

RLI Ins. Co. v City of New York
2008 NY Slip Op 30268(U)
January 29, 2008
Supreme Court, New York County
Docket Number: 0111112/2007
Judge: Karen Smith
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. KAREN SMITH

PART 62

Justice

Index Number : 111112/2007

RLI INSURANCE COMPANY

VS.

CITY OF NEW YORK

SEQUENCE NUMBER : 002

DISMISS ACTION 5

INDEX NO. _____

MOTION DATE 11/28/07

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to ~~for~~ dismiss this action

PAPERS NUMBERED

1-2

3-4

5

Notice of Motion/ Order to Show Cause _____ 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 annexed memorandum decision and order

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

FILED

JAN 3 1 2008

NEW YORK COUNTY CLERK'S OFFICE

Dated: 1/29/08

KS SS

HON. KAREN SMITH 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 62

-----X
RLI INSURANCE COMPANY,

Plaintiff,

-against-

THE CITY OF NEW YORK,

Defendants.

Index No.: 111112/2007

Motion Seq.: 002

Motion Date: 11/28/2007

DECISION AND ORDER

FILED
X
JAN 31 2008

PRESENT: KAREN S. SMITH, J.S.C.:

Defendant's motion to dismiss the complaint herein is denied with prejudice except for the portions of the motion in which the defendant seeks dismissal on the basis that the instant dispute is subject to the alternate dispute resolution provisions of the agreements between the parties and the PPB rules of the City of New York. As to this remaining issue, the Court denies defendant's motion with leave to resubmit.

Plaintiff ("RLI") was a surety for a contractor which had been declared in default of its obligations pursuant to two contracts with the defendant ("CNY"). RLI stepped in to complete the contracted work pursuant to its surety bond. RLI negotiated two separate completion contracts with CNY for the completion of certain of the defaulted contractor's work. Thereafter, RLI brought this action seeking a declaratory judgment to the effect that 1) the "CNY" is in material default of the contracts for failing to pay RLI for its services on a timely basis, 2) RLI is excused from further performance on the contracts by reason of CNY's default and 3) directing CNY to pay RLI all sums it has earned under the contracts. Additionally, RLI seeks a money

judgment as against CNY. CNY has submitted a pre-answer motion to dismiss the complaint; 1) for failure to state a cause of action, 2) for RLI's failure to comply with the Alternate Dispute Resolution provisions of the agreements between the parties and the PPB rules and 3) based upon the defense that RLI has been fully paid as demonstrated by documentary evidence. RLI opposes the motion.

CNY contends that RLI's; "... complaint fails to state a cause of action because, as a matter of law, the City is not in breach of the completion agreements..." with RLI. A motion to dismiss a complaint pursuant to CPLR §3211(a)(7) requires the court to accept the allegations of the complaint as true and construe them in the light most favorable to the plaintiff. Whether or not a defendant may ultimately disprove the allegations is not a proper consideration for the court when determining if a complaint states a cause of action. In the instant matter, RLI's complaint is sufficient to put CNY on notice of its claim (which relates not only to the completion agreements but also to the underlying contractor's agreements) and, as written, the allegations contained in the complaint state a legally cognizable claim. Therefore, this branch of CNY's motion must be denied.

Similarly, the branch of CNY's motion seeking dismissal based upon documentary evidence must be denied. CNY has submitted copies of some of its internal records to indicate that other than certain amounts which are disputed between the parties and currently the subject of Alternate Dispute Resolution proceedings, RLI has been fully paid all amounts CNY alleges are due RLI pursuant to the completion agreements. The documents submitted by CNY have not conclusively resolved the issues raised in the instant litigation. In order to do so, CNY would, at least, need to submit documentation of all payment requests made by RLI to date and

[* 4]

documentation which could be mathematically correlated with those requests in order to show proper payment. The documents submitted by CNY with the instant motion are not sufficient to do so. Therefore, it cannot be said that CNY has met its burden of proof on this branch of its motion.

The branch of CNY's motion to dismiss for failure to comply with the Alternative Dispute Resolution process provided in the contracts is more problematic. While the court is the proper forum for a determination of the threshold question of whether a dispute is the subject of a valid agreement to engage in such an alternative process, the modern trend is for courts to defer to the resolution of controversies by alternative dispute mechanisms where the parties have entered into an agreement to engage in an alternative dispute resolution.

In the instant matter, CNY contends that the dispute involved in this litigation is subject to the dispute resolution process provided in Article 25 of the contracts and the PPB Rules of the City of New York. RLI, on the other hand, argues that the instant controversy is not one to which Article 25 of contracts applies. Neither party has provided the court with a copy of Article 25 of the contracts¹ or the PPB Rules in connection with the instant motion. Thus, the instant motion papers do not provide the court with sufficient information to be able to make a determination of whether the current dispute falls within the category of disputes for which the contracts or the PPB Rules provide an Alternative Dispute Resolution Process. Therefore, as the moving party, CNY not met its burden of proof on this issue and this branch of its current motion

¹ RLI did provide the Court with a copy of the underlying contracts in connection with another currently pending motion (Sequence #1) in this matter. Nevertheless, CPLR §2214 requires, absent a showing of good cause, that supporting papers be specified in the Notice of Motion, be served with the motion papers and be filed with the court in order to be considered on a pending motion.

[* 5]
is denied with leave to resubmit upon proper papers. Accordingly, it is;

ORDERED that CNY's instant motion is denied and it is further;

ORDERED that, upon service of a copy of this decision and order upon CNY, together with a notice of entry hereof; 1) CNY may, within ten days, submit a motion to stay or dismiss the instant proceedings and compel RLI to engage in any applicable Alternate Dispute Resolution process provided in the contracts applicable to this controversy or PPB Rules or, 2) CNY shall, within 20 days, answer the complaint herein.

The foregoing constitutes the decision and order of this court.

Dated: January 29, 2008

ENTER:



Hon. Karen S. Smith, J.S.C.

FILED
JAN 31 2008
NEW YORK
COUNTY CLERK'S OFFICE