

**Elizabeth Canal, LLC v Structure Tone Global Servs.,
Inc.**

2025 NY Slip Op 32744(U)

July 23, 2025

Supreme Court, New York County

Docket Number: Index No. 153543/2017

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

-----X

ELIZABETH CANAL, LLC, HH159 CANAL DEL
LLC, JEMCOMCANAL DEL, LLC, ELIZABETH BRONX,
LLC, JEMCOM CANAL REVERSE LLC,

Plaintiff,

- v -

STRUCTURE TONE GLOBAL SERVICES, INC., CIROCCO
& OZZIMO, INC., FIRST REPUBLIC BANK,

Defendant.

-----X

CIROCCO & OZZIMO, INC.

Plaintiff,

-against-

RITE-WAY DEMOLITION INC., ALL-SAFE LLC

Defendant.

-----X

STRUCTURE TONE GLOBAL SERVICES, INC.

Plaintiff,

-against-

RITE-WAY DEMOLITION INC., ALL-SAFE LLC

Defendant.

-----X

INDEX NO. 153543/2017
MOTION DATE N/A
MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595785/2019

Second Third-Party
Index No. 595857/2019

The following e-filed documents, listed by NYSCEF document number (Motion 006) 235-256, 258-272
were read on this motion to/for AMEND.

Defendant Structure Tone, Inc. (“Structure Tone”)’s motion to amend its answer is
granted.

Background

In this property damage matter, plaintiffs own a building located on Canal Street. They claim that when they acquired the building in 2013, a First Republic Bank branch occupied the space and this commercial entity was engaged in a significant construction project. Plaintiffs claim that excavation was performed at the site and that Structure Tone served as the general contractor. They allege that this excavation work damaged the property and subsequently commenced this action in April 2017. Structure Tone seeks to amend its answer to include two additional affirmative defenses including one for a set off pursuant to the General Obligations Law and another to assert a statute of limitations defense. It claims that the case is still in the middle of discovery and that non-party depositions remain, although it admits that party depositions have now been completed.

Structure Tone observes that the set off did not exist at the time it originally filed its answer because defendant First Republic Bank has since settled with plaintiffs. With respect to the statute of limitations defense, Structure Tone claims that recent document discovery “points to a colorable argument that some or all of Plaintiffs’ claims accrued more than three years prior to the filing of the initial complaint.”

It insists that plaintiffs’ witness admitted at his deposition that plaintiffs’ architect raised issues with the cellar in December 2013, which is prior to the June 2014 date plaintiffs alleged that they first learned about cracking on the second floor of the structure. Structure Tone emphasizes that motions to amend pleadings should be freely given and that there is no prejudice to plaintiffs as other defendants raised the statute of limitations defense.

In opposition, plaintiff claims that the motion should be denied because the proposed amended answer is substantively without merit as all documents show that plaintiffs did not

become aware of the cracking in the foundation until June 2014 and so the statute of limitations defense is wholly meritless. Plaintiffs also insist that there would be significant prejudice if this amendment were permitted as it would necessitate substantial discovery, including additional depositions despite the fact that all party depositions (and most non-party depositions) are now completed. They do not oppose the branch of the motion that seeks to allege a set-off defense.

In reply, Structure Tone argues that its proposed amendment is not devoid of merit. It emphasizes that plaintiffs cannot definitively rule out the statute of limitations defense and that defendant need only plausibly allege the proposed new allegations.

Discussion

“Motions for leave to amend pleadings should be freely granted, absent prejudice or surprise resulting therefrom, unless the proposed amendment is palpably insufficient or patently devoid of merit” (*Y.A. v Conair Corp.*, 154 AD3d 611, 612, 62 NYS3d 116 [1st Dept 2017]). A proposed counterclaim must “state a cognizable claim” (*id.*).

The Court grants the motion. As an initial matter, plaintiffs do not oppose the branch of the motion that seeks to add a “set off” affirmative defense. And Structure Tone plausibly alleges that plaintiffs may have been aware of issues relating to the cellar in December 2013 (more than three years prior to when this case was commenced). As Structure Tone correctly points out, it need not prove as a matter of law that plaintiff’s claims are time-barred in order for it to seek to amend its answer. Plaintiffs’ opposition merely offers arguments on the merits as to why their claims are timely. That is not a basis for this Court to deny the instant motion. And, despite the long, protracted discovery in this case, there is no prejudice or surprise to plaintiffs as Structure Tone’s basis for this amendment is, in part, a March 2025 deposition of plaintiff. This

is not a situation where Structure Tone seeks amendment based on purported facts that it has been aware of for years and years.

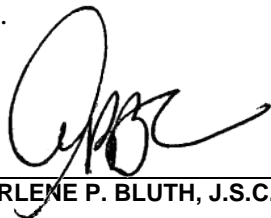
Accordingly, it is hereby

ORDERED that Structure Tone’s motion to amend is granted; and it shall upload the proposed amended pleading now uploaded as NYSCEF Doc. No. 256 as a separate document, labeled “amended answer”, on or before July 29, 2025.

See NYSCEF Doc. No. 268 concerning the next conference.

7/23/2025

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE