

Van Der Broek v J. Lawrence Const. Corp.

2010 NY Slip Op 31762(U)

June 30, 2010

Supreme Court, New York County

Docket Number: 101037/07

Judge: Emily Jane Goodman

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

PRESENT: EMILY JANE GOODMAN
Justice

PART 17

Index Number : 101037/2007
BROEK, SANDRA VAN DEN
VS.
J. LAWRENCE CONSTRUCTION
SEQUENCE NUMBER : 004
AMEND SUPPLEMENT PLEADINGS

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

on this motion to/for _____

PAPERS NUMBERED

_____ 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

attached

FILED
decided on
JUL 08 2010
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 6/30/10

[Signature]

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):

EMILY JANE GOODMAN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 17

FILED
JUL 8 2017
COUNTY CLERK'S OFFICE
NEW YORK

-----X
SANDRA VAN DER BROEK,

Plaintiff,

Index No. 101037/07

-against-

J. LAWRENCE CONSTRUCTION CORP. and AQUA
SYSTEM PLUMBING & HEATING DESIGN LTD.,

Defendants.

-----X
AQUA-SYSTEMS PLUMBING & HEATING DESIGN,
LTD., s/h/a AQUA SYSTEM PLUMBING & HEATING
DESIGN LTD.,

Third-Party Plaintiff,

Index No. 590092/08

-against-

68 EAST 86TH STREET OWNERS CORP.,

Third-Party Defendant.

-----X
J. LAWRENCE CONSTRUCTION CORP.,

Second Third-Party Plaintiff,

Index No. 590191/08

-against-

THE HARTFORD INSURANCE COMPANY,

Second Third-Party Defendant.

-----X
Emily Jane Goodman, J.:

FILED
JUL 08 2017
COUNTY CLERK'S OFFICE
NEW YORK

In this property damage action arising from a ruptured steam pipe, second third-party defendant The Hartford Insurance Company of the Midwest, incorrectly sued herein as The Hartford Insurance Company (Hartford), moves to amend its second third-party answer to plead three additional affirmative defenses against second third-party plaintiff J. Lawrence Construction Company (Lawrence).¹

The rupture of the pipe allegedly occurred in October 2005. Plaintiff Sandra Van Der Broek commenced an action against Lawrence in January 2007 (the main action). Notice of Motion, Ex. A, Summons and Complaint.

Lawrence, sued in the main action as a party responsible to the plaintiff for the property damage, in turn sued Hartford for insurance coverage, claiming to be an additional insured on a general liability insurance policy Hartford issued to third-party plaintiff Aqua-Systems Plumbing & Heating Design, Ltd. Lawrence's summons and complaint were served on Hartford in February 2008. *Id.*, Ex. B, Second Third-Party Complaint. Hartford answered in April 2008. *Id.*, Ex. C, Second Third-Party Answer.

Hartford's answer contains 12 affirmative defenses. The fourth affirmative defense states that "Hartford is not liable to

¹A similar motion has been made in the action *Pacific Indemnity Insurance Company v J. Lawrence Construction Corp.*, Index No. 111764/07, which is also before this court.

Second Third-Party Plaintiff, in whole or in part, because of Second Third-Party Plaintiff's failure to perform or comply with all of its obligations and/or conditions under the Hartford policy." Second Third-Party Answer, at 5.

Hartford served interrogatories on Lawrence. In Lawrence's answers to the interrogatories, Lawrence admitted that it was aware of the occurrence on October 24, 2005, but that it did not notify Hartford until November 16, 2006, more than a year later. Further, Lawrence failed to apprise Hartford of the main action until August 30, 2007, more than seven months after the main action was commenced.

As a result, Hartford wishes to "clarify, supplement and/or amend" its second third-party answer (Notice of Motion, at 2) to plead three additional affirmative defenses, to wit (1) "Hartford was not provided with timely and/or proper notice of the occurrence by Second Third-Party Plaintiff in violation of the terms and conditions of the Hartford Policy"; (2) "Hartford was not provided with timely and/or proper notice of the underlying action by Second Third-Party Plaintiff in violation of the terms and conditions of the Hartford Policy"; and (3) "Second Third-Party Plaintiff failed to immediately send to Hartford copies of any demands, notices, summonses or legal papers received in connection with the underlying action in violation of the Terms and conditions of the Hartford Policy."

Lawrence requests that the motion be denied, claiming that the amendments do not add anything of substance to Hartford's answer, and that Lawrence will be prejudiced due to Hartford's alleged delay in asking to amend.

"Leave to amend pleadings 'shall be freely given' absent prejudice or surprise resulting directly from the delay."
McCaskey, Davies and Associates, Inc. v New York City Health & Hospitals Corp., 59 NY2d 755, 757 (1983), quoting CPLR 3025 (b); see also *Spiegel v Grinrich*, ___AD3d___, 2010 NY Slip Op 04645 (1st Dept 2010).

While Hartford's three amended affirmative defenses fit within the general language of affirmative defense four, in that the three types of late notice are all a type of "failure to perform or comply with all of its obligations and/or conditions under the Hartford policy," they add a specificity to the second third-party answer which is of value. The amended defenses clarify the issues at hand, and allow Lawrence the opportunity to respond to specific charges, rather than generalities. In the absence of any prejudice to Lawrence at all, stemming from delay or otherwise, the motion is granted, and the proposed second third-party answer is deemed served upon Lawrence in the form as annexed to the motion.

Accordingly, it is

ORDERED that the motion brought by Hartford Insurance

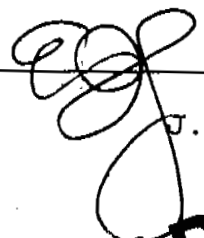
Company of the Midwest, incorrectly sued herein as The Hartford Insurance Company, to amend its second third-party answer in the form proposed in its motion papers is granted; and it is further

ORDERED that the proposed amended second third-party answer is deemed served upon second third-party plaintiff J. Lawrence Construction Company, upon service of a copy of this Decision and Order.

This Constitutes the Decision and Order of the Court.

Dated: June 30, 2010

ENTER:



J.S.C.
FILED
JUL 08 2010
COUNTY CLERK'S OFFICE
NEW YORK