

Hotel 57 LLC v Tyco Fire Prods.

2007 NY Slip Op 33820(U)

November 13, 2007

Supreme Court, New York County

Docket Number: 0602147/2004

Judge: Walter Tolub

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

PRESENT: WALTER B. TOLUB

PART 15

Index Number : 602147/2004

HOTEL 57 LLC

INDEX NO. _____

vs

TYCO FIRE PRODUCTS

MOTION DATE 8/2/2004

Sequence Number : 005

MOTION SEQ. NO. _____

SUMMARY JUDGMENT

MOTION CAL. NO. _____

The following papers, numbered 1 to _____, 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 denied in accordance with the accompanying memorandum opinion.*

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

Dated: 11/12/07

[Signature]
J.S.C.

WALTER B. TOLUB

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: IAS PART 15

-----X
 HOTEL 57 LLC d/b/a FOUR SEASONS HOTEL,
 NEW YORK,

Plaintiff,

Index No. 602147/04

-against-

TYCO FIRE PRODUCTS, CENTRAL SPRINKLER
 CORPORATION, CENTRAL SPRINKLER
 COMPANY, and ABC entities 1 through 50
 (Unknown entities),

Defendants.

-----X
TOLUB, J.:

This is a motion by defendants Tyco Fire Products L.P., Central Sprinkler Corporation and Central Sprinkler Company (together, Central) for an order, pursuant to CPLR 2219 and 3212, granting summary judgment dismissing the complaint of plaintiff Hotel 57 LLC d/b/a Four Seasons Hotel, New York (the Hotel) on the grounds that the Hotel's claims are barred by the terms of a prior class action Settlement Agreement and Order, Final Judgment and Decree, including a waiver and release of claims encompassing the claims in this action, and the doctrines of res judicata and collateral estoppel.

BACKGROUND

Facts Relative to the Hart and Santa Clara Class Actions, and the CPSC Proceeding

Central is a corporation that manufactures sprinkler heads and sprinkler system component parts for fire suppression systems. Among its products, Central manufactured a line or series of sprinklers known as Omega sprinklers.

A class action, entitled Hart v Central Sprinkler Corp. (BC 176727), was commenced on August 21, 1997 in the Superior Court of the State of California, County of Los Angeles on

behalf of a class of all owners and operators of real property in the United States in which there were installed Omega series sprinklers manufactured, distributed and/or sold by Central. It was alleged that the Omega sprinklers were defective and that Central manufactured, distributed and/or sold them when it knew, or should have known, that they were defective. A second class action, entitled County of Santa Clara v Central Sprinkler Corp. (No. CV771019), was commenced on December 23, 1997, in the Superior Court of the State of California, County of Santa Clara, on behalf of a class similar to that in the Hart class action. The Santa Clara class action complaint practically mirrored the Hart class action complaint.

On March 3, 1998, the United States Consumer Product Safety Commission (CPSC) filed an administrative complaint against Central seeking a recall of all Omega series sprinklers, including those installed at the Hotel. The CPSC complaint alleged that the sprinklers were defective and would not function in certain fire situations.

Central denied any wrongdoing in the above actions/proceeding, and denied that the sprinklers were in any respect defective.

On or about May 12, 1998, the parties to the Hart and Santa Clara class actions entered into a settlement agreement of those actions, and thereafter, an Amended Settlement Agreement on October 1, 1998 (the Amended Settlement Agreement).

On October 12, 1998, Central notified its customers of new/updated information regarding Omega sprinklers. This notice stated, in pertinent part, that "[w]e are writing to notify you that you may be eligible to participate in the new recall program. . . . You will be receiving information on the recall, the Class Action settlement and the necessary forms no later than the week of October 26, 1998. . . ."

Thereafter, Central issued the Omega Sprinkler Recall Package, dated October 27, 1998 (the Omega Notice Packet). The Omega Notice Packet included a notice entitled "Recall of Central Sprinkler's Omega Brand of Fire Sprinklers" as well as a "Notice of Proposed Settlement of Class Action, Conditional Certification of Settlement Class and a Hearing on Proposed Settlement" in the Hart and Santa Clara class actions.

In the notice entitled "Recall of Central Sprinkler's Omega Brand Fire Sprinklers," Central advised its customers, in pertinent part:

The Consumer Product Safety Commission (CPSC) and Central Sprinkler recently announced the recall of all Omega fire sprinklers. According to CPSC, these sprinklers are defective and could likely fail in a fire, which could result in bodily injury or death.

Please read the entire attached packet of information carefully. It is very important for you to determine if Omega sprinklers are installed in your home or building. The notice contains product information regarding the recall with the CPSC, as well as the preliminary settlement Central has reached with several private class action lawsuits.

* * *

This recall is available to all owners of Omega fire sprinklers. To participate in the recall you must complete the enclosed Proof of Claim Form and the accompanying Waiver and Release of Claims Form and return them to Central Sprinkler, postmarked by August 1, 1999. . . . In order to receive reimbursement toward installation costs, you must complete and return the Verification Form within 365 days after you receive your replacement sprinklers. Those owners filing a Proof of Claim and Waiver and Release of Claims Form postmarked after August 1, 1999 but before November 1, 2001, still qualify to receive replacement sprinklers (though not reimbursement). The recall terms may also provide benefits to those who have already replaced Omegas between May 1, 1996 and October 14, 1998.

The notice further advised, "[i]f you do not wish to participate in the settlement of the class action, Hart v Central Sprinkler, and not be bound by the Settlement Agreement, you must fill out and submit the Request for Exclusion Form postmarked not later than February 6, 1999."

Among the models of Omega sprinklers listed in the notice as being subject to the recall and class actions were those installed in the Hotel.

The Omega Notice Packet also contained a "Notice of Proposed Settlement of Class Action, Conditional Certification of Settlement Class, and Hearing on Proposed Settlement" in the Hart and Santa Clara class actions. The Notice of Proposed Settlement was addressed to "All Persons or Entities Who Own or Operate Real Property with Omega Series Sprinkler Heads Manufactured by Central Sprinkler Co." The Notice included detailed information on the rights of class members, procedures for exclusion from the class action and settlement, the effects on class members of the settlement and ultimate entry of a final order and judgment by the court, and a summary of all of the relevant dates and deadlines, to wit, the deadline for filing a Notice of Intention to Appear (February 5, 1999), the deadline for filing a request for an exclusion (i.e., to "opt out" - February 6, 1999), the date of the fairness hearing (February 19, 1999), and the deadline for making claims for both Replacement Sprinklers and payments from the Trust (August 1, 1999). The Notice further warned that: "[a] member of the Settlement Class who fails to submit complete, valid and timely proof of claim and waiver and release of claims forms will be barred from participating in the settlement. If you do not opt out of the Settlement and fail to complete valid and timely proof of claim and waiver and release of claims forms, you will be bound by the Settlement and all orders and judgments entered by the court, and you will have released your claims against Central without any right to the benefits under the Settlement."¹

¹Among other things, the Settlement Agreement provided for a dismissal and a release of claims as follows:

3.18 The purpose of this Settlement is to cause the dismissal with prejudice of all claims against Central by Settlement Class Members. The claims

The February 19, 1999 Fairness Hearing was conducted without incident. Thereafter, on March 4, 1999, the court in the Hart and Santa Clara class actions entered an Order, Final Judgment & Decree wherein it was determined that:

2. The notice given to the members of the Class fully and accurately informed them of all material elements of the proposed settlement; was the best notice practicable under the circumstances; was valid, due and efficient notice to all Class members; and complied fully with California law, the United States Constitution, and other applicable law regarding notice to Class members of a proposed settlement. . . . It is hereby determined that all members of the Class who have not timely elected to be excluded from the Class (hereinafter "Settlement Class Members") are bound by this Order, Final Judgment and Decree.

* * *

4. Class plaintiffs and Settlement Class Members are bound by the terms of the Amended Settlement Agreement, and are barred from initiating, asserting, or prosecuting against Central Sprinkler Corporation and Central Sprinkler Company, as well as any of its predecessors, . . . any claims that were or could have been asserted in the subject complaints sounding in tort, breach of warranty, breach of contract, violation of the Magnuson Moss Warranty Act, or any other theory, and further including but not limited to any and all claims for actual, incidental, consequential or punitive damages relating to the purchase, installation, use, inspection and/or replacement of Omega Sprinklers. . . . All claims for multiple or punitive damages in connection with the claims that were

that are subject to the Settlement are any and all claims that were or could have been asserted in the subject complaints, sounding in tort, breach of warranty, breach of contract, violation of the Magnuson Moss Warranty Act, or any other theory, and further including but not limited to any and all claims for actual, incidental, consequential or punitive damages relating to the inspection and replacement of Omega Sprinklers.

3.19 Upon the entry of the Final Order and Judgment, the actions will be dismissed with prejudice and each Class Member . . . shall be deemed to and does hereby release and forever discharge Central . . . of and from any and all claims of any type or description that relate to or arise from the purchase, installation or use of the Omega Sprinklers . . . that such Releasing Parties have or may have, whether known or unknown, that could have been or in the future might be asserted by any such Releasing Party in the Action or in any action or proceeding, regardless of legal theory. . . .

asserted or could have been asserted in the complaint are released in this Settlement and are barred by this judgment.

* * *

5. Pursuant to the Amended Settlement Agreement, this judgment includes all Settlement Class Members

6. The remediation program as set forth in the Settlement shall constitute the sole and exclusive remedy for any and all released claims of Settlement Class Members. . . .

The Order, Final Judgment & Decree approved and incorporated the terms and conditions of the Amended Settlement Agreement, including the dismissal and release provisions in paragraphs 3.18 and 3.19 thereof, and those providing for continuing jurisdiction by the class action court over the action and all parties, and over all matters pertaining to the implementation and enforcement of the Settlement.

Facts Concerning Central's Sprinkler Relative to the Hotel

Between approximately 1991 and 1994, Omega series sprinklers, manufactured by Central, were installed at the Hotel. In November 1997, the Hotel's loss protection consultant uncovered a possible defect in the Omega sprinkler heads installed at the Hotel. In the next few months, Central tested a two percent sampling of these sprinklers, and the results indicated excessive hydrocarbon contamination in the sprinkler system. Replacement of the sprinkler heads was recommended. In July and August 1998, Central replaced the sprinklers at the Hotel. The new sprinklers were also part of the Omega series.

The October 12, 1998 notice from Central advising its customers of the upcoming Omega recall program (discussed in the preceding section) was sent to the Hotel, and received by it on October 16, 1998. The Omega Notice Packet was likewise sent to the Hotel, and received by it

on November 5, 1998. Thus, the Hotel received each of the documents sent to the class members, but did not appear or otherwise participate in the Hart and Santa Clara class actions or settlements. Nor did it request exclusion by February 6, 1999, or otherwise, from the settlement of those class actions.

On July 19, 2001, CPSC and Central announced a "Voluntary Replacement Program" (VRP). The Hotel received a notice letter and VRP brochure on or about August 30, 2001. However, the VRP concerned certain O-ring seals on certain fire sprinklers; it did not concern or involve Omega fire sprinklers, which were the issue of the Hart and Santa Clara class actions, having concluded two years earlier in March 1999 with the entry of the Order, Final Judgment & Decree. The Omega sprinklers installed at the Hotel in 1998 were NOT included in the list of sprinklers involved in the VRP.

In October 2002, the Hotel forwarded several Omega sprinkler heads to Central for testing. Central recommended that the Hotel replace the sprinkler heads since a recall had taken place in 1998. Central declined the Hotel's request for reimbursement for the replacement of the Omega sprinklers on the ground that the request was untimely under the terms of the Settlement and the Order, Final Judgment & Decree in the Hart and Santa Clara class actions.

The Hotel commenced this action in July 2004. In the First Amended Verified Complaint, dated September 21, 2006 (the Complaint), the Hotel seeks damages in excess of \$900,000 in connection with its replacement of sprinklers at the Hotel. In the complaint, the Hotel asserts theories of fraud, negligent misrepresentation/non-disclosure and constructive fraud. Additionally, the Hotel seeks punitive damages, costs and attorneys' fees.

DISCUSSION

Central contends that the Hotel was a class member that did not elect to be excluded from the Hart and Santa Clara class actions by February 6, 1999, or otherwise, and, therefore, pursuant to the terms of the Order, Final Judgment & Decree, became a class member bound by the Order, Final Judgment & Decree therein. As such, Central contends that it is entitled to summary judgment dismissing the complaint, as barred by the terms of the Amended Settlement Agreement and Order, Final Judgment & Decree, including the waiver and release of claims provisions therein, and the doctrines of res judicata and collateral estoppel.

The Hotel argues, among other things, that Central was obligated, but failed, to disclose the pendency of the class actions and the CPSC proceeding to the Hotel at the time that Central installed these sprinklers in the Hotel in July and August 1998. Having failed to disclose the pendency of these class actions and the CPSC proceeding, the Hotel contends that Central should be equitably estopped from raising res judicata and collateral estoppel as defenses herein. However, the Hotel had in its possession all of the information upon which it bases its fraud, misrepresentation and non-disclosure claims by October or November 1998, when it received the initial notice, followed by the Omega Notice Packet, disclosing the pendency and nature of the class actions, the CPSC proceeding, the allegations regarding defective Omega Sprinklers, the proposed settlement of these actions, and the forms necessary to avail itself of the full panoply of rights available to it, including replacement of the sprinklers without charge as well as instructions on how to opt out of the class, if it so desired. Furthermore, it is clear that, although phrased as fraud and negligent misrepresentation, the underlying claims here pertain to the defective nature of the replacement sprinklers.

Thus, even assuming that Central had a duty to disclose the pendency of the class actions

and the CPSC proceeding to the Hotel at the time that it installed the replacement sprinklers at the Hotel, the Hotel received notice in late 1998 of the pendency of these matters, the underlying claims and the notice of proposed class action settlement. The Hotel's 'assumption' that these documents could not have concerned the replacement sprinklers is not a reasonable assumption. These facts refute any sustainable fraud or negligent misrepresentation causes of action. They likewise refute any basis to invoke equitable estoppel in the Hotel's favor. The court also rejects the Hotel's attempt to collaterally attack the notice documents, claiming, inter alia, that they are ambiguous and/or confusing or that they are not broad enough to encompass the Hotel's claims.

Brooks v Wachovia Bank, N.A. (2007 WL 2702949, 2007 US Dist LEXIS 68079 [US Dist Court, ED Pa 2007]) is directly on point. In Brooks, the plaintiff commenced an action, on his own behalf and as representative of a putative class, against Wachovia Bank for violations of federal and state law in connection with Wachovia's investment of the plaintiff's fiduciary account assets.

Wachovia moved to dismiss the complaint on the ground that the plaintiff's claims were released by the settlement of a prior class action in a Pennsylvania state court entitled Parsky v Wachovia Bank N.A. Wachovia argued that the plaintiff's claims shared the same factual predicate as the Parsky class claims. The plaintiff countered that his claims were not barred by the Parsky settlement because he did not receive notice of the settlement and he did not consent to the terms of the settlement. The plaintiff further argued that, even if he had received the Parsky notice, his claims were not barred because, inter alia: (a) the Parsky notice was too vague and ambiguous to provide sufficient notice; and (b) his claims were based on actions that occurred after the Parsky settlement agreement was executed. The court rejected plaintiff's

arguments and granted Wachovia's motion.

The Brooks court first addressed the plaintiff's attacks on the Parsky notice, and ruled that, in the absence of proof that the judicially-approved notice lacked due process, his objections constituted an impermissible collateral attack on the notice. The court summarized and applied the applicable law, as follows:

A plaintiff's ability to attack collaterally notice of a prior settlement is limited. An absent class member may only collaterally attack notice of a prior settlement if there was a lack of due process. In re Diet Drugs Prods. Liab. Litig., 431 F3d 141, 145-46 (3d Cir 2005). There is "a failure of due process only in those cases where it cannot be said that the procedure adopted fairly insures the protection of the interests of absent parties who are to be bound by it." Id. at 145 (quoting Hansberry v Leg., 311 US 32, 42 [1940]).

Opt-out procedures fully satisfy due process requirements for class action suits. Phillips Petroleum Co. v Shutts, 472 US 797, 812 (1985) (finding that "a fully descriptive notice [sent] first-class mail to each class member, with an explanation of the right to 'opt-out,' satisfies due process"); cf. Prince George Ctr. v U.S. Gypsum Co. (In re Prudential Ins. Co. of Am.), 704 A2d 141, 148 (Pa Super 1997) (finding that, under Pennsylvania law, actual receipt of notice by a class member is not required to bind an absent class member and that a plaintiff is bound by the settlement agreement if he or she had the ability to opt-out and did not choose to do so). In a settlement where opt-out rights were given, there must be "adequate representation by the class representatives, notice of the class proceedings, and the opportunity to be heard and participate in the class proceedings." In re Diet Drugs Prods. Liab. Litig., 431 F3d at 145 (citing Phillips Petroleum, 472 US at 811-12).

Once issues of due process protections for class members have been decided by a court, they may not be relitigated. Id. at 146. Prior to approving a settlement, a court necessarily decides these very issues. A judge of the Philadelphia Court of Common Pleas approved the Parsky settlement, including its method of notice. Consequently, there is no issue of lack of due process. Because adequacy of notice has already been decided, it may not be relitigated. See id. Therefore, plaintiff may not collaterally attack the Parsky settlement agreement.

(Id. at *4-5).

Wilkes v Phoenix Home Mut. Life Ins. Co. (587 Pa 590, 902 A2d 366 [Pa 2006]) is to the

same effect. In Wilkes, the plaintiff argued that a prior settlement in a class action involving similar allegations as alleged by the plaintiff regarding defendant's insurance policies did not affect plaintiff's right to proceed in the subsequent action. Rejecting the plaintiff's attempt to collaterally attack the notice in the prior class action case, the Court stated:

[W]e have no difficulty in rejecting appellees' contention that the notice sent to them concerning the . . . class action did not provide them with sufficient information to comprehend the propriety of their inclusion in that litigation.

* * *

Considering the breadth of information provided in the . . . class notice, question and answer brochure, and cover-letter, appellees clearly were provided with sufficient information apprising them of the pending litigation and a means to present objections to it or to opt out. Due process requirements aside, notice is not an end in itself; in most instances, the recipient of notice must take some affirmative responsive action, whether it be investigation, a formal pleading, etc. The notice provided here alerted appellees to potential problems with their policy, that these problems involved a lack of disclosure by appellant, and that the specified circumstances in the notice were not exhaustive or exclusive. The proverbial ball was then in appellees' court, to make an assessment of their own individual circumstance, i.e., to determine whether the class action adequately protected their interest. Notice is only the first step: the follow-up is generally a matter of individual responsibility. Thus, we hold that the notice in the case sub judice met the requirements of due process.

* * *

Furthermore, we are unpersuaded by appellees' claim that fraud perpetrated by appellant precluded them from discovering the true scope of the . . . litigation. The class notice plainly provided appellees with the necessary information to understand that the [subject] insurance policy would be affected by the class settlement, if they failed to opt out of it, and even provided appellees with avenues to obtain further information, avenues they neglected to pursue. Simply put, the claim of external fraud forwarded here cannot make this facially constitutionally adequate notice constitutionally inadequate. We do not doubt that appellees now regret not having investigated the matter further when put on notice; but they cannot colorably claim they were unaware of the effect of their choice to surrender all claims.

(id. at 384-385; see also Caruso v Candie's Inc., 201 FRD 306 [SD NY 2001] [denying plaintiff's collateral attack of a class action notice where the class action court previously approved the notice as adequate]).

In Brooks, the court also addressed the release contained in the Parsky settlement and determined that it was valid and binding as against Brooks, stating:

The broad language of the Parsky release, typical of general release language, indicates a "clear intent to leave nothing open and unsettled between the parties." see Three Rivers Motors Co. v Ford Motor Co., 522 F2d 885, 895 (3d Cir 1975). The language of the Parsky release is not overly broad, is valid, and provides sufficient notice.

(Id. at *7).

The court, in Brooks, also determined that the plaintiff's claims shared the same factual predicate with those released in the Parsky settlement, and were, therefore precluded. The court noted, but rejected the plaintiff's argument that his claims were distinguishable from those presented in Parsky (id. at * 7). Stated otherwise, "[i]ndividual claims may not escape the res judicata effect of a previous class judgment by asserting different legal theories or ground for recovery when the second lawsuit is based on the same conduct which gave rise to the earlier action and the relief sought is basically the same" (see Newberg on Class Actions § 16.22 [4th ed] ["Individual actions by (absent) class members following class judgment"]). Additionally, in Brooks, as here, the plaintiff argued that the operative facts post-dated the class action settlement. The court rejected this argument: "[a] class member should not be permitted to plead around a broad Release and Waiver negotiated in a complex lawsuit merely by asserting that some facts associated with his claim occurred outside of the Class Period" (id. at * 9, quoting Ross v Metropolitan Life Ins. Co., 411 F Supp 2d 571, 578 n 3 [WD Pa 2006]). Similarly, in Thompson

v Edward D. Jones & Co. (992 F2d 187, 191-192 [8th Cir 1993]), the plaintiff/appellant claimed that the scope of the matters settled in a prior class action did not cover her claims, which she asserted were inherently individual in nature. Based on the broad language used in the Notice and in the Final Judgment in the settled class action, the Eighth Circuit rejected this argument, stating: “[t]here is no exception for those individual claims a class member could have brought at that time if the class member had chosen to opt out of the class prior to settlement” (id. at 190-191, citing TBK Partners, Ltd. v Western Union Corp., 675 F2d 456, 461 [2d Cir 1982]). The Eighth Circuit, in Thompson, further ruled that “appellant had the opportunity to opt out of the class action . . . in order to preserve any individual claims she may have had in addition to those in common with the class. Appellant did not opt out of the class, she did not voice any objection to the terms of the settlement, and she did not seek relief from the Final Judgment. . . . As a class member who chose not to opt out after notice of the terms of the settlement, appellant is bound by the Order and Final Judgment . . . and must abide by its express terms” (id., at 191-192).

Here, the Omega Notice Packet was court-approved and contained detailed information and forms regarding the class actions and the CPSC proceeding, the scope of the actions, the allegations and claims of the parties, identification of the Omega sprinklers, including those installed at the Hotel, necessary forms to submit claims and obtain free replacements of Omega sprinklers, and all applicable deadlines. At that point, the Hotel was in possession of all the information that it contends constituted non-disclosed and misrepresented information by Central.

The court in the Hart and Santa Clara class actions approved the notice plan and found that the notice given to Class Members fully informed them of all material elements of the

proposed settlement, was the best notice practicable, and complied with California law, the United States Constitution, and other applicable law regarding notice to Class Members of a proposed settlement. The Hotel received the Omega Notice Packet, but ignored it, claiming that it considered the documents to be a form letter and “reasonably assumed that it received these documents because it was a Central customer, and not because the Replacement Omega Sprinklers were impacted by the Class Action Settlement.” As stated above, the facts refute the reasonableness of the Hotel’s assumptions, preclude the Hotel’s attempt to collaterally attack the judicially-approved notice, and support the grant of Central’s motion for summary judgment, based, inter alia, upon the application of res judicata and collateral estoppel, and the application of the waiver and release provisions in the Amended Settlement Agreement, and approved by the Order, Final Judgment & Decree.


CONCLUSION

It is ORDERED that the motion by defendants for summary judgment is granted and the complaint is dismissed with costs and disbursements to defendants as taxed by the Clerk of the Court upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: 11/13/07

ENTER:



J.S.C.