

Almah LLC v AIG Empl. Servs., Inc.

2016 NY Slip Op 31850(U)

October 1, 2016

Supreme Court, New York County

Docket Number: 652117/2014

Judge: Anil C. Singh

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 45

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ALMAH LLC,

Plaintiff,
-against-

AIG EMPLOYEE SERVICES, INC.,
AMERICAN INTERNATIONAL GROUP, INC.,

Defendants.

DECISION AND
ORDER

Index No.
652117/2014

Mot. Seq. 003

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HON. ANIL C. SINGH, J.:

This action was filed by Almah LLC (“Almah” or “plaintiff”) for, *inter alia*, recovery of monetary damages arising out of breaches of the Lease by AIG Employee Services, Inc. (“AIG Service”). Defendants AIG Service and American International Group, Inc. (“AIG Inc.”, with AIG Service, “defendants”) move to join Goldman Sachs Group, Inc. (“Goldman Sachs-Assignor”) and Goldman Sachs and Co. (“Goldman Sachs-Subtenant”, with Goldman Sachs-Assignor, “Goldman Sachs Entities”) as party defendants to this action pursuant to CPLR § 1001(a). Plaintiff opposes the motion on the ground that the Goldman Sachs Entities are not necessary parties to this action.

BACKGROUND

Plaintiff was the owner of the commercial office building known as 180 Maiden Lane, New York, NY (“Building”) as of the time when AIG Service vacated

possession of the Building upon the expiration of the parties' lease agreement. The lease was originally entered on July 16, 1998 between TCL Acquisition Corp., on behalf of plaintiff's predecessor-of-interest as landlord, and Goldman Sachs-Assignor, as tenant and predecessor-of-interest of AIG Service (the "Lease"). Pursuant to the written Agreement of Sublease (the "Sublease"), dated as of May 29, 2008, as amended, Goldman Sachs-Assignor sublet portions of the Building to Goldman Sachs-Subtenant.

AIG Service assumed possession of the Building via the Assignment and Assumption Agreement, effective June 30, 2008 (the "Assignment Agreement"), which assigned Goldman Sachs-Assignor's rights and obligations under both the Lease and Sublease prospectively to AIG Services, with AIG Inc. acting as Guarantor. Goldman Sachs-Assignor retained all pre-assignment liability. Goldman Sachs-Subtenant continued to occupy portions of the Building premises until May 31, 2010. AIG Services vacated the Building upon the expiration of the Lease on April 30, 2014. It is not disputed that during the Lease term, Goldman Sachs-Assignor installed 17 electrical "busways" for the purpose of transporting supplemental and/or emergency electrical power to the trading floors and other operations of the building.

In its amended complaint, plaintiff asserts that pursuant to the Lease, the tenant was required (a) to install the Busways properly; (b) to thereupon, during the term of the Lease, take good care of the Busways as now constituting part of

“Premises”; and (c) upon expiration of the Lease, to turn-over the Busways to Owner in good condition. Amended Complaint ¶ 7. The complaint further alleges that the “busways were not properly installed, and in particular were installed in a manner that improperly impaired the tenant’s ability to maintain the busways . . . in any event . . . the busways were not properly maintained by AIG Service over time. . . .” Id. ¶ 12.

Defendants argue that joinder of the Goldman Sachs Entities is necessary under CPLR § 1001 in order to afford complete relief between the parties. They further argue that if the Goldman Sachs Entities cannot be joined to this action, the plaintiff’s claim should be dismissed under CPLR § 1001(b) and § 1003.

DISCUSSION

Under CPLR § 1001(a), necessary parties to an action or proceeding fall into two distinct categories: persons “who ought to be parties if complete relief is to be accorded between the persons who are parties to the action,” or “who might be inequitably affected by a judgment in the action.” 27th St. Block Assn. v. Dormitory Auth. of State of N.Y., 302 A.D.2d 155, 160 (1st Dept 2002). CPLR § 1001 gives a court wide discretionary latitude and is to be liberally construed. See Gross v. BFH Co., 151 A.D.2d 452, 452 (2d Dept 1989) (internal citations omitted). Courts have interpreted the rule to require joinder where existing parties might be inequitably affected by a judgment in the action without the non-party’s presence. See Joanne S.

v. Carey, 115 A.D.2d 4, 9 (1st Dept 1986) (taking into consideration the potential prejudice to plaintiff that might be caused by nonjoinder). Where a person who should be joined nevertheless cannot be joined, courts must decide whether the action can proceed without the necessary party. CPLR § 1001 (b).

The primary reason for compulsory joinder of parties is to avoid multiplicity of actions and to protect nonparties whose rights should not be jeopardized if they have a material interest in the subject matter. Joanne S., 115 A.D.2d at 7 (internal citations omitted). In making the determination as to whether an absentee need be joined as an indispensable party, courts must decide if a decision in the case, in the absence of the proposed parties, will have the element of finality for the protection of those before the court. Id.

Defendants claim that they lack the full ability to defend themselves, without the presence of the Goldman Sachs entities who installed the busways and were responsible for their maintenance over many years, thereby making them potentially liable for some or all of the busways damage claimed by plaintiff.

Plaintiff asserts that the court will not have to apportion AIG's and the Goldman Sachs Entities' respective liability since plaintiff is only seeking "damages concerning AIG's failure to 'take good care' of the Busways during the time that it was tenant of the Building." The assertion is based on the theory that to "take good care" equals a sweeping obligation to "keep, throughout the Lease term, in good working condition." (Plaintiff's memorandum of law, at 2.)

A look at the Lease itself reveals that plaintiff's argument is unavailing. Lease § 7.1 provides that "Tenant shall (a) take good care of the Premise . . . pay the cost of making good any injury, damage, or breakage to the Building or Premises *done by Tenant* or by the employees, agents, licensees or invitees of Tenant; . . ." (emphasis added). Lease § 7.2(a) further provides that plaintiff shall "pay the cost of making good any injury, damage or breakage to the Premises or any property therein or any other property installed in the Building by Tenant *done by Landlord or by the agents, servants, employees or contractors of Landlord.*" (emphasis added). With respect to surrender, Lease § 9.1 stipulates that "Tenant shall . . . quit and surrender to landlord, the Premise, broom-clean and *in as good condition as it was at the commencement of the term . . .*" (emphasis added). Therefore, AIG did not have an unlimited duty of upkeep under the Lease. The ascertainment of defendants' liability, if any, inevitably involves the allocation of causation of the alleged busways damages.

Defendants have made several arguments in support of their motion. Without the Goldman Sachs Entities' presence in this case as co-defendants subject to discovery and required to state their positions as to Almah's claims, AIG will not be able to investigate and present its full defense. In addition, in the event defendants are found liable in this case for busways damages they believe were caused by the Goldman Sachs Entities, there exists a risk that defendants might be collaterally estopped from later asserting that the Goldman Sachs Entities are responsible for

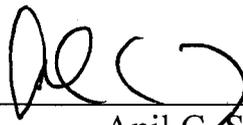
not be able to investigate and present its full defense. In addition, in the event defendants are found liable in this case for busways damages they believe were caused by the Goldman Sachs Entities, there exists a risk that defendants might be collaterally estopped from later asserting that the Goldman Sachs Entities are responsible for some or all of such liability. Finally, considering the fact that AIG might have to arbitrate any claims for indemnification between AIG and the Goldman Sachs Entities under their Assignment Agreement, the Goldman Sachs Entities should be joined in this action in order to avoid the multiplicity of proceedings.

The moving parties have demonstrated the necessity of joinder of the Goldman Sachs Entities under CPLR § 1001 (a). Therefore, the motion for necessary joinder of parties is granted.

Accordingly it is,

ORDERED that defendants' motion is granted.

Date: October 1, 2016
New York, New York



Anil C. Singh