

Woori Am. Bank v 885 E. 138th St., LLC

2008 NY Slip Op 32087(U)

July 23, 2008

Supreme Court, New York County

Docket Number: 0600805/2007

Judge: Eileen Bransten

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

PRESENT: BRANSTEN
Justice

PART 3

Index Number : 600805/2007
WOORI AMERICA BANK
vs.
885 EAST 138TH STREET, LLC
SEQUENCE NUMBER : 002
DISMISS ACTION

C

INDEX NO. 600 805 / 07
MOTION DATE 4/30/08
MOTION SEQ. NO. 002
MOTION CAL. NO. _____

on this motion to/for _____

PAPERS NUMBERED
<u>1</u>
<u>2,3</u>
<u>4</u>

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 IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM**

FILED

JUL 25 2008

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 7-23-08

Eileen Bransten

HON. EILEEN BRANSTEN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

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

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

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WOORI AMERICA BANK

Plaintiff,

Index No.: 600805/07
Motion Date: 4/30/08
Motion Sequence No.: 002

-against-

885 EAST 138th STREET, LLC; CARNEGIE LINEN
SERVICES, INC.; CARNEGIE HOTEL CLEANERS,
INC.; and NEWTEX, INC., et al,

Defendants.

-----X

PRESENT: EILEEN BRANSTEN, J:

Defendants Carnegie Linen Services, Inc. and Carnegie Hotel Cleaners, Inc. (collectively "Carnegie") move for dismissal pursuant to CPLR 3211, 1001(a), and 1003. Plaintiff Woori America Bank ("Woori") opposes the motion and requests to preserve the status quo pursuant to CPLR 7102(d)(2) and CPLR 6313(c).

BACKGROUND

Defendant Newtex, Inc. ("Newtex") leased premises from Defendant 885 East 138th Street ("885") for the purpose of operating a dry-cleaning business. Newtex gave Woori a security interest in certain fixtures and equipment located in the premises, which it perfected by filing a financing statement in accordance with New York's Uniform Commercial Code (see Shapiro Aff, Ex. A, Ex. B).

FILED
JUL 25 2008
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NEW YORK

Newtex filed a Chapter 11 bankruptcy petition in the Southern District of New York on October 20, 2005 and defaulted on its lease-obligations. 885 evicted it and leased the premises to Carnegie, which also operated a dry-cleaning business there. Carnegie allegedly continues to use the equipment and fixtures in which Woori holds a security interest. During the bankruptcy proceedings, Woori and other creditors claimed security interests in the same equipment and fixtures (*id.*, Ex. C). Woori commenced this action to recover said assets, in which it claims a superior security interest, in March 2007.¹ The bankruptcy proceeding was subsequently dismissed.

In this motion, Carnegie moves to dismiss the complaint pursuant to CPLR 3211(a)(10), 1001(a), and 1003 for Woori's alleged failure to name a necessary party.² Woori opposes the motion and requests an order directing Carnegie not to remove the equipment and fixtures from its location under CPLR 7102(d)(2) and 6313(c).³

¹ Newtex and 885 are no longer parties to this action.

² Carnegie also moved to dismiss or stay this action pursuant to CPLR 3211(a)(2) & (4) alleging that the Bankruptcy Court, and not this Court, had subject matter jurisdiction over the equipment. Since that action was dismissed, that portion of the motion is denied as moot.

³ Woori does not move by Notice of Cross Motion. Rather, it concludes its Memorandum of Law in Opposition with a request for temporary restraints. In its reply, Carnegie offers arguments in opposition.

DISCUSSION

Motion to Dismiss

CPLR 3211(a)(10) authorizes a court to dismiss an action when it should not proceed in the absence of a person who should be a party. Necessary parties are “persons who ought to be parties if complete relief to those persons who are parties” cannot be granted or who “might be inequitably affected by the judgment” (CPLR 1001[a]). “Nonjoinder of a [necessary party] is grounds for dismissal without prejudice” (CPLR 1003).

Here, Woori seeks to recover certain equipment in which it has a security interest from Carnegie. During the course of Newtex’s bankruptcy proceedings, the following parties, in addition to Woori, claimed to hold a security interest in the equipment and fixtures at issue: CDC Capital, Inc., US Bancorp, All Points Capital Corp., Elk Associates Funding Corp., Lakeland Bank Equipment Leasing, Republic Leasing Company, Inc., Butler Capital Corp., and Bank of the West (*see Herzog Aff., Ex. 7*). All of these entities are necessary parties in this replevin action because a judicial determination regarding possessory rights will affect all competing claimants (*see Williams v Somers, 91 AD 2d 545 [1st Dept 1982]*, [in an action for a declaration of possessory rights, all those with such an interest are necessary parties under CPLR 1001(a)]).

Woori was on notice before it commenced this action that others also laid claim to the same assets, and that their purported rights could be affected by this Court’s determination.

Generally, failure to join these parties would warrant this action's dismissal (*see Steinhardt Group Inc v Citicorp*, 303 AD2d 326 [1st Dept 2003] [if the appeal had been timely filed, dismissal pursuant to CPLR 3211(a)(10) for failure to name a necessary party would have been affirmed]). However, dismissal should be the last resort (*see Saratoga County Chamber of Commerce v Pataki*, 100 NY2d 801 [2003]). If this Court were to grant dismissal at this juncture, it would only delay the administration of justice with respect to the rights in dispute.

CPLR 1001(b) authorizes a court to summon a necessary party into an action (*see Marks v Zucker*, 118 AD2d 452 [1st Dept 1982]). Accordingly, Woori is directed to join those parties with competing security-interest claims to this action within 30 days from the date of notice of entry of this order.

Request for a Restraining Order

Woori requests a restraining order pursuant to CPLR 7102(d) and 6313(c) to prevent Carnegie from removing the equipment from its premises. CPLR 7102(d)(2) only applies to a motion for an order of seizure. Woori has not sought such an order pursuant to CPLR 7102(d)(1). Moreover, it did not comply with the provisions of CPLR 7102(c), which requires an affidavit setting forth specific information to support the motion for an order of seizure. The request is therefore denied.

Accordingly, it is

ORDERED that the motion to dismiss pursuant to CPLR 3211(a)(2) and (4) is denied as moot; and it is further

ORDERED that the motion to dismiss pursuant to CPLR 3211(a)(10) is denied; and it is further

ORDERED that Woori is to join those parties with competing security-interest claims within 30 days from the date of notice of entry of this decision; and it is further

ORDERED that Woori's request for a restraining order is denied.

This constitutes the Decision and Order of the Court

Dated: New York, New York
July 23, 2008

FILED
JUL 25 2008
COUNTY CLERK'S OFFICE
NEW YORK
ENTER



Hon. Eileen Bransten

HON. EILEEN BRANSTEN