

Area ... ID, Inc. v Elizabeth Stone LLC
2021 NY Slip Op 30060(U)
January 7, 2021
Supreme Court, New York County
Docket Number: 650993/2015
Judge: Shawn T. Kelly
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 57

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AREA... ID, INC., INGA DAVIDSSON,
Plaintiff,

INDEX NO. 650993/2015

MOTION DATE 11/09/2020

- v -

MOTION SEQ. NO. 003

ELIZABETH STONE LLC, STONE STREET PROPERTIES
LLC, ROBERT MORGENSTERN, JEFFREY KAYE,
ALISSA HAZAN, 260 ELIZABETH STREET OWNERS
LLC, BERNARDINI BROTHERS LANDSCAPING, LLC,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

ELIZABETH STONE LLC, STONE STREET PROPERTIES
LLC, ROBERT MORGENSTERN, JEFFREY KAYE, ALISSA
HAZAN

Third-Party
Index No. 595077/2019

Plaintiff,

-against-

Defendant.

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ELIZABETH STONE LLC, STONE STREET PROPERTIES
LLC, ROBERT MORGENSTERN, ALISSA HAZAN

Second Third-Party
Index No. 595068/2020

Plaintiff,

-against-

BERNARDINI BUILDERS ENTERPRISES, INC., ALBA
CARTING & DEMOLITION, INC.

Defendant.

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HON. SHAWN TIMOTHY KELLY:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 120, 121, 122, 123,
124, 125, 126, 127, 128, 129, 134, 135, 136, 137, 138, 146, 147, 148, 149

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

Upon the foregoing documents, it is
650993/2015 AREA... ID, INC. vs. ELIZABETH STONE LLC
Motion No. 003

Plaintiffs Area ... ID Inc., and Inga Davidsson (herein "plaintiffs") move to amend the pleadings to add Bernardini Builders Enterprises, Inc. and Alba Carting & Demolition, Inc. (herein "Alba") as a Defendants to Action #1. The parties have executed a stipulation, filed November 10, 2020, to amend the caption to add Bernardini Builders Enterprises, Inc. as a direct defendant in Action #1. Accordingly, this decision will solely address the issue of amending the caption to include Alba Carting & Demolition as a direct defendant in Action #1.

In opposition, Alba contends that the statute of limitations has long expired and plaintiffs have not met the requirements permitting amendment based upon the relation-back doctrine. Alba alleges that it had no notice of the present lawsuit until February 2020, five years after the commencement of the lawsuit and seven years after the underlying events occurred.

Background

Area ID Inc., which is owned by Inga Davidsson, was the tenant of a commercial space located at 262 Elizabeth Street (herein "Subject Premises"). From January 2013 to March 2015, the subject premises underwent a series of renovations to the residential units above plaintiffs' leased space. The owner of the subject premises during the renovations was Elizabeth Stone LLC, which is itself owned/operated by Stone Street Properties LLC. Plaintiffs allege that during these renovations, they were the victim of a series of negligent acts that caused plaintiffs to suffer a loss of use of their premises, personal injuries, harassment, and damages to merchandise.

On or about March 27, 2015, plaintiffs commenced the within action against Defendants Elizabeth Stone LLC, Stone Street Properties LLC, Robert Morgentstern, Jeffrey Kaye, Alissa Hazan and 260 Elizabeth Street Owner LLC, for the damages sustained as described above. On or about January 25, 2019, a third-party action was commenced by Elizabeth Stone LLC, Stone Street Properties LLC, Robert Morgentstern, Jeffrey Kaye and , Alissa Hazan as against

Bernadini Brothers Landscaping, LLC, in which it was alleged that Bernadini Brothers Landscaping was the contractor responsible for the work that caused plaintiffs' damages. On June 3, 2019, plaintiffs amended their Summons & Complaint to assert a direct cause of action against Bernadini Brothers Landscaping. On or about October 16, 2019, a second third-party action was commenced by Bernadini Brothers Landscaping, as against Alba Carting & Demolition, Inc. (herein "Alba"), in which it was alleged that Alba was a subcontractor of Bernadini Brothers Landscaping and was the entity responsible for the damages sustained by plaintiffs. In the Second Third-Party Complaint Bernadini Brothers Landscaping asserted that it entered into an agreement with Alba "to perform certain work at the aforesaid premises," and that pursuant to said agreement Alba was/is required to hold harmless and indemnify Bernadini Brothers Landscaping for the damages alleged by plaintiffs herein.

On or about January 8, 2020, David Bernardindi, the owner of Bernadini Brothers Landscaping was deposed. Prior to the deposition, Bernadini Brothers Landscaping produced documents which included a bill to Bernadini Builders Enterprises from Alba. Plaintiffs contend that this bill was the first discovery of the entities Bernadini Builders Enterprises and Alba's involvement.

On or about January 21, 2020, a 3rd third-party action was commenced by Elizabeth Stone LLC, Stone Street Properties LLC, Robert Morgentstern, Jeffrey Kaye, Alissa Hazan as against Bernadini Builders Enterprises, Inc. and Alba Carting & Demolition, Inc. for the damages sustained by plaintiffs.

Analysis

Pursuant to CPLR § 305(c), the Court, at its discretion, may allow a summons to be amended, but only if a substantial right of a party against whom the summons issued is not

prejudiced. Plaintiffs contend that pursuant to the relation back doctrine, Alba cannot assert that the statute of limitations bars its inclusion as a direct defendant. In opposition, Alba argues that the relation back doctrine does not apply, and that plaintiffs' claims are completely barred under the statute of limitations.

In order for a claim asserted against a new defendant to relate back to the date a claim was asserted against another defendant, the plaintiff must establish 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 notice of the institution of the action and will not be prejudiced in maintaining his or her defense on the merits by virtue of the delayed, and otherwise stale, assertion of those claims against him or her, and (3) the new party knew or should have known that, but for a mistake by the plaintiff as to the identity of the proper parties, the action would have been timely commenced against him or her as well (*see Alvarado v Beth Israel Med. Ctr.*, 60 AD3d 981, 982, 876 NYS2d 147 [2009]; *Buran v Coupal*, 87 NY2d 173, 178 [1995]; *Schiavone v Victory Mem. Hosp.*, 292 AD2d 365, 365-366 [2002]). Of paramount consideration is whether the new defendant had notice within the applicable limitations period (*see Buran v Coupal*, 87 NY2d at 180; *Shapiro v Good Samaritan Regional Hosp. Med. Ctr.*, 42 AD3d 443, 444 [2007]).

Plaintiffs contend that adding Alba as a direct defendant would result in no prejudice as Alba has already repeatedly been named as a third-party defendant. However, plaintiffs do not address the significant differences in the causes of actions asserted against Alba in the third party complaints and those raised by plaintiffs in the direct action, mainly claims of negligence, trespass, constructive eviction, nuisance, nuisance per se, intentional infliction of emotional distress, tortious interference with contract, and unspecified statutory violations. Further,

plaintiffs have not demonstrated that Alba had notice of these claims nor that it is united in interest with the previously named defendants. Accordingly, plaintiffs' motion to amend the complaint to add Alba as a direct defendant is denied. It is hereby,

ORDERED that plaintiff's motion to amend the complaint to add Alba Carting & Demolition, Inc., as a direct defendant is denied.

1/7/2021

DATE



SHAWN TIMOTHY KELLY, J.S.C.

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: