

1766-68 Assoc., L.P. v City of New York

2013 NY Slip Op 33586(U)

November 29, 2013

Supreme Court, New York County

Docket Number: 118222/09

Judge: Michael D. Stallman

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 21**

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1766-68 ASSOCIATES, LP,

Plaintiff,

Index No. 118222/2009

- against -

CITY OF NEW YORK, METROPOLITAN TRANSIT
AUTHORITY, NEW YORK CITY TRANSIT AUTHORITY,
MTA CAPITAL CONSTRUCTION and S/3 TUNNEL
CONSTRUCTORS,

Decision and Order

FILED

Defendants.

DEC 05 2013

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**NEW YORK
COUNTY CLERK'S OFFICE**

HON. MICHAEL D. STALLMAN, J.:

In this action, plaintiff, the owner of a leaning building on Second Avenue in Manhattan, alleges, among other things, that excavation and blasting operations taking place in connection with the construction of the Second Avenue subway line prompted the Department of Buildings of the City of New York to issue an order to vacate the building. Plaintiff has also commenced an insurance coverage lawsuit against its own insurer in the United States District Court for the Southern District of New York, *Sakman Enterprises, Inc and 1766-68 Assocs. L.P. v Chubb Custom Ins. Co.*, 11 CIV 5614

At a court conference on October 17, 2013, the parties stipulated that "Plaintiff shall promptly, within 90 days, produce copies of all papers, transcripts, demands, responses & pleading, in the Federal Court Action."

Plaintiff now moves for a stay of this action pending the resolution of the insurance coverage action pending in federal court (Motion Seq. No. 005). If a stay is granted, defendants seek a stay of the accrual of prejudgment interest to which plaintiff might be entitled if plaintiff were to prevail against defendants. (Motion Seq. No. 006.) This decision addresses both motions.

DISCUSSION

CPLR 2201 states, "Except as otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just." Here, the Court exercises its discretion to stay this action pending the outcome of the federal action. The compliance conference previously scheduled for January 30, 2014 is cancelled.

A stay of this action should also include a tolling of any prejudgment interest to which plaintiff might be entitled if plaintiff were to prevail against defendants. That is not to say that the Court has determined, at this stage of the litigation, that prejudgment interest is recoverable on the pleaded causes of action were plaintiff to prevail. Nevertheless, as defendants indicate, it would be unfair to defendants if prejudgment interest were to continue to accrue during the period of a discretionary stay sought by the plaintiff. Plaintiff does not object to a court-ordered toll of the accrual of any prejudgment interest.

The stay of this action is also conditioned upon plaintiff's compliance with the October 17, 2013 stipulation.

CONCLUSION

Accordingly, it is hereby

ORDERED that plaintiff's motion for a stay is granted (Motion Seq. No. 005), and if plaintiff complies with the stipulation dated October 17, 2013, then this action is stayed, until further order of this Court, pending the resolution of federal action, *Sakman Enterprises, Inc and 1766-68 Assocs. L.P. v Chubb Custom Ins. Co.*, 11 CIV 5614; and it is further

ORDERED that defendants' motion is granted (Motion Seq. No. 006), and the accrual of any prejudgment interest to which plaintiff might be entitled on the pleaded causes of action shall be tolled for the period from the date of entry of this decision and order until further order of this Court.

Dated: *November 29, 2013*
New York, New York

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J.S.C.
HON. MICHAEL D. STALLMAN