

Salazar v 200 Park, L.P.
2026 NY Slip Op 31551(U)
March 31, 2026
Supreme Court, New York County
Docket Number: Index No. 158135/2023
Judge: Dana M. Catanzaro
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DANA M. CATANZARO PART **37**

Justice

-----X

RICHARD SALAZAR,

Plaintiff,

- v -

200 PARK, L.P., STRUCTURE TONE, LLC, EUROTECH
CONSTRUCTION CORPORATION, and GOLUB CAPITAL
LLC,

Defendants.

-----X

200 PARK, L.P., STRUCTURE TONE, LLC

Plaintiff,

-against-

EAMON ELECTRIC INC., EUROTECH CONSTRUCTION
CORPORATION,

Defendants.

-----X

INDEX NO. 158135/2023

MOTION DATE 08/04/2025

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595239/2024

The following e-filed documents, listed by NYSCEF document number (Motion 003) 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 102, 103, 104

were read on this motion to/for DISMISS.

In this Labor Law action, defendant Golub Capital LLC (“Golub Capital”) moves, pursuant to CPLR 3211, to dismiss the supplemental summons and amended complaint as against it on the ground that plaintiff served the amended complaint after the expiration of the statute of limitations. Plaintiff cross-moves for an order, pursuant to the relation back doctrine, deeming defendant Golub Capital as “united in interest” with defendant 200 Park, L.P. (“200 Park”), and, accordingly, deeming the amended complaint to be timely served and filed.

For the reasons set forth below, Golub Capital's motion to dismiss is granted, and the amended complaint is dismissed as against it. The cross-motion is denied.

BACKGROUND

On August 16, 2023, plaintiff commenced this action by filing a summons and verified complaint (NYSCEF Doc. No. 1). On October 3, 2023, defendants 200 Park, 200 Park GP, LLC ("200 Park GP"), and Structure Tone, LLC ("Structure Tone") joined issue by service of a verified answer (NYSCEF Doc. No. 7). On October 23, 2023, plaintiff filed a stipulation of discontinuance against defendant 200 Park GP (NYSCEF Doc. No. 11).

On March 7, 2024, 200 Park and Structure Tone filed a third-party action impleading Eurotech Construction Corporation ("Eurotech") and Emanon (NYSCEF Doc. No. 14). On March 27, 2025, plaintiff filed a motion for leave to serve a supplemental summons and amended complaint to add Eurotech as a direct defendant, and Golub Capital LLC as an additional party defendant (NYSCEF Doc No. 64).

By order and decision dated May 14, 2025, Justice Letitia M. Ramirez granted plaintiff's unopposed motion (NYSCEF Doc No. 69). On June 25, 2025, plaintiff filed the supplemental summons and amended complaint (NYSCEF Doc. Nos. 76 and 77).

ARGUMENT

In support of its motion to dismiss, Golub Capital argues that the amended complaint must be dismissed as against it because plaintiff did not file the amended complaint until after the statute of limitations expired. This court agrees.

The statute of limitations for "an action to recover damages for a personal injury" is three years (CPLR 214 [5]). It is well settled that a cause of action for personal injuries accrues, for purposes of calculating the statute of limitations, on the date of the accident (*Moises-Ortiz v. FDB*

Acquisitions LLC, 221 A.D.3d 540, 542 [1st Dept 2023], citing *Ackerman v. Price Waterhouse*, 84 N.Y.2d 535, 541 [1994]). Here, plaintiff alleges that the accident occurred on April 18, 2022 (*see* amended complaint, ¶ 90). Accordingly, the statute of limitations originally expired on April 18, 2025. However, because plaintiff moved for leave to serve an amended complaint to add Golub Capital as a defendant, the statute of limitations was tolled for a limited period of time.

“[W]hen, as here, judicial permission is needed to join a new defendant, ‘the statute of limitations is tolled as to the new defendant from the time plaintiff files the motion ... until the court decides the motion’” (*Diaz v. 611 W. 158th St. Corp.*, 2015 NY Misc LEXIS 5778, * 4 [Sup Ct, NY County 2015], quoting *Long v. Sowande*, 27 A.D.3d 247, 248 [1st Dept 2006]; *see e.g. Abreu v Casey*, 157 A.D.3d 442, 442 [1st Dept 2018] [“Plaintiff’s filing of the motion to amend (to add an additional defendant) and annexed proposed amended pleadings tolled the applicable statute of limitations”]). Under New York law, a toll stops the clock on a deadline when it becomes effective, and a litigant is then entitled to whatever time that was left on the deadline when the tolling lifts (*see e.g. Bayne v. City of New York*, 137 A.D.3d 428, 429 [1st Dept 2016]; *see also Brash v. Richards*, 195 A.D.3d 582, 582 [2d Dept 2021] [“A toll suspends the running of the applicable period of limitation for a finite time period, and ‘(t)he period of the toll is excluded from the calculation of the (relevant time period)’”] [citation omitted]). However, the toll at issue here “is not indefinite but ends upon entry of an order granting permission to join the new defendant, and the supplemental summons and amended complaint must then be filed within the time remaining on the statute of limitations after it begins to run” (*Diaz*, 2015 NY Misc LEXIS 5778 at * 4, citing *Perez v. Paramount Communications Inc.*, 92 N.Y.2d 749, 756 [1999]).

On March 27, 2025, twenty-two days before the statute of limitations had been scheduled to expire on April 18, 2025, plaintiff filed his motion to amend the complaint and add Golub

Capital as a party. The order with notice of entry granting the motion was filed on May 15, 2025. The statute of limitations was tolled during the pendency of the motion, and began to run again after May 15, 2025 (*Perez*, 92 N.Y.2d at 756). Accordingly, the new expiration date for the statute of limitations was 22 days later, or June 6, 2025. However, plaintiff did not file the supplemental summons and amended complaint until June 25, 2025, 19 days after the statute of limitations expired. Thus, because plaintiff filed his supplemental summons and amended complaint after the statute of limitations expired, the amended complaint must be dismissed as against Golub Capital.

In his cross-motion, plaintiff argues that the amended complaint should nevertheless be deemed timely because 200 Park and Golub Capital are “united in interest” under the relation-back doctrine. The court rejects this argument.

Under the relation-back doctrine set forth in CPLR 203, a plaintiff may join a new party as a defendant after the statute of limitations has expired by demonstrating that: “(1) both claims arose out of the 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 he will not be prejudiced in maintaining his defense on the merits; and (3) the new party knew or should have known that, but for an excusable mistake by plaintiff as to the identity of the proper parties, the action would have been brought against him as well” (*Buran v. Coupal*, 87 N.Y.2d 173, 178 [1995] [citation omitted]; *accord Nemeth v. K-Tooling*, 40 N.Y.3d 405, 411 [2023]).

“If the interest of the parties in the subject-matter is such that they stand or fall together and that judgment against one will similarly affect the other then they are ‘otherwise united in interest’” (*Prudential Ins. Co. of America v. Stone*, 270 N.Y. 154, 159 [1936] [quotation marks and citation omitted]). However, “unity of interest will not be found unless there is some

relationship between the parties giving rise to the vicarious liability of one for the conduct of the other” (*Mercer v. 203 E 72nd Street Corp.*, 300 A.D.3d 105, 106 [1st Dept 2005]).

Here, although the claims clearly arise of the same occurrence, plaintiff fails to demonstrate that Golub Capital and 200 Park are united in interest for purposes of the relation-back doctrine. Golub Capital presents documentary evidence, in the form of a lease, that 200 Park is the owner and landlord of the Property, and that Golub Capital is a tenant of the Property (*see* lease between 200 Park and Golub Capital [NYSCEF Doc. No. 103]). However, “a landlord-tenant relationship, standing alone, does not give rise to vicarious liability or otherwise create a unity of interest which ... requires a situation in which the parties ‘stand or fall together and the judgment against one will similarly affect the other’” (*Kingstone Ins. Co. v Marion Pharmacy, Inc.*, 224 A.D.3d 501, 503 [1st Dept 2024], quoting *Nemeth*, 40 N.Y.3d at 415; *see e.g. id.* [“plaintiff failed to establish that a unity of interest existed between Marion (the newly added defendant) and the other defendants, against whom the action was timely commenced,” because “(s)o far as the record discloses, the only relationship between Marion and the other defendants is that of landlord and tenant, and this does not suffice to create a unity of interest for purposes of the relation-back doctrine”]).


Plaintiff also speculates that 200 Park LP and Golub Capital are united in interest because the same policy of insurance covers both parties, and because they are both represented by the same law firm. However, “mere speculation is insufficient to establish a unity of interest” (*Y.C. v. Catholic Charities of Staten Is., Inc.*, 236 A.D.3d 457, 458 [1st Dept 2025]). Moreover, merely sharing an insurance policy does not create a “unity of interest” sufficient to invoke the doctrine (*see Brett Bossung v. Rebaco Realty Holding Co.*, 169 A.D.3d 538, 538 [1st Dept 2019] [“That the Board (which owns the building) agreed to name Gumley-Haft (the manager of the building) as an

additional insured under its policy does not establish that the two entities are united in interest for the purposes of the relation back doctrine”)).

Finally, plaintiff argues that Golub’s motion is premature, and additional discovery should be conducted concerning the relation-back doctrine. The court rejects this argument as it is clear that the relation-back doctrine does not apply to the facts of this case. Accordingly, it is hereby:

ORDERED that the motion of defendant Golub Capital LLC to dismiss the amended complaint is granted and the amended complaint is dismissed as against Golub Capital LLC, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that plaintiff’s cross-motion is denied.

<u>3/31/2026</u> DATE					 _____ DANA M. CATANZARO, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/> REFERENCE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	