

Joy v Tower Records Inc.

2007 NY Slip Op 32592(U)

August 14, 2007

Supreme Court, New York County

Docket Number: 0116292/2006

Judge: Emily Jane Goodman

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

EMILY JANE GOODMAN

PRESENT

PART 17

Index Number : 116292/2006

JOY, CAROL

VS.

TOWER RECORDS

SEQUENCE NUMBER : # 001

STAY DISCOVERY / TRIAL

Justice

INDEX NO. 116292-06

MOTION DATE #001

MOTION SEQ. NO. #001

MOTION CAL. NO. _____

were read on this motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided for
attached

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

[FILED]

AUG 21 2007

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 8/14/07

Emily Jane Goodman
EMILY JANE GOODMAN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 17

-----X

CAROL JOY,

Plaintiff,

Index No. 116292/06

-against-

TOWER RECORDS INC., MTS, INCORPORATED, and
VORNADO 692 BROADWAY II, LLC,

Defendants.

-----X

Emily Jane Goodman, J.S.C:

Defendant Vornado 692 Broadway II, LLC (Vornado) moves for an order, pursuant to CPLR 2201, staying discovery and trial in this matter until co-defendants, Tower Records, Inc. and MTS, Inc. (collectively, Tower Records) are discharged from bankruptcy proceedings, or "until insurance information can be procured." Plaintiff opposes the motion and maintains that the insurance information Vornado seeks is already known.

FILED

AUG 21 2007

I. Background

COUNTY CLERK'S OFFICE
NEW YORK

The instant action involves an accident that occurred in an elevator located at 20 East 4th Street, New York, NY (Premises) on December 27, 2005. The plaintiff, Carol Joy, alleges that she tripped as she entered the elevator as a result of the elevator being uneven and misleveled with the floor at the mezzanine level of the building. Tower Records was the tenant of the building at the time of the incident, and leased the Premises from the landlord Vornado. At the time of the incident, plaintiff alleges that Tower Records was insured by CNA Insurance, policy number 20492222061. Plaintiff filed a

Summons and Complaint in October, 2006. Also, in October 2006, Tower Records filed a bankruptcy case under Chapter 11 of the United States Bankruptcy Code, causing an automatic stay to be placed on certain collections and actions against it or its property.

II. Discussion

“Except where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just.” (CPLR 2201). CPLR 2201 gives a court discretion in determining the criteria and conditions for the imposition of a stay (see Pierre Associates, Inc. v. Citizens Cas. Co. of New York, 32 AD2d 495, 496 [1st Dept.1969]).

Vornado argues that the instant proceeding must be stayed because Tower Records is a “critical defendant in this matter, and the real party in interest.” Vornado notes that as an out of possession landlord, it is not responsible for negligence with respect to a condition on the Premises absent a contractual obligation to make such repairs or unless the injury was caused by a structural defect or design defect which violates a statutory duty and Vornado reserves the right to renter and repair. Vornado claims that pursuant to the lease, Tower Records, not Vornado, was the party responsible for maintaining the premises, including the elevator.¹ Moreover, even though Vornado

¹The lease signed by MTS, Incorporated (d/b/a Tower Records•Video•Books) and Vornado (Lease) provides, in relevant part that:

7.1 LANDLORD’S MAINTENANCE AND REPAIR. Except as provided in Sections 7.2 and 7.3 and ARTICLE 13 and ARTICLE 14 of this Lease, Landlord will at all times during the Term of this Lease (provided Tenant shall reimburse Landlord for any payments made to third parties by Landlord, including reasonable fees of outside counsel) cause the Condominium Association to the extent that the Condominium Association is obligated to do so pursuant to the Condominium Documents, to maintain

* 4]

retained a right to reenter, Vornado maintains that plaintiff has no claim against it because plaintiff has not alleged a statutory violation and because there is no evidence that the accident was caused by a significant structural defect.

The strength or weakness of plaintiff's case is not apparent at this point. For instance, it is not clear whether Vornado breached the Lease provision requiring it to "cause" the Condominium Association to repair the elevator, assuming the Condominium Association was obligated to do so pursuant to the Condominium documents, which were not submitted to the Court. In addition, Vornado does not support its conclusion that it was Tower Record's responsibility under the Lease to repair the elevator, nor its

and repair the following: (I) the structural parts of the Building, which structural parts include the foundations, bearing and exterior walls (not including the portions thereof on the Unit-side of the brick work of such walls), sub-flooring and roof (including roof coverings, insulation, skylights (if any), roof structures and roof support systems); (ii) the unexposed electrical, plumbing, sewage and utility systems, lying outside the Premises; (iii) gutters, and downspouts on the Premises and the Building; and (iv) latent defects in the construction of the Building. Landlord shall have no obligation with respect to or in connection with the making of or payment for any repairs or replacements to the Premises.

7.2 TENANT'S MAINTENANCE AND REPAIR. Except as provided in Section 7.1 and ARTICLE 13 and ARTICLE 14 of this Lease, Tenant will at all times during the Term of this Lease and at its sole cost and expense make all repairs and replacements and maintain the Premises and every part thereof and its exterior signs and the exterior glass and doors in good order, condition and repair and make all repairs to the building necessitated by Tenant's neglect or acts (other than such repairs it is the responsibility of the Condominium Association to perform). Upon termination of this Lease by lapse of time or otherwise, Tenant will deliver the Premises to Landlord in good condition and repair, ordinary wear and tear from reasonable and normal use and damages by casualty pursuant to ARTICLE 13 of this Lease excepted. Except as otherwise specifically provided in this Lease or the Condominium Documents, Tenant shall have no responsibility for any structural repairs of the Premises or Building. Additionally, Tenant shall have no duty to repair or replace any fixtures, equipment or HVAC serving the Premises during the last two (2) years of the Term.

conclusion that the problems with the elevator do not constitute a significant structural defect. In any event, the strength or weakness of plaintiff's case is irrelevant to whether the Court should stay the action. To the extent that Vornado is correct in asserting that plaintiff's case is weak, litigation, and not a stay of litigation, is appropriate.

Further, a stay is not appropriate on the basis that "it is unknown whether Tower Records procured insurance related to its tenant obligations at the subject premises." Vornado claims that it is entitled to indemnification from Tower Records pursuant to the Lease, and request a stay "for the purpose of obtaining insurance information." It is undisputed that a party can pursue a claim against a discharged bankrupt defendant for the limited purpose of pursuing payment from the defendant's insurance carrier (see Lang v. Hanover Ins. Co., 3 N.Y.3d 350 [2004]; Roman v. Hudson Telegraph Assoc. et al., 11 A.D.3d 346 [2004]). Plaintiff has already indicated in her opposition that CNA insurance policy # 20492222061 was in effect at the time of the incident, and this statement can be verified by Vornado. Even if this information is incorrect, it is unclear why Vornado could not obtain the information it seeks, even if that means seeking such relief in Bankruptcy Court.

Accordingly, it is

ORDERED that the motion by defendant Vornado 692 Broadway II, LLC. for an order pursuant to CPLR 2201 to stay discovery and trial is denied; and it is

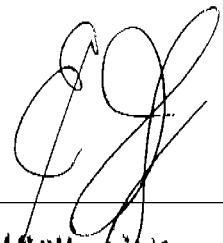
ORDERED that the action is severed as to defendants Tower Records Inc. and MTS, Incorporated and is continued as to the remaining defendant; and it is further

ORDERED that further prosecution of and proceedings in this action are stayed as to defendants Tower Records Inc. and MTS, Incorporated, except for applications to vacate or modify this stay; and it is further

ORDERED that either party may make an application to vacate or modify this stay upon the final determination of, or vacatur of the stay issued in Bankruptcy Court with respect to defendants Tower Records Inc. and MTS, Incorporated.

This Constitutes the Decision and Order of the Court.

Dated: ^{August 14} ~~September 4~~, 2007

Enter: 

EMILY JANE GOODMAN

[FILED]
AUG 21 2007
COUNTY CLERK OF RICE
NEW YORK