

**Perez v Lendlease (US) Constr. Inc.**

2023 NY Slip Op 34689(U)

September 19, 2023

Supreme Court, Kings County

Docket Number: Index No. 507286/2021

Judge: Devin P. Cohen

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This opinion is uncorrected and not selected for official publication.

**Supreme Court of the State of New York**  
**County of Kings**  
Part LL1M

Index Number 507286/2021  
Seq. 003

CHRISTIAN A. PEREZ,

Plaintiff,

against

LENDLEASE (US) CONSTRUCTION INC., TURNER  
CONSTRUCTION COMPANY, AND SIEMENS INDUSTRY,  
INC.,

Defendants.

LENDLEASE (US) CONSTRUCTION INC. AND TURNER  
CONSTRUCTION COMPANY,

Third-Party Plaintiff,

against

SIEMENS INDUSTRY, INC. AND A TECH ELECTRIC  
ENTERPRISES, INC.,

Defendants.

**DECISION/ORDER**

Recitation, as required by CPLR §2219 (a), of the papers  
considered in the review of this Motion

Papers	Numbered
Notice of Motion and Affidavits Annexed . . . . .	<u>1</u>
Order to Show Cause and Affidavits Annexed . . . . .	<u>   </u>
Answering Affidavits . . . . .	<u>2</u>
Replying Affidavits . . . . .	<u>3</u>
Exhibits . . . . .	<u>   </u>
Other . . . . .	<u>   </u>

Upon the foregoing papers, plaintiff's motion to amend and to add parties (Seq. 003) is  
decided as follows:

**Introduction**

Plaintiff commenced this action to recover for damages he claims to have sustained on  
October 28, 2019, while working as an electrician on a construction project known as the Jacob  
Javits Center at 655 West 34th Street, New York, NY. In the instant motion, plaintiff seeks to  
amend his complaint to change the name of defendant Lendlease (US) Construction Inc.  
(Lendlease) to Lendlease (US) Construction LMB, Inc. (Lendlease LMB), and to add defendant  
Lendlease Turner, A Joint Venture (LT) pursuant to the relation back doctrine.

### Analysis

With respect to substituting Lendlease LMB for Lendlease; “an amendment [correcting the complaint with the intended defendant] will be permitted if the court has acquired jurisdiction over the intended but misnamed defendant provided that two criteria are met[:] [1] the intended but misnamed defendant was fairly apprised that it was the party the action was intended to affect . . . [and] [2] the intended but misnamed defendant would not be prejudiced” (*Simpson v Kenston Warehousing Corp.*, 154 AD2d 526, 527 [2d Dept 1989]; *Connell v Hayden*, 83 AD2d 30 [2d Dept 1981]; CPLR 305 [c]). Here, Lendlease LMB has both the same designed agent for service as Lendlease (CT. Corp.) and the same corporate address (200 Park Avenue, New York, NY). Lendlease LMB can therefore be presumed to have received notice of the lawsuit. Moreover, neither Lendlease nor Lendlease LMB oppose the motion, indicating that there is no apparent prejudice to the amendment.

With respect to plaintiff’s request to add LT, the relation back doctrine requires that: (1) both claims arose out of 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 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 brought against that party as well (*Xavier v RY Mgt. Co., Inc.*, 45 AD3d 677, 677 [2d Dept 2007]). It is undisputed that the first prong of the test is satisfied. Additionally, plaintiff’s contention that LT is wholly owned and controlled by the two named defendants satisfies the second prong (*see Connell v Hayden*, 83 AD2d 30 [2d Dept 1981]). Finally, LT does not oppose the motion, nor do Lendlease LMB and Turner Construction Company, indicating a lack of prejudice.

Although none of the parties identified in the motion interposed opposition, third-party defendant A Tech Electric Enterprises, Inc. (A Tech) did file opposition. A-Tech contends that the proposed amendments are time-barred by the statute of limitations and should therefore be denied. A Tech's basis for standing to oppose the motion is that the new parties may file claims against A Tech, by which it would be prejudiced. However, the basis of the amendment is that the parties being substituted have been, essentially, participating and represented in the action since its inception. Indeed, plaintiff's counsel notes that Lendlease LMB has participated in discovery despite not being an officially named party. A Tech's claimed prejudice is therefore without merit.

### **Conclusion**

Plaintiff's motion to amend and to add a party is granted. The amended complaint shall be deemed served *nunc pro tunc* and shall be served upon all parties via NYSCEF. Responsive pleadings shall be interposed within twenty-one days of the notice of entry of this order. The caption shall hereby read:

[Caption contained on next page]

