At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 15th day of APRIL 2020.

P R E S E N T:
HON. RICHARD VELASQUEZ
Justice.

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VERONICA SEGREE,

Plaintiffs,

Index No.: 520469/2018

-against-

Decision and Order

762 PARK LLC, CSC OF NY INC., PRECISE CONSTRUCTION CONTRACTING, INC., D.D.S. MECHANICAL PLUMBING & HEATING CORP. and ONE KET LLC,

Defendants.

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The following *papers* numbered 16 to 79 read on this motion:

Papers	Numbered
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed	16-23; 26-34; 52-59; 59-69
Opposing Affidavits (Affirmations)	36-39; 30-43; 69-72; 73-76
Reply Affidavits (Affirmations)	44; 47; 77; 79

After oral argument and a review of the submissions herein, the Court finds as follows:

Defendant Precise Construction Contracting, Inc. moves for an order pursuant to CPLR 3211(a)(5) dismissing plaintiff's complaint and all claims asserted against Precise Construction Contracting, Inc. (MS#1). Plaintiff opposes the same.

Defendant 762 Park LLC, moves this court pursuant to CPLR 3211(a)(5) for an order dismissing plaintiff's complaint and all cross claims asserted against 762 Park LLC. (MS#2). Plaintiff opposes the same.

Defendant D.D.S. Mechanical Plumbing & Heating Corp. moves this court pursuant to CPLR 3211(a)(5) for an order dismissing plaintiff's complaint and all cross claims asserted against D.D.S. Mechanical Plumbing & Heating Corp.. (MS#3). Plaintiff opposes the same

Defendant One Key LLC moves this court pursuant to CPLR 3211(a)(5) for an order dismissing plaintiff's complaint and all cross claims asserted against One Key LLC. (MS#4). Plaintiff opposes the same.

PROCEDURAL HISTORY

Plaintiff commenced this action by service of Summons and Complaint dated and filed on October 11, 2018, wherein it stated the date of the accident was July 21, 2017. On November 15, 2018, before any answer was filed, plaintiff as of right, filed an Amended Complaint correcting the date of the accident to October 24, 2015.

ARGUMENTS

All defendants contend that this matter should be dismissed because plaintiff filed his amended complaint after the statute of limitations expired. Defendants contend that

pursuant to CPLR 203(f) the plaintiffs amended complaint should not be deemed to be interposed on the date of the original complaint because the original complaint did not give them notice of the date of the occurrence.

Plaintiff in opposition contends that while the incorrect date of accident was on the initial pleading which was an error, it was corrected and the pleading amended before any answers were filed. Plaintiff further contends there is zero prejudice to the moving defendants in this matter as they were all aware of the correct date of loss since 2016, as letters from the defendants 762 Park LLC and defendant One Key LLC carriers from February 19, 2016 referencing the correct date of accident, as well as letters form defendant Precise Construction contracting, Inc.'s carriers from April 15, 2016 referencing the correct date of accident.

ANALYSIS

It is well established that pursuant to CPLR 214 All actions for personal injury shall be commenced within 3 years. The Court of Appeals on numerous occasions has articulated the governing rule for the accrual of personal injury claims. "[A]ccrual occurs when the claim becomes enforceable, i.e., when all elements of the tort can be truthfully alleged in a complaint." *Snyder v. Town Insulation, Inc.*, 1993, 81 NY2d 429, 432, 599 NYS2d 515, 516, 615 NE2d 999, 1000. *See also Blanco v. American Telephone and Telegraph Co.*, 1997, 90 NY2d 757, 767, 666 NYS2d 536, 540, 689 NE2d 506, 510. As a practical matter, this means that accrual occurs when the plaintiff suffers injury. Snyder, supra. See CPLR 214 (McKinney). It bears emphasizing that the date-of-injury accrual rule applied to CPLR 214(5) does not include a discovery component. "That the injury

suffered may not be perceived until much later ... [provides] no escape from the statute." *Cubito v. Kreisberg*, 69 AD2d at 743, 419 NYS2d at 581. See CPLR 214 (McKinney).

It is well established that a party may amend its pleadings at any time by permission of the court, and leave should be freely given (see CPLR 3025 [b]), 'provided the amendment is not palpably insufficient, does not prejudice or surprise the opposing party, and is not patently devoid of merit' " (*Belus v. Southside Hosp.*, 106 AD3d 765, 766, 964 NYS2d 614, *quoting Douglas Elliman, LLC v. Bergere*, 98 AD3d 642, 643, 949 NYS2d 766; *see Mastrokostas v. 673 Madison, LLC*, 109 AD3d 459, 970 NYS2d 82).

CPLR 203(f) states that "the claim in an amended pleading is deemed interposed at the time the claims in the original pleading were interposed, UNLESS the original pleading does not give notice of the transactions, occurrences, or series of transactions or occurrences, to be proved pursuant to the amended pleading, and in this case the original pleading could not possibly give notice of the transactions or occurrences since the date of the accident in the original pleading in completely incorrect." CPLR 203(f) McKinney.

In the present case, the amendment which was already filed is similar to the proposed amendment in *Cortes v. Jing Jeng Hang*, 143 AD3d 854, 855, 40 NYS3d 434, 435 (2nd Dep't 2016), wherein the court found "the proposed amendment, which corrected a typographical error in the complaint regarding the date of the accident, did not result in any prejudice or surprise to the defendants, and was not palpably insufficient or patently devoid of merit" (*see HSBC Bank v. Picarelli*, 110 AD3d 1031, 974 NYS2d 90; *Matter of Board of Mgrs. of Century Condominium v. Board of Assessors*, 96 AD3d 739, 741, 945

NYS2d 727); *quoting, Cortes v. Jing Jeng Hang*, 143 AD3d 854, 855, 40 NYS3d 434, 435 (NY App Div 2016). In the present case, the defendants were aware of the correct date of the accident as early as 2016, which is evidenced by correspondence between the attorneys and insurance carriers for the defendants. All counsel proceeded with the matter for the past two years with the correct date of the accident. To refuse to allow this typographical error to be corrected and dismiss the case would result in extreme prejudice to the plaintiff, the prejudice being dismissal of the action and as a result the plaintiff would be barred from commencing a new action. It cannot be said that all of the parties were not aware of the correct date of the incident, and were not on notice of the occurrence. There is ample correspondence acknowledging the same. Moreover, in the present case, it cannot be said that the amendment would prejudice or surprise the opposing party, and is patently devoid of merit. Here, there is no prejudice to the defendants as they were aware of the correct accident date well before the amendment was filed. To allege that because the amendment for the complaint would have been 21 days beyond the statute of limitations is without merit, and the CPLR 203(f) exception should apply because the original complaint did not give notice of the occurrence is meritless. Specifically, this court finds that CPLR 203(f) would apply and the original complaint would have and did put the defendants on notice of the accident in question, the scrivener's error regarding the date of the accident would not trigger the exception to CPLR 203(f) in the present case, because all parties were on notice of the correct date of the accident well in advance of the filing of the amended complaint. The original complaint clearly put the parties on notice of the occurrence, and the original complaint was filed within the statute of limitations. In

addition, contrary to defendant's contentions the case of *Pendleton v City of New York*, 44 AD3d 733, 736, 843 NYS2d 648 (2nd Dep't 2007), is not applicable to the present case, in the *Pendleton* case the court found that the plaintiff could not add additional causes of action when the Notice of Claim did not put the City of New York on notice of the occurrences for the additional causes of action, i.e. the relation back doctrine. In contrast, in the present case, the plaintiff did not seek to add additional causes of action to the amended complaint, therefore, the relation back doctrine is of no moment. All other arguments are without merit.

Accordingly, Defendant Precise Construction Contracting request to dismiss this action pursuant to 3211(a)(5) is hereby denied, for the reasons stated above. (MS#1). Defendant 762 Park LLC request to dismiss this action pursuant to 3211(a)(5) is hereby denied, for the reasons stated above. (MS#2). Defendant D.D.S. Mechanical Plumbing & Heating Corp. request to dismiss this action pursuant to 3211(a)(5) is hereby denied, for the reasons stated above. (MS#3). Defendant One Key LLC request to dismiss this action pursuant to 3211(a)(5) is hereby denied, for the reasons stated above. (MS#4).

This constitutes the Decision/Order of the Court.

Date: April 15, 2020

RICHARD VELASQUEZ, J.S.C.

So Ordered
Hon. Richard Velasquez

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