TJX Cos., Inc. v Jacobs Eng'g Group, Inc.
2020 NY Slip Op 32211(U)
July 7, 2020
Supreme Court, New York County
Docket Number: 154858/2019
Judge: David Benjamin Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. DAVID BENJAMIN COHEN** **PART** **IAS MOTION 58EFM**

Justice

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THE TJX COMPANIES, INC.,

Plaintiff,

- v -

JACOBS ENGINEERING GROUP, INC., ABCO-PEERLESS SPRINKLER CORPORATION, GRUBHUB, INC., JOHN DOES, ABC COMPANIES 1-10 (FICTITIOUS ENTITIES),

Defendant.

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INDEX NO. 154858/2019

MOTION DATE 02/20/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

GRUBHUB, INC.

Plaintiff,

-against-

AMERICON CONSTRUCTION INC., PAR PLUMBING CO., INC., SOVEREIGN MECHANICAL CORP., ATLANTIC ENGINEERING LABORATORIES OF NY INC, TRIZECHAHN 1065 AVENUE OF THE AMERICAS LLC

Defendant.

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Third-Party
Index No. 595030/2020

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

Plaintiff, the TJX Companies, Inc. ("TJX") is a tenant in a building located at 5 Bryant Park in New York, New York and occupies the 13th, 14th, and 20th floors. Defendant Grubhub, Inc. ("Grubhub") is the 15th floor tenant. On June 11, 2011 defendant Jacobs Engineering Group, Inc. ("Jacobs") entered into a contract with defendant Grubhub, to provide architectural, design, and engineering services, which included replacing the existing sprinkler system on the 15th floor (the "Project").

Upon completion of certain projects, the New York City Department of Buildings ("DOB") inspects said projects to ensure compliance with all relevant laws, and the DOB issues a Letter of Completion, indicating that the work has been completed. The last sign-off on the Project by the DOB was on January 22, 2013. On March 5, 2017, TJX sustained property damage caused by the rupture of a pipe that was part of sprinkler system on the 15th floor. The ruptured pipe was in the vicinity of the air duct that supplies outside air to an HVAC system which was designed by Jacobs. Plaintiff commenced this action on May 13, 2019.

Jacobs moved to dismiss, claiming that plaintiff's claim is time-barred. Specifically, CPLR 214(6) provides a three-year time period to commence an action for malpractice other than medical, dental, or podiatric malpractice, regardless of whether the underlying theory of liability is based in contract or tort. Jacobs argues that for claims against architects, regardless of whether the claims are rooted in malpractice or in simple negligence, the statute of limitations starts accruing from the date of completion, which was more than three years before commencement.

Plaintiff argues it claim is not time-barred since it is not in privity with Jacobs. Thus, plaintiff is asserting a general negligence claim, not a malpractice claim, against Jacobs. As such, the statute of limitations starts accruing from the date of loss, which took place on March 5, 2017, making this action timely.

"On a motion to dismiss a cause of action pursuant to CPLR 3211(a)(5) on the ground that it is barred by the statute of limitations, a defendant bears the initial burden of establishing, prima facie, that the time in which to sue has expired. In considering the motion, a court must take the allegations in the complaint as true and resolve all inferences in favor of the plaintiff" (*Benn v. Benn*, 82 AD3d 548 [1st Dept 2011]). Once

the defendant meets this burden, the plaintiff must raise a question of fact as to whether the statute of limitations was tolled or was otherwise inapplicable (*Williams v New York City Health and Hosps. Corp.*, 84 AD3d 1358 [2d Dept 2011]), or that the cause of action was actually interposed within the statute of limitations (*id.; Krichmar v Scher*, 82 AD3d 1164 [2d Dept 2011]).

Whether the claim here is for malpractice or general negligence, the statute of limitations is three years (CPLR 214[5]; 214[6]), however, the claims accrue at different times. The outcome of this motion rests on whether plaintiff's claim is for malpractice or general negligence, and, thus, when the claim accrued. TJX was not in privity with Jacobs as there is no relationship between Jacobs and TJX governed by contractual terms or by expectations, that would ground a claim against Jacobs by TJX (*see Lake Placid Club Attached Lodges v. Elizabethtown Builders, Inc.*, 131 AD2d 159 [3d Dept 1987]). Nor can TJX assert a claim for malpractice against Jacobs, since TJX was not Jacob's client (*see Cubito v. Kreisberg*, 69 AD2d 738 [2d Dept 1979] *affd* 51 NY2d 900 [1980]). The plaintiff in *Cubito* who sustained a personal injury when she slipped due to a negligently designed laundry room floor could not assert a malpractice claim against the architect (i*d*., at 742). The *Cubio* court wrote:

> [W]e think that malpractice in the statutory sense describes the negligence of a professional toward the person for whom he rendered a service, and that an action for malpractice springs from the correlative rights and duties assumed by the parties through the relationship. On the other hand, the wrongful conduct of the professional in rendering services to his client resulting in injury to a party outside the relationship is simple negligence.

(Id., see also Sommer v. Federal, 79 NY2d 540 [1992]). Thus, TJX's claim against Jacobs is grounded in simple negligence.

At bar, TJX alleges in the Complaint that the injury occurred due the negligent design of the sprinkler system. In designing the sprinkler system Jacobs had a duty of reasonable care

towards TJX since a faulty design could create a risk of property damage and personal injury (*Lake Placid Club Attached Lodges*, 131 AD2d at 162 [claim by a third-party plaintiff against an architect, grounded in negligence, can proceed where the plaintiffs allege that defects in the construction created a dangerous condition posing a risk of accidental injury to persons or to property]; *see also 905 5th Associates, Inc. v. Weintraub*, 85 AD3d 667 [1st Dept 2011] [plaintiff not in privity may bring an action for simple negligence where there are issues of fact as to whether the defendant controlled or directed the work which is alleged to have created the injury]).

"The time within which an action must be commenced, except as otherwise expressly prescribed, shall be computed from the time the cause of action accrued to the time the claim is interposed" (CPLR 203[a]). The Statute of Limitations starts to run from the first time an action could have been brought to recover for the damages it seeks (*Cubito*, 69 AD2d 738 at 740 [unreasonable that the statute of limitations should start accruing before the plaintiff can assert his claim]).

The theory of liability upon which a plaintiff grounds his claim is determinative when the cause of action starts accruing (*id.*, at 742, 743). Where a cause of action is grounded in malpractice, the statute of limitations starts accruing from the date of completion, as at that point the plaintiff can prosecute its claim (*id*). However, when a third-party plaintiff asserts a claim grounded in simple negligence, a cause of action only arises when an injury occurs (*id.*, at 744).

An action to recover damages for injury to property accrues on the date when the damages become apparent (*Naccarato v. Sinnot*, 176 AD 3d 1467 [3d Dept 2019]; *EPK Properties, LLC v. Pfohl Brothers Landfill Site Steering Committee*, 159 AD3d 1567 [4th Dept

2018]; *Russel v. Dunbar*, 40 AD3d 952 [2d Dept 2007]; *Board of Mgrs. of Bowery Condominium v 250VE LLC*, 2018 NY Slip Op 31168(U) at 19).

Here, the statute of limitations began to accrue on March 5, 2017, when the pipe ruptured, the damage because apparent and the plaintiff sustained an injury. Accordingly, this action is not time-barred by the three-year statute of limitations. Accordingly, it is hereby

ORDERED that defendant Jacobs' motion to dismiss is denied.

7/7/2020
DATE

DAVID BENJAMIN COHEN, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	X DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE