

Garcia v City of New York

2025 NY Slip Op 32821(U)

August 8, 2025

Supreme Court, New York County

Docket Number: Index No. 159635/2016

Judge: Hasa A. Kingo

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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. HASA A. KINGO PART 05M

Justice

-----X

ISMAEL GARCIA,

Plaintiff,

- v -

THE CITY OF NEW YORK, CONSOLIDATED EDISON
COMPANY OF NEW YORK, JRM CONTRUCTION CORP.,
A-1 SEWER & WATERMAIN CONTRACTORS CORP.,

Defendant.

-----X

CONSOLIDATED EDISON COMPANY OF NEW YORK

Plaintiff,

-against-

DANELLA CONSTRUCTION OF NY, INC.

Defendant.

-----X

INDEX NO. 159635/2016
MOTION DATE 07/29/2025
MOTION SEQ. NO. 009

DECISION + ORDER ON MOTION

Third-Party
Index No. 595606/2019

The following e-filed documents, listed by NYSCEF document number (Motion 009) 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 303

were read on this motion to RESETTLE ORDER.

This matter comes before the court on Third-Party Defendant/Second Third-Party Defendant Danella Construction of NY Inc.'s ("Danella") motion pursuant to CPLR § 2221 seeking leave to resettle the court's decision and order dated May 14, 2025 (the "May 14 Order") to delete the portion thereof suggesting that Plaintiffs may bring a direct action against Danella in a separate suit. To be sure, Danella moves for an order resettling and amending the court's May 14 Order to eliminate language indicating that Plaintiffs may pursue a direct action against Danella, contending that such a direct claim is time-barred by the applicable statute of limitations. Danella expressly does not seek to alter or amend the substantive findings of the May 14 Order dismissing Plaintiffs' claims against Consolidated Edison Company of New York, Inc. ("Con Edison") or the dismissal of Con Edison's third-party claims against Danella.

For the reasons set forth below, Danella's motion is granted solely to the extent that the court deletes from the May 14 Order any reference to the viability of Plaintiffs asserting a direct cause of action against Danella.

BACKGROUND AND PROCEDURAL HISTORY

This litigation arises from a motor vehicle accident on November 15, 2015, where Plaintiffs Ismael Garcia and Aurora Rojas allege injury resulting from striking an open manhole located near 1st Avenue and East 9th Street in New York City. Plaintiffs commenced separate actions that were later consolidated.

Plaintiffs filed suit against multiple defendants, including the City of New York and Con Edison. Con Edison interposed third-party claims against Danella based on contractual indemnification and negligence theories related to the alleged defect. The Court's May 14 Order granted Con Edison summary judgment dismissing Plaintiffs' complaints against it, and dismissed Con Edison's third-party claims against Danella without prejudice due to the dismissal of the underlying claims.

The May 14 Order contained language stating that "Nothing in this decision prevents Plaintiff from asserting an independent cause of action against Danella in a separate suit." Danella now moves to resettle the Order to remove this language, arguing it incorrectly overlooks the statute of limitations and controlling case law, particularly *Duffy v Horton Memorial Hosp.*, 66 NY2d 473 (1985).

ARGUMENTS

Danella argues that the court overlooked the fact that Plaintiffs' direct claims against Danella are time-barred. The statute of limitations for personal injury claims under CPLR § 214(5) is three years, accruing on the date of injury, November 15, 2015. Therefore, any direct action against Danella by Plaintiffs expired on November 15, 2018. Danella further asserts that the relation-back doctrine under CPLR § 203(e) does not apply to save Plaintiffs' claims, citing *Duffy v Horton Memorial Hosp.*, *supra*, which requires a direct claim to relate back to a timely pleading against the third-party defendant. Since Con Edison's third-party action against Danella was commenced on July 2, 2019—well beyond the limitations period—the direct claims do not relate back and are barred.

Con Edison does not oppose the deletion of the language regarding the viability of Plaintiffs' direct action against Danella but opposes any broader modifications or relief that would alter the substantive rulings or affect its rights under the May 14 Order.

Plaintiffs have not opposed Danella's motion.

DISCUSSION

A motion for leave to resettle is appropriately used to correct errors or clarify rulings in a Court's prior order (*see Ansonia Assoc. v Ansonia Tenants Coalition*, 171 AD2d 411, 411 [1st Dept 1991]). Such a motion is not a vehicle for re-argument or renewal but permits correction of clear errors or omissions. Here, Danella seeks to correct what it contends is a manifest oversight concerning the viability of Plaintiffs' direct claims against it.

I. Statute of Limitations on Plaintiffs' Direct Claims

Under CPLR § 214(5), the statute of limitations for personal injury actions is three years, commencing on the date the injury is sustained (*Fleishman v Lilly & Co.*, 96 AD2d 825, 825 [2d Dept 1983], *aff'd* 62 NY2d 888 [1984]). The injury here occurred on November 15, 2015, and thus any personal injury claim accrued that day, expiring November 15, 2018.

Plaintiffs did not commence a direct action against Danella within this limitations period. Their direct claims are therefore time-barred absent a valid basis for relation back.

II. Relation Back Doctrine and *Duffy v Horton Memorial Hosp.*

CPLR § 203(e) permits amended pleadings to “relate back” to the date of the original pleading if the original pleading gave notice of the transactions or occurrences underlying the claim. The Court of Appeals in *Duffy, supra*, clarified that a direct claim against a third-party defendant relates back only if the third-party complaint was timely served within the statute of limitations period and the direct claim arises out of the same transaction or occurrence.

In *Duffy*, 66 NY2d at 478, *supra*, the Court held:

“An amendment of the complaint may be permitted, in the court’s discretion, and a direct claim asserted against the third-party defendant ... relates back to the date of service of the third-party complaint.”

Here, Con Edison’s third-party action against Danella was commenced on July 2, 2019—well after November 15, 2018, when the limitations period expired. Consequently, the relation-back doctrine cannot save Plaintiffs’ direct claims against Danella.

III. Effect of May 14 Order Language

The May 14 Order correctly granted summary judgment dismissing all claims against Con Edison and dismissed Con Edison’s third-party claims against Danella. However, the statement that Plaintiffs remain free to bring a direct action against Danella overlooks the clear limitations bar and the controlling precedent of *Duffy*.

The court acknowledges the importance of avoiding language that might mislead parties regarding the viability of claims barred by law. Thus, deletion of the referenced language is warranted.

IV. No Other Substantive Modifications Warranted

Danella’s motion does not seek to amend any other aspect of the May 14 Order. Con Edison rightly opposes any broader relief, which would be unsupported by the record or law. The court declines to disturb any other findings or rulings.

As such, Danella’s motion to resettle the May 14, 2025 Decision and Order is granted solely to the extent that the court deletes any language suggesting that Plaintiffs may assert a viable direct cause of action against Danella in a separate suit. The court’s prior substantive determinations remain intact and binding.

Accordingly, it is hereby

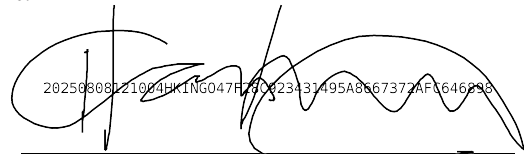
ORDERED that Danella’s motion is granted solely to the extent that the portion of the court’s May 14, 2025 Order referencing the possibility of Plaintiffs asserting a direct action against Danella is hereby deleted; and it is further

ORDERED that Danella is granted leave to resettle the court’s May 14, 2025 Order to conform to the directives set forth in this decision and order; and it is further

ORDERED that upon receipt of this decision and order, the Clerk of the Court is directed to take all necessary actions to implement and effectuate the court’s rulings herein; and it is further

ORDERED that the parties shall bear their own costs with respect to this motion.

This constitutes the decision and order of the court.



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HASA A. KINGO, J.S.C.

8/8/2025
DATE

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