

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION—CIVIL**

MEGA CONCRETE, INC.	:	April Term, 2011
MEGA SITEWORK, LLC and	:	
CAPPONI ENTERPRISES, INC.	:	Case No. 000997
	:	
<i>Plaintiffs</i>	:	
v.	:	
	:	
PLUMBLINE CONSTRUCTION, INC. et al.	:	
	:	
<i>Defendants</i>	:	
	:	
v.	:	Commerce Program
	:	
1419 TOWER, LP et al	:	Control No. 12113319
	:	
<i>Additional Defendants</i>	:	

ORDER

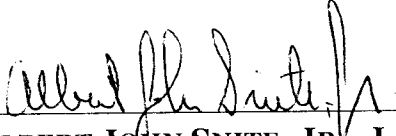
AND NOW, this 8th day of January, 2013, upon consideration of the Motion for Leave to File Amended Complaint of plaintiff Mega Concrete, Inc., the Answer in Opposition of defendants Plumblin Construction, Inc., John Matter and Andrew Uhrig, the respective memoranda of law, plaintiffs’ reply brief in further support of their Motion for Leave to File Amended Complaint, and defendants’ sur-reply brief, it is **Ordered** that the motion is **Granted**. Plaintiffs shall file a Second Amended Complaint which shall be identical to their proposed Amended Complaint.¹

¹ The Motion for Leave to File Amended Complaint seeks to add as defendants in the instant action Barbara Matter and Rosemary Uhrig, respectively wives of defendants John Matter and Andrew Uhrig. The motion also seeks to pierce the corporate veil of defendant Plumblin Construction, Inc., an entity solely owned by Barbara Matter and Rosemary Uhrig.

In the course of discovery, plaintiffs deposed Barbara Matter and Rosemary Uhrig. According to plaintiffs, Barbara Matter and Rosemary Uhrig may have engaged with their respective husbands in a scheme to improperly win government contracts by creating the illusion that defendant Plumblin Construction, Inc. was a “minority women company,” even though real control rested solely in the hands



By The Court,


ALBERT JOHN SNITE, JR., J.

of John Matter and Andrew Uhrik. See Deposition Transcript of Rosemary Uhrik, Exhibit F to the Motion for Leave to Amend Complaint, p. 24:6–24:5; Deposition Transcript of Barbara Matter, Exhibit G to the Motion for Leave to Amend Complaint, pp. 132:15–22. In discovery, Plaintiffs also uncovered evidence that Barbara Matter may have commingled funds of the business with funds that she held personally in a separate account. See Deposition Transcript of Barbara Matter, Exhibit G to the Motion for Leave to File Amended Complaint, p. 184:4–11.

Under Pa. R.C.P. 1033, a party, “either by consent of the adverse party or by leave of court, may at any time ... amend his pleading.” However, “an amendment will not be permitted where it is against a positive rule of law, or where the amendment will surprise or prejudice the opposing party.” Horowitz v. Universal Underwriters Ins. Co., 397 Pa. Super. 473, 479; 580 A.2d 395, 398 (Pa. Super. 1990). “All amendments ... are offered later in time than the pleading which they seek to amend. If the amendment contains allegations which would have been allowed inclusion in the original pleading (the usual case), then the question of prejudice is presented by the time at which it is offered rather than by the substance of what is offered. The possible prejudice, in other words, must stem from the fact that the new allegations are offered late rather than in the original pleading, and not from the fact that the opponent may lose his case on the merits if the pleading is allowed.” Capobianchi v. BIC Corp., 446 Pa. Super. 130, 134-135; 666 A.2d 344, 346 (Pa. Super. 1995). Finally, the corporate veil may be pierced in the presence of “circumstances which justify disregarding corporate form, such as undercapitalization, failure to adhere to corporate formalities, substantial intermingling of corporate and personal affairs, and use of the corporate form to perpetrate fraud.” Superior Stores Co. v. Pennsylvania Dep’t of Health, Special Supplemental Food Program for Women, etc., 151 Pa. Commw. 102, 107; 616 A.2d 166, 169 (Pa. Commw. Ct. 1992).

In this case, plaintiffs assert that they uncovered the above evidence only on November 13, 2012, the day in which Barbara Matter and Rosemary Uhrik were deposed. See Plaintiffs’ Reply Brief in Further Support of their Motion for Leave to File Amended Complaint, p. 12. Granting leave to file a Second Amended Complaint will not prejudice defendants because plaintiffs learned of the alleged fraud and commingling only in the course of discovery. For the above reasons, the Motion for Leave to File Amended Complaint is granted.