

Krentsel v Loews Miami Beach Hotel Operating Co., Inc.
2009 NY Slip Op 32281(U)
October 1, 2009
Supreme Court, New York County
Docket Number: 103823/08
Judge: Walter B. Tolub
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
WALTER B. TOLUB

PRESENT:

PART 15

Index Number : 103823/2008
KRENTSEL, HEATHER
vs
LOEWS HOTELS HOLDING
Sequence Number : 002
AMEND CAPTION/PARTIES

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ his 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

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

FILED
OCT 02 2009
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 10/01/09

WALTER B. TOLUB J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check If appropriate: DO NOT POST REFERENCE

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

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

-----x
HEATHER KRENTSEL

Plaintiff,

-against-

LOEWS MIAMI BEACH HOTEL OPERATING
COMPANY, INC.,

Defendant.
-----x

Index No.103823/08
Mtn Seq.002

FILED
OCT 02 2009
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NEW YORK

WALTER B. TOLUB, J.:

This is Plaintiff's motion for an order amending the caption of this action to substitute Loews Holding Corp as the Defendant, to reargue this Court's June 25, 2009 decision and for this Court to apply New York Law.

Facts

As stated in this Court's June 25, 2009 decision, Plaintiff Heather Krentsel, a resident of New York, claims that her wedding band and engagement ring were taken from her room while she was staying at Defendant Loews Miami Beach Hotel on February 16, 2008. Plaintiff values the rings at \$10,000 and \$60,000, respectively in her Bill of Particulars; however, in her statement to the Miami Beach Police, Plaintiff reported the value of the rings as \$5,000 and \$35,000.

Also in her statement to police, Plaintiff claimed that she removed her rings from her finger and placed them on the top of a

cabinet in the room. She further claimed that on Saturday, February 16, 2008 at about 9:00 am, she left the room and left the rings where they were placed the previous night. Plaintiff did not realize that the rings were missing until February 17, 2008. Plaintiff further reported that she had owned the rings for four years, that they were uninsured, and that she would not be able to furnish a receipt for them.

According to the police, the room showed no signs of forced entry, its door and lock functioned properly, and the hotel had no security cameras monitoring the door. Plaintiff claims that the rings were taken due to Defendant's negligence in its hiring and supervision of employees as well as in its maintenance and operation of the hotel.

By decision dated June 25, 2009, this Court held that this action was properly commenced in New York and that Florida law would apply.

Plaintiff now seeks an order permitting it to amend the caption and substitute Loews Holding Corp as the Defendant. The action was initially brought against Loews Holding Corp which answered the Complaint (Plaintiff's Ex. 3). In December 2008, while the parties were trying to settle the matter, Plaintiff claims that Loews Holding Corp's attorney promised to settle the action if the parties stipulated to the caption being amended so

that Loews Miami Beach Hotel Operating Company, Inc., would be named as Defendant (Plaintiff's Ex. 5 and 6). Plaintiff signed the stipulation but the matter was not settled. Defendant denies that the settlement was conditioned on the stipulation being signed.

Additionally, Plaintiff seeks to reargue this Court's June 25, 2009 decision arguing that Plaintiff's Ex. 6, the letter sent to Defendant's counsel upon the signing of the stipulation, is new evidence that should be considered by the court.

Discussion

Motion to Amended the Caption

CPLR 305[c] provides that amendments to pleadings shall be freely granted absent a showing of prejudice (CPLR §305[c]). Here Plaintiff seeks to substitute the original Defendant, Loews Holding Corp [a New York Corporation] (Loews Holding), for the Defendant Loews Miami Beach Hotel Operating Company, Inc. (Loews Miami).

Loews Holding cannot merely be substituted as a Defendant as the two companies are separate entities. However, since Loews Holding was on notice of this action because it was the original named defendant, Loews Holding would not suffer any prejudice and may be added as an additional party (CPLR §§1003, 305[a] and

3025[d]¹).

Motion to Renew

On a motion for leave to renew, Plaintiff must show that: (1) that there are new facts not presented in the prior motion that would change the prior determination; or (2) that there has been a change in the law that would change the prior determination (CPLR 2221[e]). In addition, the moving party must present a reasonable justification for not presenting the new facts on the prior motion (CPLR 2221[e][3]; Peebles v. New York City Housing Authority, 298 AD2d 189 [1st Dept 2002]). Both requirements of CPLR 2221 must be met (CPLR 2221; American Audio Service Bureau Inc v. AT&T Corp, 33 AD3d 473 [1st Dept 2006]).

Here, Plaintiff seeks to renew based on its failure to submit the correspondence regarding the stipulation to amend the caption from Loews Holding to Loews Miami (Plaintiff's Ex. 6). Plaintiff, in essence, argues that leave to renew should be granted and that New York law therefore applies.

The letter regarding the stipulation, dated January 5, 2009, states:

As per your correspondence, enclosed hereto,

¹CPLR §1003: Parties may be added at any stage of the action by leave of court
CPLR § 305[a]: Summons and Supplemental Summons
CPLR § 3025[d]: Response to Amended and Supplemental Pleadings.

please find a fully executed Stipulation amending the subject action.

We Look forward to discussing an amicable resolution of this matter in the near future. If you have any questions, please do not hesitate to contact the undersigned.

(Plaintiff Ex. 6).

Plaintiff fails provide a reasonable explanation as to why this document was not offered in the original motion papers. More importantly, Plaintiff fails to demonstrate how the correspondence about the stipulation to amend the caption would change the prior determination of this court. Were this Court to consider the January 5, 2009 letter at the time the determination was made, the letter would have no bearing on this Court's determination to apply Florida law.

Therefore, Plaintiff's motion to renew must be and is denied.

Accordingly, it is

ORDERED that Plaintiff's motion to Amend is granted to the extent that it may add Loews Holding as a party; and it is further

ORDERED that Plaintiff's motion to renew is denied; and it is further

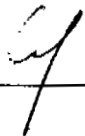
ORDERED that Plaintiff's motion to apply New York law is

denied at this time.

Counsel for all parties are directed to appear for a discovery conference on December 4, 2009 at 11:00AM in room 335 at 60 Centre Street.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 10/27/09



HON. WALTER B. TOLUB, J.S.C.

FILED
OCT 02 2009
COUNTY CLERK'S OFFICE
NEW YORK