

East Houston Partners, LLC v Citi Lending Servs. Corp.
2009 NY Slip Op 33475(U)
December 1, 2009
Supreme Court, New York County
Docket Number: 112343/09
Judge: Judith J. Gische
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10

EAST HOUSTON PARTNERS, LLC,

Plaintiff,

-against-

CIT LENDING SERVICES CORP,

Defendant.

Decision/Order

Index No.: 112343/09

Seq. No. : 001

Present:

Jess. Judith J. Gische
J.S.C.

FILED
DEC 03 2009
COUNTY OF NEW YORK
CLERKS OFFICE

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

Papers

Pltf's motion [consolidate] w/SJC affirm, exhs

Numbered

1

Upon the foregoing papers, the decision and order of the court is as follows:

Plaintiff moves pursuant to CPLR § 602 an order consolidating this action ("Action 1") with a second action bearing index number 113222/09 ("Action 2"). The caption in Action 2 is CIT Lending Services Corp. v. East Houston Partners, LLC et al. None of the defendants in this action or any of the other parties in Action 2 have submitted any opposition to the motion, although proof of service has been provided.¹

In Action 1, plaintiff seeks to recover damages in connection with CIT Lending Services Corp.'s ("CIT") alleged failure to timely and completely fund a \$19,475,000 loan commitment (the "Project Loan") it made to plaintiff in connection with plaintiff's acquisition and renovation of the real property known as 41-45 East Houston Street,

¹ A stipulation dated November 16, 2009 has been submitted wherein some of the parties to Action 1 and 2 have agreed to the relief sought in this motion. However, not all of the parties have signed the stipulation.

New York, New York, Block 509, Lot 19. Plaintiff's causes of action against CIT include breach of contract, breach of the covenant of good faith and fair dealing, promissory estoppel and equitable estoppel.

Action 2 is a foreclosure action commenced by CIT on the Project Loan against plaintiff and plaintiff's principals Kyle Ransford and Trevor Stahelski.

The court has the discretion to order the consolidation of actions where common questions of law or fact exist. CPLR 602 [a]; Bradford v. John A. Coleman Catholic High School, 110 AD2d 965 (3d Dept 1985). It is unnecessary that all the facts and issues be the same, but there must be "at least some important rules of law and fact in common to both actions." Id. at 966. Thus, while Action 1 and Action 2 do not need to be identical in every respect, individual issues should not predominate. Bender v. Underwood, 93 AD2d 747 (1st Dept 1983). Where the actions arise from the same incident, have substantially the same facts and issues of law, and the same witnesses would testify at both trials if actions were tried separately, consolidation is appropriate. Burger v. Long Island Rail Road Company, 24 AD2d 509 (2d 1965) [different damages, but same collision, same witnesses].

Here, Actions 1 and 2 involve the same parties, arise out of the same operative set of facts and will require legal analysis of the same causes of action. The motion has been submitted without opposition, and therefore, no one has demonstrated prejudice to a "substantial right" resulting from the consolidation (see Maigur v. Saratogian, 47 AD2d 982 [3d Dept 1975]). Accordingly, the motion to consolidate is granted and Action 1 and 2 are hereby consolidated.

Conclusion

In accordance herewith, it is hereby:

ORDERED that the motion to consolidate is granted; and it is further

ORDERED that the actions entitled CIT Lending Services Corp. v. East Houston Partners LLC, et al., Index No. 113222/09 is hereby consolidated under East Houston Partners LLC v. CIT Lending Services Corp. et al., with the following caption:

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK: PART 10

EAST HOUSTON PARTNERS, LLC,

Index No.: 112343/09

Plaintiff,

-against-

CIT LENDING SERVICES CORP *et al.*

Defendants.

CIT LENDING SERVICES CORPORATION,

Index No.: 113222/09

Plaintiff,

-against-

EAST HOUSTON PARTNERS LLC, KYLE
RANSFORD, TREVOR STAHELSKI, A&B
CAULKING COMPANY, INC., BAYPORT
CONSTRUCTION CORP., FSM ELECTRICAL
CORPORATION, SARAMAC INTERNATIONAL
INC., STONE DIVERSIFIED SERVICES, PARK
AVENUE BUILDING AND ROOFING SUPPLIES
LLC, KISKA GROUP, LTD, ROTAVELLE
ELEVATOR INC., UNITED RENTALS NORTH
AMERICA, SOLCO PLUMBING SUPPLY, INC.,
MALOTA PLUMBING CONTRACTING CORP.,
THOMAS S. BROWN ASSOCIATES, INC., ERA-

USA CONTRACTING LLC, COLGATE
SCAFFOLDING & EQUIPMENT CORP., A&E
SURFACES CO., and JOHN DOE #1 THROUGH
JOHN DOE #10,

Defendants,

-----X

and it is further

ORDERED that upon service on the Clerk of the Court of a copy of this Order with Notice of Entry, the Clerk shall consolidate the papers in the actions hereby consolidated, and shall mark this consolidation in the Court's files; and it is further

ORDERED that a copy of this order with notice of entry shall also be served upon the Clerk of the Trial Support Office, who is hereby directed to mark the Court's records to reflect the consolidation; and it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that a preliminary conference be held on January 14, 2010 at 9:30 a.m.

Any requested relief not expressly addressed herein has nonetheless been considered by the court and is hereby expressly denied.

This shall constitute the decision and order of the Court.

Dated: New York, New York
December 1, 2009

So Ordered:

FILED

DEC 03 2009

NEW YORK
COUNTY CLERK'S OFFICE

HON. JUDITH J. GISCHE, J.S.C.