

**211 W. 14th Prop. Owner, L.L.C. v Sordoni Constr.  
Co.**

2020 NY Slip Op 30550(U)

February 25, 2020

Supreme Court, New York County

Docket Number: 655381/2017

Judge: Barry Ostrager

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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. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

-----X

211 WEST 14TH PROPERTY OWNER, L.L.C.,

Plaintiff,

- v -

SORDONI CONSTRUCTION CO., FNA ENGINEERING SERVICES, PC, and JESAN CONSTRUCTION GROUP LLC,

Defendants.

-----X

SORDONI CONSTRUCTION CO.

Third-Party Plaintiff,

-against-

JESAN CONSTRUCTION GROUP. LLC, and RED HOOK CONSTRUCTION GROUP-II, LLC

Third-Party Defendants.

-----X

SORDONI CONSTRUCTION CO.

Second Third-Party Plaintiff,

-against-

FNA INSPECTION SERVICES, INC., DOMANI INSPECTION SERVICES, INC., DOMANI TECHNICAL & DESIGN SERVICES, INC., DOMANI CONSULTING, INC., and DAYTON INSPECTION SERVICES, INC.

Second Third-Party Defendants.

-----X

FNA ENGINEERING SERVICES, PC,

Third Third-Party Plaintiff,

-against-

FNA INSPECTION SERVICES, INC., DOMANI INSPECTION

INDEX NO. 655381/2017
MOTION DATE
MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

Third-Party
Index No. 595860/2017

Second Third-Party
Index No. 595875/2019

Third Third-Party
Index No. 595116/2020

SERVICES, INC., DOMANI TECHNICAL & DESIGN  
SERVICES, INC., DOMANI CONSULTING, INC., DAYTON  
INSPECTION SERVICES, INC., and JESAN CONSTRUCTION  
GROUP LLC

Third Third-Party Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 004) 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 258, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277

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

**OSTRAGER, BARRY R., J.S.C.:**

Upon the foregoing documents, and having heard oral arguments on February 25, 2020, plaintiff’s motion to amend the caption and pleadings to add FNA Inspection Services, Inc. (“FNA Inspection”) as a defendant in the main action is granted.

FNA Inspection is a second third-party defendant in this action. Based on recent discovery, plaintiff now seeks to add FNA Inspection Services, Inc. as a direct defendant in the main action. Plaintiff moves to add three causes of action against FNA Inspection (1) breach of contract (2) negligence and (3) common law indemnification. FNA Inspection opposes plaintiff’s motion on the grounds that the claims are time barred pursuant to CPLR. § 214(6) which provides that the statute of limitations for “an action to recover damages for malpractice, other than medical, dental or podiatric malpractice, regardless of whether the underlying theory is based in contract or tort” is three years. FNA Inspection argues that plaintiff’s proposed claims sound in malpractice.

Leave to amend the pleadings should be granted in the absence of evidence of substantial prejudice or surprise or that the proposed amendments are palpably insufficient or patently devoid of merit. *J.P. Morgan Chase Bank N.A. v. Low Cost Bearings NY Inc.*, 107 A.D.3d 643, 644 (1st Dep’t 2013) (citations omitted).

Plaintiff's motion to amend is granted with the express understanding that the Court is granting the motion because there are insufficient facts in the record to determine whether the services provided by FNA Inspection at issue in this case are "professional" in nature, making them subject to CPLR § 214(6). *See generally Chase Sci. Research, Inc. v. NIA Grp., Inc.*, 96 N.Y.2d 20, 29 (2001) [discussing the term professional within the meaning of CPLR § 214 (6)]. This is an issue of fact that could be resolved by discovery.

The Court recognizes that FNA Inspection and FNA Engineering are distinct entities, but there are issues of fact about whether engineer Robert Wolfson P.E. was employed by both FNA entities, and which one he performed services on behalf of for plaintiff. To the extent that an engineer performed the services at issue on behalf of FNA Inspection, it would appear that a three-year statute of limitations would apply. Nevertheless, at the pleading stage there is an insufficient record to hold as a matter of law that the claims are time-barred.

Discovery is needed to determine if the purported failures by FNA Inspection are breaches of the contract between plaintiff and FNA Inspection, subject to a six-year statute of limitations, or whether the alleges failures are professional malpractice, subject to a three-year statute of limitations. If discovery shows that the services FNA rendered to plaintiff are "professional" within the meaning of CPLR § 214(6), then the claim is time barred unless the Court determines the professional malpractice is saved by the relation-back doctrine. Whether the relation-back doctrine applies will also be resolved by further discovery regarding the relationship between FNA Inspection and FNA Engineering. If discovery shows that the services FNA rendered to plaintiff are not "professional" within the meaning of CPLR § 214(6), then the alleged failures fall under the breach of contract statute of limitations, which has not yet run.

Discovery is needed to determine the nature of FNA's services, the nature of the alleged failures and the relationship between FNA Inspections and FNA Engineering.

Accordingly, it is hereby

ORDERED that plaintiff's motion to amend the caption and pleadings is granted without prejudice to FNA Inspection's ability to re-raise the statute of limitations issue following additional discovery. FNA Inspection Services, Inc. shall answer the amended complaint within 30 days of the date of this decision. The parties shall appear for a status conference on April 28, 2020 at 10:30 a.m.

2/25/2020  
DATE

*Barry R. Ostrager*  
BARRY R. OSTRAGER, J.S.C.  
**BARRY R. OSTRAGER**  
JSC

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: