

AR Design Studio Architect, P.C. v Goidel

2007 NY Slip Op 33978(U)

December 5, 2007

Supreme Court, Suffolk County

Docket Number: 0027019/2007

Judge: Sandra L. Sgroi

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SUPREME COURT - STATE OF NEW YORK
SPECIAL TERM, PART 19 SUFFOLK COUNTY

Mot Seq: 001 MG

Present:

Hon. SANDRA L. SGROI

PRELIMINARY
CONFERENCE SCHEDULED
JANUARY 17, 2008
CASE JOINED
WITH CIVIL COURT ACTION
CIVIL COURT ACTION
REMOVED TO SUFFOLK

Adj'd Date: 11-15-07

Return Date: 10-14-07

AR DESIGN STUDIO ARCHITECT, P.C.,
Plaintiff,

-against-

JONATHAN GOIDEL, MELISSA GOIDEL, and
496 BEEHIVE, LLC,
Defendant.

BARBARA A. RASMUSSEN, ESQ.
Attorney for Plaintiff
12 Oak Street, Suite 2
Westhampton Beach, New York 11978

GOIDEL & SIEGEL, LLP
Attorney for Defendants
122 East 42nd Street
New York, New York 10168

Upon the following papers numbered 1 to 19 read on this Motion: Notice of Motion and supporting papers 1-8; Affidavit in opposition and supporting papers 9-17; Affirmation in Reply and supporting papers 18-19; it is,

ORDERED that the motion of the Plaintiff for consolidation of this action with an action pending in New York Civil Court is granted to the extent that the action in the New York Civil Court entitled "Melissa Goidel and 496 Beehive, LLC v. AR Design Studio Architect and Donald Jewell," Index No. 37539-2007, is joined with this Suffolk County Supreme Court action and the New York Civil Court action is removed to Suffolk County; and it is further

ORDERED that a copy of this order shall be served on the calendar clerks of Suffolk County and the New York Civil Court; and it is further

ORDERED that the parties are directed to take all steps necessary to facilitate the orderly transfer of the entire file in the New York Civil Court action “*Melissa Goidel and 496 Beehive, LLC v. AR Design Studio Architect and Donald Jewell,*” (Index No. 37539-2007) to Suffolk County; and it is further

ORDERED that a preliminary conference in this matter is scheduled for January 17, 2008 at 9:30 a.m. at the John P. Cohalan Courthouse, Central Islip, New York, Courtroom S23, at which time all discovery will be scheduled.

The Plaintiff has brought this order to show cause and seeks to stay the New York Civil Court action and transferring the pending New York City Civil Court action entitled “*Melissa Goidel and 496 Beehive, LLC v. AR Design Studio Architect and Donald Jewell,*” Index No. 37539-2007 to Suffolk County and consolidating that matter with this matter.

Although the Defendant Jonathan Goidel is an attorney, he also is a party to this action, and therefore the submission of an affirmation instead of an affidavit is improper (see, *CPLR 2106; Slavenburg Corp. v. Opus Apparel*, 53 N.Y.2d 799, 801, 439 N.Y.S.2d 910, 422 N.E.2d 570; *Samuel & Weininger v. Belovin & Franzblau*, 5 A.D.3d 466, 772 N.Y.S.2d 600; *Pisacreta v. Minniti*, 265 A.D.2d 540, 697 N.Y.S.2d 160; *Board of Managers of Ocean Terrace Towne House Condominium v. Lent*, 148 A.D.2d 408, 409, 538 N.Y.S.2d 824). The Court will accept Goidel’s affirmation for the purpose of opposing this motion but, in the future, the Court notes that an affirmation from a party does not have any probative value if the party submitting an affirmation is addressing factual issues.

On August 10, 2007, the Plaintiff filed a mechanic’s lien with the Suffolk County Clerk’s office in the amount of \$24,345.98 and served the Defendants with a copy of the lien. On August 27, 2007, the Plaintiff commenced this action to foreclose the mechanic’s lien in the Suffolk County Supreme Court by filing a summons and verified complaint and a notice of pendency. Prior to the commencement of this action to foreclose the mechanic’s lien, the Plaintiff was served with a summons and complaint wherein Melissa Goidel and 496 Beehive, LLC, Defendants herein, sued the Plaintiff and Donald Jewell¹ as Defendants in an action venued in the New York Civil Court for a claim alleging a breach of contract.

The action herein and the New York Civil Court action both arise out of an agreement of the Plaintiff to provide architectural services for the benefit of the Defendants for the improvement of property located in Westhampton Beach. This real property is owned by 496 Beehive, LLC.

Jonathan Goidel, a Defendant herein, has opposed the motion of the Plaintiff to consolidate the action pending in New York Civil Court with this foreclosure action. Among other things, he alleges that neither he nor his wife has been properly served with process. However, it appears from the affidavit of service that the Goidel

¹ Donald Jewell is the President of AR Design Studio Architect, P.C.

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Defendants were served at their place of business and that the address where they were served is the same as their business address, the location for the law office of Goidel & Siegel, LLP (see, *CPLR* 308). The Defendant 496 Beehive, LLC has been served by service upon the Secretary of State and the individual Defendants have not alleged that this Court lacks jurisdiction over 496 Beehive, LLC.

Here, the two actions involve the same parties, the same contractual relationship between those parties and the same real property which is located in Suffolk County. Under these facts, and to avoid possible inconsistent results in the Civil Court action and the Supreme Court action, either consolidation or joinder will be granted absent a showing of prejudice to a substantial right by the party opposing the motion (see, *City Line Auto Mall, Inc. v. Citicorp Leasing, Inc.*, --- N.Y.S.2d ---, 2007 WL 4127912, 2007 N.Y. Slip Op. 09195, N.Y.A.D. 2 Dept. Nov 20, 2007; *Moor v. Moor*, 39 A.D.3d 507, 835 N.Y.S.2d 593; *Perini Corp. v. WDF, Inc.*, 33 A.D.3d 605, 606, 822 N.Y.S.2d 295; *Gadelov v. Shure*, 274 A.D.2d 375, 711 N.Y.S.2d 896; see generally, *Fourteen Hills Bldg. Corp. v. Usi*, 43 A.D.3d 859, 841 N.Y.S.2d 676; *H. C. H. Contractors, Inc. v. Docutel Corp.*, 47 A.D.2d 539, 363 N.Y.S.2d 112). Suffolk, the place where the property is located and the contract services were performed, is the proper venue for this action (see, *CPLR* 507; see, *Antonacci v. Antonacci*, 273 A.D.2d 185, 186, 709 N.Y.S.2d 432; *Avis Rent-A-Car Sys. v. Edmin Realty Corp.*, 209 A.D.2d 656, 657, 619 N.Y.S.2d 334).

Since this Court has jurisdiction over the Defendant 496 Beehive, LLC. and both the Civil Court action and the Supreme Court action concern the same contractual transactions, the motion to consolidate will be granted to the extent that the Court will join the Civil court action with this foreclosure action and direct that the matter in New York County be transferred to Suffolk County and assigned to Justice Sgroi (see, *GAM Property Corp. v. Sorrento Lactalis, Inc.*, 41 A.D.3d 645, 838 N.Y.S.2d 633).

Consolidation is the organic merger of separate causes of action which results in one judgment, verdict and bill of costs. A joint trial maintains the integrity of each action and results in separate judgments or verdicts and bills of cost in regard to each action (see, *Bank of New York v. Rodgers*, 40 A.D.2d 777, 337 N.Y.S.2d 620). A joint trial is properly ordered when one party has a dual role of plaintiff and defendant which may lead to confusion among jurors if consolidated (see, *Padilla v. Greyhound Lines, Inc.*, 29 A.D.2d 495, 288 N.Y.S.2d 641). Since two of the Defendants in the Supreme Court action are Plaintiffs in the Civil Court action and the Plaintiff in this action is a Defendant in the Civil Court action, the motion will be granted to the extent that the matters will be joined for trial.

The court directs that a separate Note of Issue and Certificate of Readiness be filed and separate court fees be paid for each action. Each party shall be entitled to enter a separate bill of costs.

The joint trial shall be held in the Supreme Court of the County of Suffolk. A consideration in determining the place of trial is a more favorable calendar, it is the place where the cause of action arose and the action commenced here is inclusive as to the relevant issues (see, *Padilla v Greyhound Lines, Inc.*, 29 AD2d 495, 288 NYS2d 641; *Fields v Zwiebel*, 36 AD2d 808, 320 NYS2d 309).

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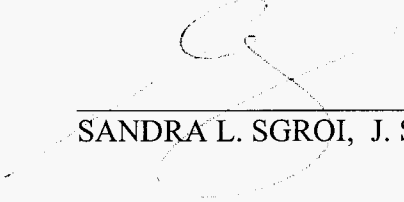
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Upon service of a copy of this order on him/her the Clerk of the New York Civil Court is directed to transfer the file in "Melissa Goidel and 496 Beehive, LLC v. AR Design Studio/Architect and Donald Jewell," index # 37539-2007, to the County Clerk of Suffolk County.

A copy of this order must be served on the calendar clerks of both Suffolk County and the New York Civil Court. The parties are responsible to take all steps necessary to facilitate the orderly transfer of all files from the New York Civil Court to Suffolk County.

The Defendants may raise their jurisdictional objections here in Suffolk County if they continue to assert that they have not been properly served pursuant to the procedure set forth in the CPLR.

Dated: 12/5/07



SANDRA L. SGROI, J. S. C.