

Canon Point N., Inc. v City of New York
2010 NY Slip Op 33762(U)
October 20, 2010
Supreme Court, New York County
Docket Number: 101157/04
Judge: Judith J. Gische
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. JUDITH J. GISCHE
J.S.C.*Justice*

PART 10

Index Number : 101157/2004

CANNON POINT NORTH

VS.

CITY OF NY

SEQUENCE NUMBER : 011

STRIKE JURY DEMAND

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. 011

MOTION CAL. NO. _____

1 this 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

FILED

OCT 22 2010
NEW YORK
COUNTY CLERK'S OFFICE

Motion(s) and cross-motion(s)
decided in accordance with
the annexed decision/order
of even date.

Dated: 10/20/10

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

Check one: ☐ FINAL DISPOSITION

☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

☐ REFERENCE

☐ SUBMIT ORDER/JUDG.

☐ SETTLE ORDER /JUDG.

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 10

Canon Point North, Inc.,

Plaintiff,

Decision/Order

-against-

Index No.: 101157/04

Seq. No.: 011

The City of New York, The City of New York
Department of Transportation, The City of New York
Department of Buildings, The City of New York
Department of Housing Preservation and Development,
The State of New York and The State of New York
Department of Transportation,

Defendants.

FILED

OCT 22 2010

NEW YORK
COUNTY CLERK'S OFFICE

Present:

Hon. Judith J. Gische, JSC

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

PAPERS

NUMBERED

Notice of Motion, RBG affirm., exhibits.....1
BB affirm. exhibits.....2

The plaintiffs, Canon Point North, Inc. ("CPN") move to strike defendants' ("the city's") demand for a jury.

On or about January 18, 2008 CPN filed its Second Amended Complaint. On or about February 15, 2008 the City filed its Answer to the Second Amended Complaint and Counterclaims. On or about May 1, 2009 the City filed a Note of Issue demanding a jury trial on all issues. CPN argues that because the counterclaims are both legal and equitable in nature, the City has waived its right to a jury trial on all claims made in this case. The City argues that it is entitled to a jury on the claims and counterclaims

that are solely legal in nature. It further argues that the case should be tried in a single trial, in which the jury first determines the legal issues.

The deliberate joining of legal and equitable claims for relief arising, out of the same transaction, amounts to a waiver of a demand for a jury trial. CPLR §§ 4101, 4102(c); Anesthesia Associates of Mount Kisco LLP v. Northern Westchester Hospital Center, 59 AD3d 481 (2nd dept 2009); Chichilnisky v. the Trustees of Columbia, 52 AD3d 206 (1st dept. 2008). Once the right to a jury trial has been intentionally lost by such joining, any subsequent dismissal, settlement or withdrawal of the equitable claims will not revive the right to trial by jury. Anesthesia Associates of Mount Kisco LLP v. Northern Westchester Hospital Center, supra. The fact that a plaintiff may have waived its own right to a jury trial, by joining a legal claim with an equitable claim, will not affect a defendant's entitlement to a jury trial on plaintiff's legal causes of action. Hudson View II Associates v. Gooden, 222 AD2d 163, 167 n.168 (1st dept. 1996); Imaging International v. Hell Graphic Systems, Inc., 11 Misc3d 1071(A)(NY Sup. 2006). If, however, a defendant interposes an equitable counterclaim, based on the same transaction and occurrences that underlie plaintiff's legal claim, such defendant has waived a jury trial even on the main legal claim. The same waiver does not apply where the defendant raises only equitable defenses to plaintiff's legal claims. In the seminal case of Hudson View II Associates v. Gooden, (222 AD2d at 163,167) the Appellate Division of this department stated the rule fo law as follows:

“ ...[W]here a plaintiff brings a claim triable by a jury and the defendant interposes both equitable defenses and counterclaims arising from the same transaction, the defendant waives a jury even on the main, legal, claim. It has also been held that where a plaintiff brings a claim triable by a jury and the defendant asserts a related counterclaim not

4] triable by a jury, defendant thereby waives a jury trial in all respects, including on the main claim.We find, however, that such a waiver should not be imputed merely on the basis of raising equitable defenses. There is a significant distinction between defenses and counterclaims. The bringing of an equitable counterclaims is, at least theoretically, a voluntary act, from which a waiver may be voluntarily inferred. An equitable defense, on the contrary, as with any defense, must be raised now or forever be waived, and its assertion, which is necessarily dictated by the nature of plaintiff's causes of action, cannot therefore be fairly characterized a voluntary in this contest. For this reason, the mere assertion of equitable defenses could not be fairly, without the concomitant assertion to equitable counterclaims, result in a waiver of a right to a jury."

Jury trial as to the Counterclaims

All of the parties' disputes all concern the understructure of the premises located at 25 Sutton Place South in Manhattan ("premises"). The first counterclaim seeks a declaratory judgment that CPN is the owner of the entire understructure of the premises and that the City does not hold a permanent easement therein. The second counterclaim seeks a declaration that CPN is responsible for the maintenance and repair of the understructure of the premises and a direction that CPN abate all of the violations of the New York City Administrative Code that exist on account of the condition of the understructure. The third counterclaim alleges that because CPN failed to correct hazardous violations to the understructure, the City proceeded to make the repairs. It seeks monetary damages in an amount intended to cover the cost of correcting the conditions.

The City implicitly concedes in its Memorandum of Law that the first and second counterclaims seek equitable relief. Indeed, the City seeks no monetary relief in such counterclaims and affirmatively alleges it has not adequate remedy at law. The City argues, however, that the third counterclaim which is for money damages, seeks only

legal relief. It further argues that because the third counterclaim is not based upon the same transactions and occurrences as the first and second counterclaims, it has not waived its right to a jury trial on the third counterclaim.

The court disagrees. Even if the Court were to find that the third counterclaim asserts only a claim at law, the right to relief in the third counterclaim is entirely contingent upon the City establishing the facts necessary to prevail in the first and second counterclaims. This is not merely a situation where there are some common facts to be proven in the equitable and legal counterclaims. At bar, the failure to prevail on the first two counterclaims effectively deprives the City of the right of recovery on the third counterclaim. That the events necessary to prevail on the counterclaims involves events separated in time by many years, does not mean that the underpinnings of the claims are different transactions and occurrences. Thus, the Court holds that the two intertwined equitable counterclaims constitute a waiver of a jury trial on the third counterclaim.

Jury trial on Plaintiff's claims

The Second Amended Complaint originally asserted twenty separate causes of action, sounding in both law and equity. There are eight affirmative defenses, as well as three counterclaims asserted in the City's Answer to the Second Amended Complaint and Counterclaims. It is undisputed that CPN has waived its right to a jury on all of its claims asserted in the Second Amended Complaint, including its legal claims. While under Hudson View II Associates v. Gooden, *supra*, the interposition of interrelated equitable defenses does not waive a defendant's right to a jury trial on plaintiff's legal claims, the interposition of interrelated equitable counterclaims will effect

[* 6]
a waiver.

By decision and order dated July 1, 2010, certain of the causes of action were dismissed and/or limited. Neither party has chosen to address the impact of the limiting orders. However, in deciding whether the two equitable counterclaims are interrelated with the legal claims, the court necessarily needs to look at only the remaining legal claims. There is no need to determine the academic issue of whether the City has/had a theoretical right to a jury trial on a claim that has already been resolved. See: Anesthesia Associates of Mount Kisco LLP v. Northern Westchester Hospital Center, 59 AD3d 481 (2nd dept 2009). Moreover, the City implicitly (and correctly) concedes that it has no right to a jury trial on CPN's remaining equitable causes of action.

Pursuant to the July 1, 2010 decision the following causes of action ("COA") remain: 2nd COA; 3rd COA; part of the 5th COA; part of the 7th COA; part of the 8th COA; part of the 10th COA; 12th COA; and part of the 13th COA. Of these remaining causes of action, the City, in its Memorandum of Law submitted on this motion, has characterized the following as legal claims, on which a trial before a jury should be permitted: 3rd COA; 5th COA; 8th COA; 10th COA; 12th COA and 13th COA, all of which seek money damages. It also claims that the remaining 2nd COA and 7th COA, which are for declaratory judgment, are "legal" in nature. Strachman v. Palestinian Authority, 73 AD3d 124 (1st dept. 2010). CPN does not challenge any of these characterizations.

These remaining legal causes of action are not interrelated with the City's equitable counterclaims. CPS seeks money damages (and offsets¹) on various theories

¹The 2nd COA does not seek money damages directly; it seeks a declaration of rights under certain written instruments and monetary offsets to the City's claims for damages.

7] 4

based on the City's alleged interference with its property. These causes of action assume that CPS has a property interest in the understructure of the premises. Thus, the counterclaims, which seek declarations that CPN is the owner and responsible for the understructure of the premises, are not inconsistent with such claims and do not have to be established to defeat such claims. The Court finds that the City has not waived its right to a jury trial on the 2nd COA; 3rd COA; 5th COA; 7th COA; 8th COA; 10th COA; 12th COA and 13th COA

Procedural Considerations

The City argues that the legal and equitable claims should be tried at the same time. The court agrees that the legal and equitable claims should be tried at the same time, with the jury deciding only the legal claims and the court deciding the equitable claims. To the extent there are any overlapping factual issues, the jury will serve only in an advisory capacity as to the equitable claims and will not bind the trial court from reaching a decision. Hudson View II Associates v. Gooden, *supra* at 169.

Conclusion

In accordance herewith it is hereby:

ORDERED that the motion to strike the City's jury demand is granted as to the 3rd counterclaim asserted in the City's Answer to the Fourth Amended Complaint and Counterclaims, and it is further

ORDERED that the motion to strike the City's jury demand is otherwise denied as to the remaining causes of action, and it is further

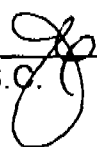
ORDERED that the legal and equitable claims shall be jointly tried with the jury deciding the legal claims and the court deciding the equitable claims and with the jury

serving in only an advisory, non-binding capacity on any factual issues decided on the legal claims that overlap with issues to be decided on the equitable claims, and it is further

ORDERED that this constitutes the decision and order of the court, and any requested relief not otherwise expressly granted herein is denied.

Dated: New York, New York
October 20, 2010

SO ORDERED:

J.G. J.S.C. 

FILED
OCT 22 2010
NEW YORK
COUNTY CLERK'S OFFICE