

American Intl. Ins. Co. v Pumping Solutions, Inc.

2005 NY Slip Op 30634(U)

September 8, 2005

Supreme Court, New York County

Docket Number: 114679/04

Judge: Judith J. Gische

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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 10

-----X
AMERICAN INTERNATIONAL INSURANCE
CO., as subrogee of BEVERLY SOMMERS,

Plaintiff,

-against-

PUMPING SOLUTIONS, INC. and JOHN
DOE,

Defendants.
-----X

DECISION/ORDER

Index No.: 114679/04

Seq. #: 001

Present:

Hon. Judith J. Gische

J.S.C.

-----X
PUMPING SOLUTIONS, INC.,

Third-Party Plaintiff,

-against-

FRC PROPERTIES PARTNERSHIP d/b/a
THE PIERRE HOTEL, 795 FIFTH AVENUE
CORPORATION and FOUR SEASONS
HOTELS LIMITED,

Third-Party Defendants,
-----X

T.P. Index No.:

590149/05

FILED
SEP 14 2005
NEW YORK
COUNTY CLERK'S OFFICE

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

Papers **Numbered**
3rd-Party Defs' Motion to Consol, w/SLH affirm, Exhs 1

-----X
Upon the foregoing papers, the decision and order of the court is as follows:

FRC Properties Partnership d/b/a The Pierre Hotel, 795 Fifth Avenue Corporation and Four Seasons Hotels Limited (“3rd party defendants”) seeks an order consolidating the above captioned action with an action currently pending in Supreme Court, New York County bearing the caption Federal Insurance Company a/s/o Martin Zweig v. Hotel Pierre Inc., 795 Fifth Avenue Corporation and Pumping Solutions Inc. Index No. 104051/05 [“Action No. 2”]. CPLR §602 [a]. The within motion, though served on all parties in each action, has been submitted to the court without any opposition.

There is a preference for consolidation where there are common questions of law and fact, and if it promotes the interest of judicial economy and ease of decision-making. Progressive Insurance Co. v. Vasquez, 10 AD3rd 518 (1st Dept 2004). As a practical matter, it also eliminates the potential for injustice from divergent decisions based upon the same facts. Chinatown Apartments Inc. v. New York City Transit Authority, 100 AD2d (1st Dept 1984). It is unnecessary that all the facts and issues be the same, but there must be “at least some important rules of law and fact in common to both actions.” Bradford v. John A. Coleman Catholic High School, 110 AD2d 965, 966 (3rd Dept 1985).

This case and Action No. 2 have a number of questions of law and fact common. In each case the plaintiff is the subrogee of its insured who filed a claim for property damages arising from water leaks in each their respective apartments at the Hotel Pierre on August 14, 2003. In each case the subrogee alleges that damage to these apartments was due to defendants and/or 3rd party defendants’ negligence in properly maintaining the water tanks, etc. atop the hotel. There are a number of counterclaims

and cross claims for contribution and indemnification. Finally, there are a number of witnesses in common, and many of the discovery demands in one case would be duplicative of the other.

Under these circumstances, consolidation for purposes of joint discovery and joint trial is appropriate and will serve judicial economy. The motion is, therefore, granted.

The caption proposed by the 3rd party defendants is, however, incorrect. Since these cases have been consolidated for all purposes, including discovery and trial, the correct caption shall be as follows:

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10**

-----X
AMERICAN INTERNATIONAL INSURANCE
CO., a/s/o BEVERLY SOMMERS, and
FEDERAL INSURANCE COMPANY
a/s/o MARTIN ZWEIG

Index No.: 114679/04

Plaintiffs,

-against-

PUMPING SOLUTIONS, INC., HOTEL
PIERRE INC., 795 FIFTH AVENUE
CORPORATION AND JOHN DOE,

Defendants.

-----X
PUMPING SOLUTIONS, INC.,

T.P. Index No.: 590149/05

Third-Party Plaintiff,

-against-

FRC PROPERTIES PARTNERSHIP d/b/a
THE PIERRE HOTEL, 795 FIFTH AVENUE
CORPORATION and FOUR SEASONS
HOTELS LIMITED,

Third-Party Defendants,
-----X

Accordingly, it is hereby

ORDERED that 3rd party defendants' FRC Properties Partnership d/b/a The Pierre Hotel, 795 Fifth Avenue Corporation and Four Seasons Hotels Limited motion for consolidation of this action with another New York County action bearing the caption Federal Insurance Company a/s/o Martin Zweig v. Hotel Pierre Inc., 795 Fifth Avenue Corporation and Pumping Solutions Inc. Index No. 104051/05 is hereby granted, and that the consolidated action shall bear the following caption:

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10**

-----X
AMERICAN INTERNATIONAL INSURANCE
CO., a/s/o BEVERLY SOMMERS, and
FEDERAL INSURANCE COMPANY
a/s/o MARTIN ZWEIG

Index No.: 114679/04

Plaintiffs,

-against-

PUMPING SOLUTIONS, INC., HOTEL
PIERRE INC., 795 FIFTH AVENUE
CORPORATION AND JOHN DOE,

Defendants.

-----X
PUMPING SOLUTIONS, INC.,

T.P. Index No.: 590149/05

Third-Party Plaintiff,

-against-

FRC PROPERTIES PARTNERSHIP d/b/a
THE PIERRE HOTEL, 795 FIFTH AVENUE
CORPORATION and FOUR SEASONS
HOTELS LIMITED,

Third-Party Defendants,

-----X

And it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that upon service on the Clerk of the Court of a copy of this order with Notice of Entry, the Clerk shall consolidate the papers in the actions hereby consolidated and shall mark his/her records to reflect the consolidation; and it is further

ORDERED that a copy of this order with Notice of Entry shall also be served upon the Clerk of the Trial Support Office, who is hereby directed to mark the court's records to reflect the consolidation.

ORDERED that the parties shall appear on October 20, 2005 at 9:30 a.m. in Part 10, 80 Centre Street, Room 122 for the preliminary conference.

Any relief not expressly addressed herein has nonetheless considered by the court and is denied.

This shall constitute the Decision and Order of the Court.

Dated: New York, New York
September 8, 2005

So ORDERED:



HON. JUDITH J. GISCHE, J.S.C.

FILED
SEP 14 2005
NEW YORK
COUNTY CLERK'S OFFICE