*Collins Bros. Moving Corp. v Pierleoni, supra*; see *Jacobson Development Group, LLC v Yews, Inc.*, 174 AD3d 868 [2d Dept 2019]). It is undisputed that CPLR 241(5) provides that an action to recover damages for a personal injury must be commenced within three years of the incident.

Here, the alleged accident occurred on July 1, 2015. The second amended complaint, adding PCT as a defendant, was filed on December 31, 2018, three years and five months after the accident. In addition, PCT was not served with the second amended complaint until March 7, 2019, more than three years and eight months after the accident. Accordingly, unless an exception applies, the causes of action alleged against PCT are time-barred.

Under CPLR 203(f) claims asserted in an amended pleading are deemed to have been interposed at the time that the claims in the original pleading were interposed if the plaintiff can demonstrate that the claims against the newly impleaded defendant (here PTC) relate-back to those against the defendants against whom the complaint was timely filed. The relation-back doctrine allows causes of action asserted against a new defendant in an amended complaint to relate back to causes of action previously asserted against a codefendant in the same action for statute of limitations purposes (see CPLR 203[b]; *Uddin v A.T.A. Construction, Corp.*, 164 AD3d 1400 [2d Dept 2018]).

For the rule allowing relation back to the date of service or filing of the original complaint under CPLR 203 [b] or [c] to be operative in an action in which a party is added beyond the applicable limitations period, the plaintiff must demonstrate that (1) both claims arose out of the 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 it will not be prejudiced in maintaining its defense on the merits; and (3) the new defendant knew or should have known that, but for an excusable mistake by the plaintiff as to the identity of the proper parties, the action would have been brought against it as well (*Id.*; *Weckbecker v Skanska USA Civil Northeast, Inc.*, 173 AD3d 936 [2d Dept 2019]). The “linchpin” of the relation-back doctrine is whether the new defendant had notice within the applicable limitations period (*Alvarado v Beth Israel Med. Ctr.*, 60 AD3d 981 [2d Dept 2009]).

PTC maintains that plaintiffs fail to satisfy the second and third criteria of the relation back doctrine. PTC and Persico Contracting are not united in interest², PTC contends because Persico Contracting ceased all operations in 2011 and, consequently, allegedly did not cause any work to be done on the Accident Site thereafter. In contrast, PCT was in business as of 2015, and, therefore, PCT defenses are not identical to Persico Contracting’s defenses. Moreover, PCT argues that, as a purchaser of assets, it is not a “successor in business” or vicariously liable for Persico

²In the first amended complaint, plaintiffs allege that Persico Contracting is liable since it maintained and performed work to the sidewalk “generally in front of 497 New Rochelle Road, Bronxville, NY”. In the second amended complaint, plaintiff claims that PCT was “known as Persico Contracting” and that PCT was the “successor in business” of Persico Contracting, and controlled work upon the relevant sidewalk, causing the alleged defect or on notice thereof, prior to July 15, 2015. [NYSCEF No. 54].

Contracting because the Asset Agreement specifically provides that PCT was not assuming Pericson Contracting's liabilities.

As for the third criteria, PTC points out that there is nothing in the record indicating that PCT should have known that it would have been an originally named defendant were it not for a mistake by plaintiffs. Perisco Contracting ceased operations in 2011 when it sold its assets to PCT. At the time of the Accident, only PCT was operational.

In opposition, plaintiffs allege PCT and Persico Contracting are "united in interest" because: the companies share the same officer, assets, telephone number, and location; Perisco Contracting did not formally dissolve until October 26, 2016; a "Dig Safety" search shows Perisco Contracting was involved in work at the accident site in 2013; and in a Blumberg business status report, PCT represented itself to be Persico Contracting.

The Town submits opposition to PCT's motion arguing that the relationship between PCT and Persico Contracting is not proven as a matter of law, PCT misrepresented its relationship with Perisco, PCT operated under Persico Contracting's name, and PCT induced the co-defendants from continuing the action through fraud.

Here, it is undisputed that the claims against PCT arise out of the same conduct, transaction, or occurrence as the claims alleged against Perisco Contracting in the first complaint. In addition, the two companies share the same officer, location and assets. Plaintiffs demonstrate, further, that, under the particular circumstances presented, Persico Contracting and PCT are united in interest inasmuch as the two entities, intentionally or not, blurred the distinction between them (*Uddin v A.T.A. Construction Corp., supra*). Moreover, PCT does not deny that it had notice of this action within the applicable limitations period, inasmuch as Persico jointly operated both PCT and Persico Contracting as an officer of both companies, and Persico Contracting's attorney acknowledged receipt of the complaint (*Uddin v A.T.A. Construction Corp., supra*). As such, in terms of the "linchpin" of the relation-back doctrine- whether the new defendant had notice within the applicable limitations period- PCT does not deny having the necessary notice(*Alvarado v Beth Israel Med. Ctr., supra*).

In addition, plaintiffs demonstrate that the initial failure to add PCT was not intentional, but was the result of an excusable mistake (see *Donovan v All-Weld Prods. Corp.*, 34 AD3d 257 [1st Dept 2006]). Furthermore, plaintiffs satisfy the third prong of the test, which focuses, *inter alia*, on whether the defendant could have reasonably concluded that the failure to sue within the limitations period meant that there was no intent to sue that defendant at all and that the matter has been laid to rest as far as it was concerned (*Rivera v Wyckoff Heights Medical Center*, 175 AD3d 522 [2d Dept 2019]). Based on the record presented on this pre-answer motion, the proposed causes of action against PCT are not palpably devoid of merit based on the statute of

limitations under CPR 3211 (a)(5) or (3), and PCT's motion [Mot. Seq. 1] is therefore denied.

Based on this finding, the causes of action alleged against PCT in the second amended complaint relate-back, in terms of the statute of limitations, to the causes of action alleged against Presico Contracting in the first amended complaint and are not time-barred. As such, plaintiffs' motion [Mot. Seq. 3], made pursuant to CPLR 203 and 3025 (b), for an order granting leave to serve a supplemental summons and amended complaint adding PCT as a defendant, *nun pro tunc*, to conform with filing of the second amended complaint on December 31, 2018, is granted (*Roseman v Baranowski*, 120 AD3d 482 [2d Dept 2014]).

In light of this conclusion, plaintiffs' motion [Mot. Seq. 4] for relief in the event that PCT was dismissed and Motion Seq. 3 was not granted, is denied as moot.

Mot. Seq. 5

Motion of Suez, made pursuant to CPLR 3212, for an order granting Suez summary judgment dismissing all causes of action and cross-claims.

Plaintiffs³, ATT, Charter, and Altice have agreed to voluntarily discontinue all claims against Suez. Suez discontinues all cross-claims against Charter. Suez argues that the documentation submitted proves conclusively that Suez had no facilities on the northerly side of New Rochelle Road and did not perform any work in the area of the Accident. Only the Town directly opposes the motion.

In opposition to Suez's evidence, the Town only submits a three-paragraph affirmation by its attorney in which he broadly states that the motion is premature due to lack of discovery. Insofar as the Town claims that the motion is premature, it utterly fails to show that facts essential to the motion are in defendant's exclusive knowledge or that discovery might lead to facts relevant to the issues (*see Woods v 126 Riverside Dr. Corp.*, 64 AD3d 422 [1st Dept 2009]). Hence, Suez's motion for summary judgment dismissing the complaint and all cross-claims against it is granted.

The court has considered the additional contentions of the parties not specifically addressed herein. To the extent any relief requested by either party was not addressed by the court, it is hereby denied. Accordingly, it is hereby

ORDERED that the motion of PTC CONTRACTING LLC [Mot. Seq. 1], made pursuant to CPLR 3025, for an order dismissing the second amended complaint as filed without leave of court, or, in the alternative, dismissing the second amended complaint pursuant to CPLR 214(5) and 3211(a) (5), (3) based on expiration of the statute of limitations is denied; and it is further

³Plaintiffs submit limited opposition to Suez's motion requesting only that, if Suez's motion is denied, that the motion be denied in all respects such that plaintiffs' action and cross-claims remain.

ORDERED that the motion of defendant AT&T CORP. [Mot. Seq.2], for an order, pursuant to CPLR 3212, granting AT&T CORP. summary judgment dismissing the complaint and all cross-claims asserted against it and imposing sanctions and attorneys' fees as against plaintiffs KATHERINE DOSCHER and DWIGHT DOSCHER is granted without opposition, with the exception that the request for attorneys' fees is denied; and it is further

ORDERED that the motion of plaintiffs KATHERINE DOSCHER and DWIGHT DOSCHER (plaintiffs)[Mot. Seq. 3], made pursuant to CPLR 2004, for an order extending the time, *nunc pro tunc*, for plaintiffs to file an amended complaint from the date of the last responsive pleading to December 31, 2018, so as to deem the second amended complaint to be filed as of right under CPLR 3015, or granting leave to file the second amended complaint *nun pro tunc*, or granting leave to file the second amended complaint and deeming the prior service the second amended complaint on PERSICO CONTRACTING & TRUCKING, INC., as service on PCT CONTRACTING LLC and denying PCT CONTRACTING LLC'S motion is granted to the extent that the second amended summons and amended complaint is deemed served, *nun pro tunc*, on December 31, 2018; and it is further

ORDERED that defendant PCT CONTRACTING LLC'S time to answer shall commence to run as of the date of the upload of this decision with notice of entry to NYSCEF and defendant PCT CONTRACTING LLC is directed to file an answer in accordance with the time constraints set forth in the CPLR; and it is further

ORDERED that the motion of plaintiffs KATHERINE DOSCHER and DWIGHT DOSCHER (plaintiffs) [Mot. Seq. 4] for an order, should PCT CONTRACTING LLC'S motion to dismiss be granted, granting plaintiffs leave to file an amended complaint correcting the complaint and substituting PCT CONTRACTING LLC instead of PERSICO CONTRACTING & TRUCKING, INC. or, in the alternative, granting plaintiffs default judgment against PERSICO CONTRACTING & TRUCKING, INC. and setting the matter down for an inquest is denied as moot; and it is further

ORDERED that the motion of defendant UNITED WATER CORPORATION (SUEZ WATER WESTCHESTER, INC.) [Mot. Seq. 5], made pursuant to CPLR 3212, for an order granting UNITED WATER CORPORATION (SUEZ WATER WESTCHESTER, INC.) summary judgment dismissing all causes of action and cross-claims asserted against it is granted; and it is further

ORDERED that the motion of defendant CHARTER COMMUNICATIONS INC. [Mot. Seq. 6], made pursuant to 3211 and 3212, for an order granting CHARTER COMMUNICATIONS INC. summary judgment dismissing all causes of action and cross-claims asserted against it is granted without opposition; and it is further

ORDERED that the remaining parties shall appear in the Preliminary Conference Part, room 811, at 9:30 a.m. on December 16, 2019; and it is further

ORDERED that the caption is amended to henceforth read as follows:

-----X
KATHERINE DOSCHER and DWIGHT DOSCHER,

Plaintiffs,

-against-

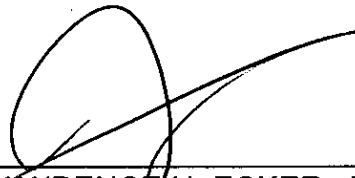
TOWN OF EASTCHESTER,
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,
PERSICO CONTRACTING & TRUCKING, INC.,
VERIZON NEW YORK, INC.,
ALTICE USA, INC.,
LEVEL 3 COMMUNICATIONS, LLC,
and PCT CONTRACTING LLC,

Defendants.
-----X

The foregoing constitutes the Decision/Order of the court.

Dated: White Plains, New York
October 11, 2019

ENTER



HON. LAWRENCE H. ECKER, J.S.C.

Appearances

All parties appearing by NYSCEF