

DePablos v 784-6 President St., LLC

2025 NY Slip Op 35085(U)

December 22, 2025

Supreme Court, Kings County

Docket Number: Index No. 535275/2022

Judge: Devin P. Cohen

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

Index Number 535275/2022
Seq. 001

Part LL1M

CARLOS YOBALYI MORA DEPABLOS,

Plaintiff,

against

784-6 PRESIDENT STREET, LLC,

Defendant.

784-6 PRESIDENT STREET, LLC,

Third-Party Plaintiff,

against

DECISION/ORDER

EMCON GROUP INC. AND ROLANDO MECHANICAL OF NY
CORP.,

Third-Party Defendant.

As required by CPLR 2219 (a), the following e-filed documents, listed by NYSCEF document numbers, were considered on this motion: 36-56.

Plaintiff's motion to amend the summons and complaints to assert a direct claim against third-party defendant Emcon Group Inc. (Emcon) pursuant to CPLR 203 (f) (Seq. 001) is granted. Plaintiff commenced this action to recover for damages he claims to have sustained on September 26, 2022. On March 29, 2023, 784-6 President Street, LLC (President) filed its third-party complaint against Emcon and Rolando Mechanical of NY Corp. The statute of limitations expired on September 26, 2025. The instant motion was filed on September 30, 2025, and plaintiff contends that his claim should be allowed pursuant to the relation-back doctrine.

Analysis

“The relation back doctrine applies when (1) the claims arise out of the same conduct, transaction or occurrence; (2) the new party is ‘united in interest’ with an original defendant and thus can be charged with such notice of the commencement of the action such that a court concludes that the party will not be prejudiced in defending against the action; and (3) the new party knew or should have known that, but for a mistaken omission, they would have been named in the initial pleading” (*Nemeth v K-Tooling*, 40 NY3d 405, 407–408 [2023]). Here, it is undisputed that the first prong is satisfied as plaintiff’s proposed claims against Emcon arise out of the same conduct and occurrence.

“To determine whether this second prong of the relation back test is met, it is not necessary for the parties to be joint contractors or have a joint interest; we look to whether the parties’ interest in the subject-matter is such that they stand or fall together and that judgment against one will similarly affect the other” (*Nemeth*, 40 NY3d at 415). The vicarious liability of one party to another unites the two parties in interest (*see Connell v Hayden*, 83 AD2d 30 [2d Dept 1981]). Although Emcon argues that the third-party action renders Emcon adverse to the direct defendant, that adversity arises out of claims for indemnification which are predicated on President’s exposure to vicarious liability on the basis of Emcon’s acts. Moreover, CPLR 1008 affords “the third-party defendant [permission to] assert against the plaintiff in [its] answer any defenses which the third-party plaintiff has to the plaintiff’s claim.” Therefore, from the inception of the third-party action, Emcon has been entitled to avail itself of any defense available to President as a matter of law (*contra Montalvo v Madjek, Inc.*, 131 AD3d 678 [2d Dept 2015] [parties not united in interest because of the availability of different defenses]).

Finally, the omission of the party does not need to be “excusable”; the relation-back doctrine only requires that the party being added had notice of the litigation and “should have realized that [its] omission was, in fact, a mistake” (*Nemeth*, 40 NY3d at 413). Here, Emcon was timely named as a third-party defendant, and thus undeniably had notice of the litigation. Furthermore, Emcon acknowledges in its own papers that it was not plaintiff’s employer, and therefore tacitly admits that it could not have anticipated avoiding direct claims from the plaintiff based upon the claimed protection of Workers Compensation Law § 11. Absent any legitimate reason to expect that plaintiff would not bring a direct claim against it, Emcon should have known that plaintiff would seek to assert direct claims against it and that the failure to do so was a mistake. The relation-back doctrine does not require an analysis of plaintiff’s reasons for failing to do so within the statute of limitations (*see Buran v Coupal*, 87 NY2d 173 [1995]). Emcon has not provided, and the court is not aware, of any evidence that plaintiff’s delay was an attempt at “gamesmanship” or “manipulation of the CPLR” (*Nemeth*, 40 NY3d at 408). That plaintiff filed this motion five days after the statute of limitations had run and before filing the note of issue indicates that plaintiff was not attempting to impede Emcon’s access to discovery or otherwise undermine its litigation strategy.

Therefore, plaintiff’s motion is granted. The primary caption is hereby amended as follows:

CARLOS YOBALYI MORA DEPABLOS,

Plaintiff,

against

784-6 PRESIDENT STREET, LLC AND EMCON GROUP INC.,

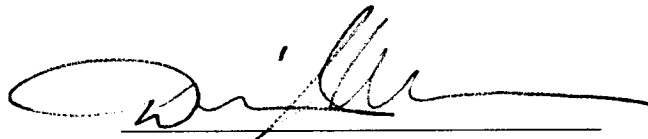
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Defendant.

The third-party caption remains unchanged.

Since all parties have appeared, plaintiff is directed to serve this order and the amended pleadings on all parties via NYSCEF within ten days of the notice of entry.

December 22, 2025
DATE



DEVIN P. COHEN
Justice of the Supreme Court

KINGS COUNTY CLERK
FILED
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