

Fort IV Group, L.P. v 624 W/172nd St., LLC
2014 NY Slip Op 31982(U)
July 25, 2014
Supreme Court, New York County
Docket Number: 151959/2012
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 5

Signed
Order

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FORT IV GROUP, L.P.,

Plaintiff,

-against-

624 W/ 172ND STREET, LLC, GUS SCOURARAS,
DOUGLSTON MANGAGEMENT CORP., AND
THE CITY OF NEW YORK,

Defendants.

DECISION/ORDER
Index No. 151959/2012
Seq. No. 005

PRESENT:
Hon. Kathryn E. Freed
J.S.C.

-----X
HON. KATHRYN E. FREED:

RECITATION, AS REQUIRED BY CPLR§2219 (a), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION.

PAPERS	NUMBERED
NOTICE OF MOTION AND AFFIDAVITS ANNEXED.....	1,2, 3 (Ex A-F)
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED.....
ANSWERING AFFIDAVITS.....No.....
REPLYING AFFIDAVITS.....
EXHIBITS.....
OTHER.....

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE MOTION IS AS FOLLOWS:

Plaintiff moves pursuant to CPLR 3025(b) and 1003, to substitute 280 Fort Washington Avenue Corp., and West 171 Associates, LP, as party plaintiffs in the within action in place of Fort IV Group, LP, and to amend the captions, pleadings and papers in this action. Defendants do not oppose.

Factual and Procedural Background:

The underlying case arises from extensive property damage allegedly caused by sewer water which has been consistently flooding into the back yard of the subject property located at 280 Washington Avenue in New York County. Additionally, the plaintiff seeks to compel defendants to abate the nuisance resulting from the underground water.

The subject property is a multiple dwelling comprised of 37 residential units and 6 commercial premises. Plaintiff alleges that said flooding has severely impacted its operation of the subject property, as well as the enjoyment and use it by both residential and commercial occupants therein. It also alleges that the presence of the underground water is unsightly as well as potentially hazardous to the occupants' health and safety and seeks monetary damages caused by the nuisance and trespass of said water.

Positions of the Parties and Discussion:

Plaintiff's new counsel, while investigating deeds for the various properties involved in this action, discovered that the record owner of the property located at 280 Fort Washington Avenue is 280 Fort Washington Avenue Corp., and that the owner of the property located at 651 West 171st Street is West 171 Associates, LP. New counsel notes that plaintiff's previous attorney used the names of the entity which leases and owns various apartments and spaces at 280 Fort Washington Avenue. Counsel appends the deed for 280 Fort Washington Avenue as Exhibit D. Additionally, counsel annexes as Exhibit E, the deed for 651 West 171st Street, showing the owner of record as West 171 Associates, LP.

Plaintiff argues that the standard applicable to a motion to substitute a party plaintiff is set forth in *MK West Street Company v. Meriden Hotels, Inc.*, 184 AD2d 312 (1st Dept. 1992) :

It is well settled that an amendment which would shift a claim from a party without standing to another party who could have asserted that claim in the first instance is proper since such an amendment, by its nature, does not result in surprise or prejudice to the defendants who had prior knowledge of the claim and an opportunity to prepare a proper defense.

Id., at 313. See also *JCD Farms, Inc., v. Juul-Nielsen*, 300 AD2d 446 (2nd Dept. 2002), *New York State Thruway Authority v. CBE Contracting Corp.*, 280 AD2d 390 (1st Dept. 2001); *Frankart Furniture Staten Island, Inc., v. Forest Mall Associates*, 159 AD2d 322 (1st Dept. 1990).

Plaintiff also cites *Bellini v. Gersalle Realty Corp.*, 120 AD2d 345 (1st Dept. 1986), where the Court allowed a substitution of the net lessee of the building in place of the managing agent who was initially designated as the plaintiff. Plaintiff notes that the Court granted the motion even though an independent action by the net lessee would have been time barred. The Court stated the amendment was proper in that it shifted “the original complaint to the properly named plaintiff who might have asserted it ab initio.” *Id.*, at 348.

Therefore, in accordance with the foregoing, it is hereby

ORDERED that plaintiffs’ motion pursuant to CPLR 3025(b) and 1003, to substitute 280 Fort Washington Avenue Corp., and West 171 Associates, LP as party plaintiffs in the within action in place of Fort IV Group, PL, and to amend the captions, pleadings and papers in this action is granted, and it is further

ORDERED that the caption for the above entitled action is hereby amended to read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 5

-----X
280 FORT WASHINGTON AVENUE CORP., and
WEST 171 ASSOCIATES, LP.,

Plaintiffs,

-against-

624 W/ 172ND STREET, LLC, GUS SCOURARAS,
DOUGLSTON MANGAGEMENT CORP., AND
THE CITY OF NEW YORK,

Defendants.

-----X

DECISION/ORDER
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and it is further

ORDERED that counsel plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to mark the court's records to reflect the entry of judgment; and it is further,

ORDERED that this constitutes the decision and order of the Court.

DATED: July 25, 2014

ENTER:


HON. KATHRYN FREED
JUSTICE OF SUPREME COURT
Hon. Kathryn E. Freed
J.S.C.