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*Attorneys for Defendant
Hayden Building Maintenance Corp.*

DIXON MILLS CONDOMINIUM
ASSOCIATION, INC.,

Plaintiff,

v.

RGD HOLDING COMPANY, LLC, ROBERT
MARTIN COMPANY, LLC, RMC
MEZZANINE COMPANY, LLC, RMC GTIS
DIXON, LLC, GOLDENTREE INSITRE 72nd
ST LLC, RMPC DIXON, LLC, GREG
BERGER, BRUCE PETERSON, TIMOTHY M.
JONES, BARRY RITHOLZ, MATTHEW
MCGRATH, ARK DURNO, ROBIN
STEINER, DAVID PARISIER, URS
CORPORATION, THE SCHONBRAUN
MCCANN GROUP LLP, RMR RESIDENTIAL
REALTY, LLC, PROPSECT PROPERTY
GROUP, JP PROPERTY SERVICES, LLC,
HAYDEN BUILDING MAINTENANCE
CORP., LANE ENGINEERING
CONSULTING, P.C., GROS ENTERPRISES,
LLC, LINDEMON, WINCKELMANN,
DEUPREE, MARTIN AND ASSOCIATES,
P.C., JOHN DOE 1-20 and ABC CORP, 1-20,

Defendants.,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
DOCKET NO.: HUD-L-4277-16

Civil Action

ORDER

THIS MATTER having been opened to the Court by Gary Strong, Esq., of Gfeller
Laurie LLP, attorneys for Defendant Hayden Building Maintenance Corp. (“Hayden”), seeking
an Order, pursuant to R. 4:46, granting Partial Summary Judgment in favor of Hayden, and the

Court having considered the papers submitted and the arguments of counsel, and for good cause shown,

IT IS on this 30th day of November, 2020,

ORDERED AS FOLLOWS:

1. Hayden’s Motion for Partial Summary Judgment be and hereby is GRANTED; and
2. Plaintiff’s claim pertaining to the 2009 Contract and its claims pertaining to the repair masonry, stucco, and window openings for the south side of the Ticonderoga Building are dismissed as to Hayden With Prejudice; and
3. ~~A copy of this Order shall be served on all counsel in this matter within seven days of receipt.~~ Service by eCourts

Mary K. Costello

 Mary K. Costello, J.S.C. , J.S.C.

X

Opposed

Unopposed

Decided on the Papers

Reasons set forth in the Statement of Reasons which is attached hereto and made a part hereof.

**RE: Dixon Mills Condominium Association, Inc. v. RGD Holdings,
et al**

Docket: L-4277-16

**Defendant Hayden Building Maintenance Corp.'s Motion for Partial
Summary Judgment.**

R. 1:7-4 STATEMENT OF REASONS

Factual and Procedural History

This matter has a discovery end date of February 8, 2021 and will have had 1551 days of discovery by that date. There is no trial date at present. Defendant RGD Holdings filed an application with the State of New Jersey in February, 2007 to convert the subject property into condominiums. RGD is/was the sponsor of the project.

Dixon Mills is a residential real estate complex located at 158 Wayne Street in Jersey City, New Jersey. The Property consists of 5 separate mid-rise buildings. Building A, Heritage, is situated along the north side of Wayne Street and consists of 102 condo units. Building B, Lafayette runs along the east side of Monmouth Street and consists of 152 condo units. Building C, Atrium, is located on the south side of Wayne Street and consists of 69 condo units. Building D, Landmark, is located on the north side of Wayne Street and the

west side of Monmouth Street and consists of 108 condo units. Building T, Ticonderoga, is situated along the south side of Wayne Street and east side of Monmouth Street and contains 36 condo units.

On May 19, 2009, Defendant Hayden Building Maintenance Corp. (hereinafter "Hayden") entered into a contract with RGD to repair masonry, stucco and window openings for the south side of the Ticonderoga building within the condominium complex. The scope of work was separate and distinct from other contractual work (e.g. roof work that was the subject of a 2007 contract and steel work that was the subject of a 2013 contract) between the same parties. The work performed under the 2009 contract was completed by August 1, 2009.

Arguments

Hayden argues that the cause of action based on work performed under the 2009 contract is time barred by the Statute of Repose which provides that no action to recover damages for deficiency in construction of an improvement to real property that arises out of "the defective and unsafe condition of an improvement to real property" shall be brought more than 10 years after the furnishing of such construction. See N.J.S.A. 2A:14-1.1(a). Hayden cites the difference between the Statute of Repose and the Statute of Limitations in that the former does

not rely on the accrual of the cause of action but rather prevents a cause of action from ever arising. Rosenberg v. North Bergen, 61 N.J. 190, 199 (1972). Plaintiff did not name Hayden until August 12, 2020.

Hayden goes on to stress that the separate and distinct nature of the 2009 contract work distinguishes it from the general contractor or other subcontractors whose work spans the entire project. See Town of Kearny v. Brandt, 214 N.J. 76, 93 (2013).

Finally, Hayden argues that the allegations made by Plaintiff claim that the contract work was deficient and pertains to the "unsafe condition" of the subject property. See Newark Beth Israel Medical Center v. Gruzen and Partners, 124 N.J. 357 (1991).

In opposition, Plaintiff argues that there are genuine issues of material fact as to whether the defective work on the south side of the Ticonderoga building constitutes an "unsafe condition" as required by the statute. Plaintiff also argues that the "relation back" doctrine provides relief from the imposition of the Statute of Repose. Plaintiff states that they did not discover Hayden as a potentially culpable party and that resort to "John Doe" practice should shield them from the relief requested. See Greczyn v. Colgate-Palmolive, 183 N.J. 5 (2005).

Hayden's motion for partial summary judgment is GRANTED. The alleged deficient construction work on the south-facing façade which is alleged to be one of the causes of structural compromise, leaking and property damage cannot be described as anything other than an unsafe condition. The obvious risk to persons and property bespeaks an unsafe condition. The threat of water infiltration, structural defects and resultant mold is something raised by this court on Hayden's prior motion regarding the roof work attendant to the 2007 contract.

The effective employ of the "relation back" doctrine is dependent upon the diligence of the Plaintiff in investigating the claims and potential tortfeasors. In this case, Plaintiff was aware of the three contracts involving Hayden and, through the exercise of due diligence, knew or should have known of Hayden's possible involvement based on the December 10, 2015 site inspection, the purpose of which was to assist in the development of a repair cost estimate. As such, Hayden could have been named as an original defendant well within the period of the Statute of Repose (i.e., before 10 years and one day of August 19, 2009). Plaintiff did not name Hayden until August 12, 2020.