

Pier 59 Studios L.P. v Chelsea Piers, L.P.

2006 NY Slip Op 30508(U)

February 8, 2006

Supreme Court, New York County

Docket Number: 601211/04

Judge: Shirley Werner Kornreich

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

PRESENT: Kornreich

PART 54

Index Number : 601211/2004

PIER 59 STUDIOS L.P.

vs
CHELSEA PIERS, L.P.

Sequence Number : 016

DISMISS ACTION

INDEX NO. 601211/04

MOTION DATE 12/29/05

MOTION SEQ. NO. 16

MOTION CAL. NO. _____

The following papers, numbered 1 to 10 were read on this motion to/for Dismiss

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1-10

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

*is decided in accordance with
the annexed decision and order.*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED
FEB 15 2006
COUNTY CLERK

Dated: 2/8/06

Shirley Werner Kornreich
SHIRLEY WERNER KORNREICH
J.S.C.

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

-----X
PIER 59 STUDIOS L.P.,

Plaintiff/Counter-Defendant,

Index No.: 601211/04

**DECISION AND
ORDER**

-against-

CHELSEA PIERS L.P.

Defendants/Counter-Claimant

-----X
KORNREICH, SHIRLEY WERNER, J.:

In this extensively litigated landlord-tenant dispute, the Court refers to the factual background set forth in its numerous previous decisions.

Now before the Court are Motion Sequences 15 and 16.

In Motion Sequence No. 15, plaintiff Pier 59 Studios L.P. ("Pier 59") seeks to reargue and/or renew its previous application for an order holding defendant in contempt of Court for failing to follow several of the Court's previous orders, which application was denied by order dated August 19, 2005.

In Motion Sequence No. 16, defendant Chelsea Piers L.P. ("Chelsea Piers") seeks an order: (1) dismissing plaintiff's claims on the ground that plaintiff lacks capacity to sue and fails to state a cause of action; (2) rescinding all equitable relief previously granted to plaintiff; (3) amending the caption to substitute Federico Pignatelli as counterdefendant therein; (4) awarding costs, attorney's fees and sanctions pursuant to 22 N.Y.C.R.R. § 130-1.01; and (5) disqualifying plaintiff's counsel.

The Court consolidates both sequences herein for decision.

I. Motion to Reargue and/or Renew

On June 25, 2004, the Court conducted a hearing of Pier 59's motion, brought on by order to show cause, for a *Yellowstone* injunction. By order dated June 28, 2004, the Court granted the injunction "to the extent stated in the Court's oral decision" made on the record of the June 25, 2004 hearing. By order dated November 8, 2004, the Court granted Pier 59's motion for a *Yellowstone* injunction, "upon the condition that plaintiff abides by the terms of the Sublease and continues to pay rent under the Sublease and its subsequent amendments." The November 8 order enjoined defendant, "during the pendency of this action, from taking any action to cancel or terminate plaintiff's sublease... ."

In December 2004, Chelsea Piers served a Ten-Day Notice to Cure Letter, and a Five-Day Rent Demand on Pier 59, in connection with a "Notice of Violation" and "Preemptory Vacate Order" issued by the Department of Buildings ("DOB") regarding a "Fabric Structure" that Pier 59 had erected on its premises. Pier 59 sought to enjoin Chelsea Piers from taking any steps to terminate the Sublease or exercise self-help. Chelsea Piers cross-moved to modify the *Yellowstone* injunction to direct Pier 59 to remove the Fabric Structure. By order dated January 31, 2005, the Court denied Pier 59's motion, and granted Chelsea Piers' cross-motion only to the extent that the Court would not "prevent defendant Chelsea Piers from proceeding pursuant to the Sublease's Paragraph 27, by which Chelsea Piers may remove the Fabric Structure from Pier 59's premises."

A. Motion to Punish for Contempt and to Compel Compliance with Court Orders

Pier 59 moved to punish Chelsea Piers for alleged contempt, for failure to comply with the above-described Court orders, and to compel Chelsea Piers' compliance therewith.

Specifically, Pier 59 sought an order directing Chelsea Piers to:

(A) Sign the Owner's Statement section of the Department of Buildings Plan/Work Approval applications previously presented to defendant for Department of Buildings Job Nos. 102255015 and 101552437, to enable plaintiff to obtain permits to do the work to cure the alleged violations on Pier 59's deck and accessory stair, and any future documents required for that purpose; and

(B) Sign all documents required by the Department of Buildings to allow plaintiff to obtain Temporary Place of Assembly permits to allow plaintiff to conduct special events limited to the indoor space of plaintiff in accordance with Department of Buildings Technical Policy and Procedure Notice #7/96 (Temporary Places of Assembly).

Affirmation of M. Hoffman, Exhibit A.

By order dated August 19, 2005, The Court denied Pier 59's motion, holding that Chelsea Piers was not required to cooperate with Pier 59 in the alteration of the premises in a manner that was not expressly authorized by the Sublease. The Court noted that:

Pier 59 argues that Chelsea Piers' failure to sign the applications and documents referenced herein contravenes the Court's Orders dated June 25, 2004, June 29, 2004 and November 8, 2004, and should be punished by contempt. The Court disagrees. Pier 59 correctly points out that the Court has previously directed Pier 59 to "cooperate to cure all possible violations." *See* Affirmation of M. Hoffman, Exhibit 1, p. 19 (Transcript of June 25, 2004 Hearing of Pier 59's Order to Show Cause Seeking Preliminary Injunction). However, the Court thereafter held that Chelsea Piers was entitled to exercise self-help pursuant to Paragraph 27 of the Sublease, noting that nothing in the *Yellowstone* injunction prevented Chelsea Piers from taking such action. *See* Hoffman Aff., Ex. 4 (Court's Decision and Order dated November 8, 2004). The Court's November 8 holding was based, in part, on the fact that the Sublease does not require Chelsea Piers to provide its consent to Pier 59. The Court would not then, and will not now, impose upon Chelsea Piers an obligation which it did not agree to take on.

Pier 59 now argues that the Court overlooked matters of fact or law, and/or misapprehended the law in rendering its August 19, 2005 decision; alternatively, Pier 59 argues that it presents new facts not offered on the prior motion, which compel a different result. The Court disagrees. Pier 59's argument here is identical to that put forward in support of its motion for contempt, which was denied. In essence, Pier 59 argues that the Court's orders issued in June and November 2004 directed Chelsea Piers to cooperate to cure violations, and that Chelsea Piers flouted those orders by failing to sign certain documents necessary for Pier 59 to cure the defects. The Court ruled on this precise issue in its August 18, 2005 order. Therein, the Court found that Chelsea Piers was not in contempt of Court, and that despite any oral directives it may have issued at the June 25, 2004 hearing, Chelsea Piers was not required to cooperate with Pier 59 in constructing a structure on its premises that was not expressly authorized by the Sublease.

II. Motion to Dismiss, Rescind Equitable Relief, Amend Caption, Award Costs and Fees, and Disqualify Counsel

A. The Assignment Transactions

Chelsea Piers' omnibus motion is premised on the theory that as of December 31, 2003, as a result of certain corporate transactions (the "Assignment Transactions"), Pier 59 "terminated and ceased to exist as a limited partnership..." Affirmation of R. Greathead, para. 3. Chelsea Piers alleges that "plaintiff and its counsel have fraudulently maintained this litigation" by failing to disclose the termination of the partnership, which should have "triggered the assignment provisions of [Pier 59's] Sublease with Chelsea Piers." *Id.* at 4. Chelsea Piers further alleges that it relied on Pier 59's representations in pleadings that "Pier 59 Studios was a validly constituted Delaware limited partnership." *Id.* at 5.

Chelsea Piers' attorney affirms that he "learned in or about September 2005 from counsel in another action in which [Pier 59] was a party that Pier 59 Studios L.P. was terminated as a partnership as of December 31, 2002, and no longer exists under Delaware law." *Id.* at 5.

Chelsea Piers submits a copy of a portion of a 2003 federal tax return for Pier 59 Studios, L.P., which states, in a footnote:

The general partner of Pier 59 Studios, L.P., Studio Management Inc., withdrew from the partnership causing a technical termination of Pier 59 Studios, L.P. This is the final tax return for the partnership, no further tax returns will be filed.

Id., Ex. A.

Chelsea Piers also submits a copy of a deposition transcript from a separate action, in which Pier 59 is a party, represented by the same attorneys as here, in which Mr. Pignatelli testifies that at some point in 2002, an assignment occurred so that, "from that time forward, Art and Fashion Group Corporation has been the only entity or individual with an ownership interest in Pier 59 Studios... ." *Id.*, Ex. E.

On the other hand, Pier 59 submits the affidavit of Felipe Montejo, an "of counsel" attorney at the firm of its attorneys, Todtman, Nachamie, Spizz & Johns, P.C. ("Todtman"). Mr. Montejo avers that he "performed the legal work in connection with the transaction ... whereby Studios Management, Inc. (formerly, Studio Management, Inc., 'SMI') transferred its general partnership interest to Art and Fashion Group Corporation ('AFG')." Affidavit of F. Montejo, para. 3. Mr. Montejo avers that prior to this transaction, he, together with another attorney at Todtman, concluded that "the Transaction was permitted and would not affect the existence of Pier 59." *Id.* at 5. Attached as an exhibit to Mr. Montejo's affidavit is an opinion letter dated

November 16, 2005, from “expert legal Delaware counsel” Richards Layton & Finger, stating that, assuming the above-mentioned transaction caused Pier 59 to dissolve, such dissolution: “did not terminate the existence of Pier 59 as a separate legal entity...does not, in and of itself, prevent Pier 59 from prosecuting and defending suits...[and such dissolution] has been revoked under Section 17-806 of LP Act effective as of the event of dissolution.” *Id.* at 4. Mr. Montejo further avers that the transaction “has been rescinded retroactively,” that “Pier 59 remains in good standing in New York State ... and Delaware...”; and that the 2003 tax return cited by Chelsea Piers:

has now been amended to correct an erroneous statement of fact and of law contained therein. The return cited in CP’s motion papers omitted to state that the general partner was replaced by another general partner, and incorrectly stated that there was a technical termination of the partnership.

Id. at 10-12.

Counsel for Pier 59 affirms that the 2003 Pier 59 tax return which Chelsea Piers here submits “was produced in another litigation (not pending in IAS Part 54) as part of a large number of confidential documents with the specific understanding that the documents would be kept confidential.” Affirmation of M. Hoffman, para. 9 (emphasis in original). Mr. Hoffman affirms that “if CP obtained a copy of this document from our opposing counsel in that case (which it certainly appears since the document has the bate stamped number and a confidential stamp), then CP obtained this document improperly.” *Id.* Mr. Hoffman also takes the position that the instant motion is part of a “duplicitous attempt to avoid discovery and trial in light of a clear warning from the Court that it was establishing prompt deadlines.” *Id.* at 2.

B. Application of Delaware Partnership Law

“The laws of the jurisdiction under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners.” Partnership Law § 121-901; *cf. Hart v. General Motors Corp.*, 129 A.D.2d 179 (1st Dept. 1987). Chelsea Piers argues that Pier 59 dissolved, pursuant to Section 17-801 of the Delaware Revised Uniform Limited Partnership Act (the “LP Act”), which provides:

A limited partnership is dissolved and its affairs shall be wound up upon ...

(3) An event of withdrawal of a general partner unless at the time there is at least 1 other general partner and the partnership agreement permits the business of the limited partnership to be carried on by the remaining general partner and that partner docs so... .

6 Del. C. § 17-801.

Chelsea Piers argues that Pier 59 was dissolved as of December 31, 2002, as a result of the Assignment Transactions. Pier 59 argues that: (1) it was not dissolved; (2) even if it was dissolved, the dissolution was revoked; and (3) even if it was dissolved, Pier 59 still had standing to prosecute the Initial Action. A threshold issue, therefore, is whether the Assignment Transactions caused Pier 59 to dissolve. The Court concludes that they did not.

It is undisputed that Pier 59 was organized as a Delaware limited partnership, and that on October 3, 2003, its then general partner, Studios Management, Inc. (“SMI”), assigned its general partnership interest to Art and Fashion Group Corporation (“AFG”). The assignment was “effective” December 31, 2002. At the time of the assignment, AFG was Pier 59's only limited partner. As a result of the assignment, AFG became the sole general partner and sole limited partner of Pier 59. It is also undisputed that AFG is a corporation owned by Mr.

Pignatelli, Pier 59's CEO, and that “[n]o money or assets were exchanged between AFG and SMI in connection with this assignment.” *See* Memorandum of Law in Opposition to Chelsea Piers’ Most Recent Motion to Dismiss Plaintiff’s Claims and Baseless Attempt at Sanctions and Disqualification, p. 3. Chelsea Piers argues that “the conclusion is inescapable that from December 31, 2002 Pier 59 Studios did not exist as a validly constituted limited partnership under Delaware law... .” Reply Memorandum of Law in Support of Chelsea Piers L.P.’s Motion to Dismiss Plaintiff’s Claims, p. 6. The Court disagrees.

The language of 6 Del. C. § 17-801 does not support Chelsea Piers’ argument that Delaware law provides that “the withdrawal of the general partner causes a limited partnership to dissolve.” *See* Memorandum of Law in Support of Chelsea Piers L.P.’s Motion to Dismiss Plaintiff’s Claims, p. 6. To the contrary, the statute provides that the limited partnership may carry on its business if at the time of withdrawal of a general partner, there is at least one other general partner. Here, this requirement was met because SMI’s general partnership interest was assigned to AFG, which became the sole general partner of Pier 59.

Chelsea Piers cites to 6 Del. C. § 17-101(9), which provides that a limited partnership means “a partnership formed by 2 or more persons under the laws of the State of Delaware and having 1 or more general partners and 1 or more limited partners... .” By its terms, this definitional requires “2 or more persons” for the *formation* of a limited partnership. However, Chelsea Piers does not contend that Pier 59 was not a validly formed Delaware limited partnership prior to the Assignment Transactions. Chelsea Piers cites no statutory language or judicial precedent indicating that a validly formed Delaware limited partnership may not carry on business with one entity as both the sole general partner and sole limited partner. Nor is the

Court aware of any such authority. Indeed, under the LP Act, one person may be “both a general partner and a limited partner.” *See* 6 Del. C. § 17-404. Thus, the Court concludes that Pier 59 did not dissolve, and remained a viable Delaware limited partnership, capable of prosecuting an action in the courts of this state. Nor is there any evidence that the Assignment Transactions caused an assignment of the Sublease.

In light of the foregoing discussion, the Court need not reach the issues raised by Pier 59, as to whether its actions in 2005 to revoke its purported dissolution would have been effective, had a dissolution been found. Still, the Court notes that the opinion letter of Richards, Layton & Finger (“RLF”) dated November 16, 2005, states that:

assuming that Pier 59 dissolved under Section 17-801 of the LP Act by virtue of the Pier 59 Assignment, if properly presented to a Delaware court, a Delaware court applying Delaware law would conclude that:

1. Under the LP Act, (i) the dissolution of Pier 59 did not terminate the existence of Pier 59 as a separate legal entity, and (ii) the existence of Pier 59 as a separate legal entity shall continue until the cancellation of the Pier 59 Certificate.

2. Under the LP Act, the dissolution of Pier 59 under Section 17-801(3) of the LP Act does not, in and of itself, prevent Pier 59 from prosecuting and defending suits, whether civil, criminal or administrative.

3. Pursuant to the Pier 59 Consent, the dissolution of Pier 59 has been revoked under Section 17-806 of the LP Act effective as of the event of dissolution.

See Memo, *supra* note 6.

The Court further notes that, pursuant to Section 17-806 of the LP Act:

notwithstanding the occurrence of an event set forth in § 17-801(1), (2), (3), (4) or (5) of [the LP Act], the limited partnership shall not be dissolved and its affairs shall not be wound up if, prior to the filing of a certificate of cancellation in the office of the Secretary of State, the business of the limited partnership is

continued, effective as of the occurrence of such event, pursuant to the affirmative vote or written consent of (1) all remaining general partners and all remaining limited partners of the limited partnership... .

6 Del. C. § 17-806.¹

Chelsea Piers has not alleged that Pier 59 filed a certificate of cancellation, and Pier 59 denies so doing. RLF opines that Pier 59 has taken all appropriate and necessary steps to revoke the purported dissolution, pursuant to 6 Del. C. § 17-806. Thus, were a dissolution to have occurred—and the Court expressly finds to the contrary—it appears that Pier 59 effectively revoked it. Accordingly, it is

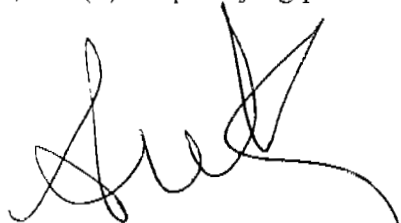
ORDERED that the motion of plaintiff Pier 59 Studios L.P., to reargue and/or renew its motion to hold defendant Chelsca Piers L.P. in contempt of Court for failure to comply with previous orders of the Court, or to compel compliance therewith, is denied; and it is further

ORDERED that the motion of defendant Chelsea Piers L.P., for an order: (1) dismissing plaintiff's claims on the ground that plaintiff lacks capacity to sue and fails to state a cause of action; (2) rescinding all equitable relief previously granted to plaintiff; (3) amending the caption to substitute Federico Pignatelli as counterdefendant therein; (4) awarding costs, attorney's fees

¹Chelsca Piers argues that this section, enacted on August 1, 2005, would not apply here because Pier 59's purported dissolution occurred as of December 31, 2002. As mentioned above, this point is moot, because the Court has concluded that no dissolution occurred. Nevertheless, the Court notes that RLF's opinion letter states that the "better argument" is that the newly enacted revocation provision of Section 17-806 does apply, because the revocation occurred after August 1, 2005.

and sanctions pursuant to 22 N.Y.C.R.R. § 130-1.01; and (5) disqualifying plaintiff's counsel, is denied.

Date: February 8, 2006
New York, New York



SHIRLEY WERNER KORNREICH

FILED
FEB 15 2006
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NEW YORK