

Alphonse Hotel Corp. v Manning

2016 NY Slip Op 31930(U)

October 12, 2016

Supreme Court, New York County

Docket Number: 651405/2016

Judge: Manuel J. Mendez

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ
Justice

PART 13

ALPHONSE HOTEL CORPORATION ,
Plaintiff,
-against-

INDEX NO. 651405/2016
MOTION DATE 09/07/2016
MOTION SEQ. NO. 002
MOTION CAL. NO. _____

LOIS R. MANNING, MILTON MANNING AGENCY,
MILTON MONTALVO, JR., and SUSANNAH JANE
MELLETT,
Defendants.

The following papers, numbered 1 to 4 were read on this motion to substitute, and for leave to amend.

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1 - 3</u>
Answering Affidavits — Exhibits _____	<u>4</u>
Replying Affidavits _____	

Cross-Motion: Yes No

Upon a reading of the foregoing cited papers, it is Ordered that 239 Elizabeth Realty, LLC's (herein "Movant") motion for leave to substitute into this action as Plaintiff, amend the caption and body of the Summons and Complaint, stay the action for thirty days, and/or permit it to supplement the opposition to Motion Sequence No. 001, is granted to the extent of permitting Movant to be substituted as the Plaintiff in this action, and amending the caption and pleadings to reflect this substitution. The remainder of the relief is denied.

Plaintiff was the former owner of the building located at 239 Elizabeth Street, New York, New York (herein "the building"). Plaintiff commenced this action on March 17, 2016, asserting various causes of action against the Defendants pertaining to an alleged invalid lease entered into between Defendants Milton Montalvo, Jr. and Susannah Jane Mellett (herein "Defendant Tenants"), as lessees, and Lois R. Manning on behalf of Plaintiff, as lessor.

Ownership of the building was transferred to Movant by Deed dated August 9, 2016. (Mot. Exh. A). Simultaneous to the transfer of the property, Plaintiff assigned, and Movant assumed, all rights, title and interest in this action. (Mot. Exh. B).

By Order to Show Cause Movants now seek (1) leave to be substituted as the Plaintiff in this action pursuant to CPLR §1018; (2) leave to amend the caption, and Summons and Complaint; (3) a stay of this action for thirty days; and (4) permission to supplement its opposition papers to Defendant Tenants' motion to dismiss under Motion Sequence No. 001.

Movant contends that it, being the current owner of the building and therefore a successor-in-interest, should be substituted as the Plaintiff because the rights and claims under this action were assigned to it as part of the transfer from Plaintiff. Further, Movant requests that the caption be amended to reflect this substitution, and it be allowed to amend the Complaint. Movant argues that Defendants would not be prejudiced by amending the Complaint to substitute Movant as the Plaintiff because the litigation is still in its early stages and discovery has not been commenced. Movant further requests that this action be stayed so that it may supplement the Plaintiff's opposition papers to Defendant Tenants' motion to dismiss under Motion Sequence No. 001. Movant argues that the Defendant Tenants would not be prejudiced by this short stay, and that the stay should be granted so that it can raise its own arguments in opposition to the dismissal motion.

Defendant Tenants oppose the motion arguing that the Movant lacks standing, and that they would be prejudiced by the substitution, and by Movant being allowed to supplement the opposition papers to Motion Sequence 001.

CPLR §1018 states that, “[u]pon any transfer of interest, the action may be continued by or against the original parties unless the court directs the person to whom the interest is transferred to be substituted or joined in the action.” CPLR §1021 states in relevant part that, “[a] motion for substitution may be made by the successors or representatives of a party or by any party.”

General Obligations Law §13-101 provides that “[a]ny claim or demand can be transferred, except in one of the following cases: (1) where it is to recover damages for a personal injury; (2) where it is founded upon a grant, which is made void by a statute of the state; or upon a claim to or interest in real property, a grant of which, by the transferrer, would be void by such a statute, and; (3) where a transfer thereof is expressly forbidden by: (a) a statute of the state, or (b) a statute of the United States, or (c) would contravene public policy.”

Plaintiff had a right to transfer its interest in this litigation to the Movant, and therefore Movant can be substituted as Plaintiff.

Leave to amend pleadings pursuant to CPLR §3025 (b) should be freely given “absent prejudice or surprise resulting directly from the delay” (Anoun v. City of New York, 85 A.D.3d 694, 926 N.Y.S.2d 98, 99 [1st Dept., 2011] citing to, Fahey v. County of Ontario, 44 N.Y.2d 934, 935, 408 N.Y.S.2d 314, 380 N.E.2d 146 [1978]), “or if the

proposed amendment is palpably improper or insufficient as a matter of law” (McGhee v. Odell, 96 A.D.3d 449, 450, 946 N.Y.S.2d 134, 135, [1st Dept., 2012] citing to, Shepherd v. New York City Tr. Auth., 129 A.D.2d 574, 574, 514 N.Y.S.2d 72 [2nd Dept., 1987]). “Prejudice arises when a party incurs a change in position or is hindered in the preparation of its case or has been prevented from taking some measure in support of its position, and these problems might have been avoided had the original pleading contained the proposed amendment” (Valdes v. Marbrose Realty, Inc., 289 A.D.2d 28, 29, 734 N.Y.S.2d 24 [1st Dept., 2001]).

Movant is the successor-in-interest to the building and was assigned all rights and claims in the instant litigation. Defendant Tenants’ conclusory statements fail to establish how they would be prejudiced by any substitution of the Movant as Plaintiff and/or by any amendments to the Complaint to reflect the substitution.

ACCORDINGLY, it is ORDERED, that 239 Elizabeth Realty, LLC’s motion to be substituted as the Plaintiff in this action, and to amend the caption and the Complaint to reflect this substitution, is granted, and it is further,

ORDERED, that 239 Elizabeth Realty, LLC is substituted for Plaintiff Alphonse Hotel Corporation and as a party Plaintiff, and it is further,

ORDERED, that the pleadings are amended to reflect that 239 Elizabeth Realty, LLC is substituted as Plaintiff in place and stead of Alphonse Hotel Corporation, and it is further,

ORDERED, that the pleadings as amended shall become the pleadings in this action, and it is further,

ORDERED, that the Amended Summons and Amended Complaint shall be deemed served on all parties who have appeared in this action upon service on them of a copy of this Order with Notice of Entry together with a copy of the Amended Summons and Complaint, and it is further,

ORDERED, that the action shall bear the following caption:

239 ELIZABETH REALTY, LLC

Plaintiff,

-against-

LOIS R. MANNING, MILTON MANNING AGENCY,
MILTON MONTALVO, JR., and SUSANNAH
JANE MELLETT,

Defendants.

and it is further,

ORDERED, that within thirty (30) days from the date of entry of this Order the moving party shall serve a copy of this Order with Notice of Entry upon the General Clerk's Office (Room 119) and the County Clerk (Room 141B) who are directed to mark the court's records to reflect the amendment of the pleadings and caption to include the substituted party, and it is further,

ORDERED, that the remainder of the relief sought is denied.

ENTER:

Dated: October 12, 2016



MANUEL J. MENDEZ

J.S.C.

MANUEL J. MENDEZ

J.S.C.

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE