

**Trustees of the N.Y. City Dist. Council of Carpenters
Pension Fund v Prime Contrs., Inc.**

2021 NY Slip Op 32202(U)

October 25, 2021

Supreme Court, New York County

Docket Number: Index No. 158244/2020

Judge: Nancy M. Bannon

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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. NANCY BANNON PART 42

Justice

-----X

TRUSTEES OF THE NEW YORK CITY DISTRICT
COUNCIL OF CARPENTERS PENSION FUND, WELFARE
FUND, ANNUITY FUND, APPRENTICESHIP,
JOURNEYMAN RETRAINING, EDUCATIONAL AND
INDUSTRY FUND, TRUSTEES OF THE NEW YORK CITY
CARPENTERS RELIEF AND CHARITY FUND, THE
CARPENTER CONTRACTOR ALLIANCE OF
METROPOLITAN NEW YORK,

Plaintiffs,

- v -

PRIME CONTRACTORS, INC., JOHN DOE NO. 1, JOHN
DOE NO. 2, JOHN DOE NO. 3

Defendants.

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INDEX NO. 158244/2020

MOTION DATE 08/02/2021,
08/02/2021

MOTION SEQ. NO. 002 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26, 27, 28, 29, 30

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

The following e-filed documents, listed by NYSCEF document number (Motion 003) 32, 33, 34, 35, 36, 37

were read on this motion to/for EXTEND - TIME.

In this action to recover benefits withheld in violation of the New York Labor Law, the plaintiff moves (1) pursuant to CPLR 3025 to amend the caption to substitute Guarantee Company of North America USA ("Guarantee") in place of unnamed defendant John Doe No. 2 and pursuant to CPLR 306-b for an extension of time of 30 days to serve the Amended Summons and Complaint on Guarantee (SEQ 002); and (2) pursuant to CPLR 306-b for an extension of time of 90 days to serve the Amended Summons and Complaint on John Doe Nos. 1 and 3 (SEQ 003);. The plaintiffs, which recently discovered the identity of Guarantee as one of the unnamed sureties but have had difficulty discovering the identities of the remaining sureties, John Doe Nos. 1 and 3, have submitted a proposed Amended Summons and

Complaint. The plaintiffs served a FOIL request to ascertain the identities of John Doe Nos. 1 and 3 on the New York City School Construction Authority (NYSCSA). After NYSCSA responded that it did not have copies of the relevant bonds, the plaintiffs served a subpoena on the general contractor, Pro-Metal Construction, Inc., in order to obtain copies of the relevant bonds. The plaintiffs are awaiting a response on the subpoena. No opposition is submitted to either motion.

It is well settled that leave to amend a pleading should be freely granted absent evidence of substantial prejudice or surprise, or unless the proposed amendment is palpably insufficient or patently devoid of merit. See CPLR 3025(b); JPMorgan Chase Bank, N.A. v Low Cost Bearings NY, Inc., 107 AD3d 643 (1st Dept. 2013). The burden is on the party opposing the motion to establish substantial prejudice or surprise if leave to amend is granted. See Forty Cent. Park S., Inc. v Anza, 130 AD3d 491 (1st Dept. 2015). The plaintiffs met their burden and, by failing to oppose the motion, Guarantee has not demonstrated any surprise or prejudice in allowing the amendment.

CPLR 306-b permits the court to extend the time for service “upon good cause shown or in the interest of justice.” “[W]hile ‘good cause’ requires a showing of reasonable diligence, ‘the interest of justice’ standard has a broader scope, which can encompass late service due to ‘mistake, confusion or oversight, so long as there is no prejudice to the defendant.” Baumann & Sons Buses, Inc. v Ossining Union Free School Dist., 121 AD3d 1110 (1st Dept. 2014) *citing* Leader v Maroney, Ponzini & Spencer, 97 NY2d 95, 105 (2001); see Nicodene v Byblos Restaurant, Inc., 98 AD3d 445 (1st Dept. 2012); Henneberry v Borstein, 91 AD3d 493 (1st Dept. 2012). Furthermore, CPLR 2004 provides that “the court may extend the time fixed by any statute rule or order from doing any act, upon such terms as may be just and upon good cause shown.”

Here, the plaintiffs submitted attorney’s affirmations detailing the diligent efforts made to ascertain the identity of the sureties currently designated as John Doe Nos. 1, 2, and 3, as well as the referenced FOIL request, subpoena, the Labor and Material Payment Bond identifying Guarantee as the surety and subsequent communications. See CPLR 1024; Tucker v Lorieo, 291 AD2d 261 (1st Dept. 2002). Furthermore, the plaintiffs first sought relief within the 120-day

period provided by CPLR 306-b, which motion was granted by an order of the court (Crane, J.) dated March 15, 2021 (MOT SEQ 001). Finally, there is no apparent prejudice in granting this motion. For these reasons, the plaintiffs' motions for an extension of time to serve are granted "for good cause shown" (CPLR 306-b). The time for service upon Guarantee is extended for 30 days and the time for service upon John Doe Nos. 1 and 3 is extended for 90 days.

Accordingly, it is

ORDERED that the plaintiffs' motions are granted in their entirety, without opposition, and it is further

ORDERED that the caption in this action is hereby amended as follows:

**TRUSTEES OF THE NEW YORK CITY DISTRICT
COUNCIL OF CARPENTERS PENSION FUND,
WELFARE FUND, ANNUITY FUND,
APPRENTICESHIP, JOURNEYMAN RETRAINING,
EDUCATIONAL AND INDUSTRY FUND,
TRUSTEES OF THE NEW YORK CITY
CARPENTERS RELIEF AND CHARITY FUND, and
THE CARPENTER CONTRACTOR ALLIANCE
OF METROPOLITAN NEW YORK,**

v

**PRIME CONTRACTORS, INC., JOHN DOE NO. 1,
THE GUARANTEE COMPANY OF NORTH AMERICA
USA, and JOHN DOE NO. 3**

And it is further,

ORDERED that the plaintiffs shall serve a copy of the Amended Summons and Complaint on the Guarantee Company of North America USA and Prime Contractors, Inc., within 30 days of the date of this order, and it is further

ORDERED that the plaintiffs shall serve the remaining defendants within 90 days of this order; and it is further

ORDERED that the plaintiffs shall serve a copy of this order with notice of entry upon the County Clerk and the Clerk of the Trial Support Office, who are directed to mark the court's records to reflect the amendment, and it is further,

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.


NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

10/25/2021
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
SEQ 002	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
SEQ 003	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
			DENIED		OTHER
			DENIED		OTHER
					REFERENCE