

Arnold v 4-6 Bleecker St. LLC
2015 NY Slip Op 31954(U)
October 19, 2015
Supreme Court, New York County
Docket Number: 158541/13
Judge: Joan A. Madden
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

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PETER ARNOLD, ELI LAZARUS, SEAN ROCHA
and MICHAEL SCHILLER,

INDEX NO. 158541/13

Plaintiffs,

-against-

4-6 BLEECKER STREET LLC, 316 BOWERY
REALTY CORP. and BAPPLE LLC a/k/a
BAPPLE INC.,

Defendants.

-----X

JOAN A. MADDEN, J.:

Defendant 4-6 Bleecker Street LLC (“Bleecker”) moves, by order to show cause, pursuant to CPLR 3025(b), for leave to amend the complaint to add Walsam 316 LLC, Walsam 316 Bowery LLC, Walsam Bleecker LLC, Lawber Bowery LLC, and 316 Bowery Next Generation LLC (together “the Purchasers”) as party defendants.¹ Plaintiffs support the motion and co-defendant 316 Bowery Realty Corp. (“Bowery”) opposes. The motion is granted for the reasons below.

Plaintiffs are three current tenants and one former tenant who claim their respective apartments were improperly and fraudulently removed from Rent Stabilization, and that they were overcharged in excess of the legal regulated rent. Plaintiffs’ apartments are located in a single horizontal multiple dwelling known as 4-6 Bleecker Street (the “Building”) which is

¹Although defendant Bapple I LLC a/k/a Bapple Inc. [“Bapple”] originally joined in the motion, on August 6, 2015, the court issued an order dismissing the complaint without prejudice as to Bapple, pursuant to the parties’ stipulation dated August 4, 2015. In the stipulation, plaintiffs agreed to discontinue the action without prejudice against Bapple, and Bapple agreed to discontinue its cross claims and counterclaims without prejudice.

subject to the Rent Stabilization Law. Defendant Bowery is the former owner of the Building. Pursuant to a purchase and sale agreement between Bowery and Bleecker dated August 10, 2012 (“the Agreement”), Bowery agreed to convert the Building to condominium ownership, and sell the residential portion to Bleecker. Until the conversion was completed, Bowery agreed pursuant to a net lease agreement dated April 13, 2013, to net lease the residential portion to Bleecker. Defendant Bapple was retained by Bleecker as the managing agent for the residential portion of the Building. By deed dated June 14, 2014, Bowery transferred its interest in the Building to the Purchasers.

Bleecker is now moving to amend the complaint, arguing that the Purchasers are properly added as party-defendants. In support of the motion, Bleecker points to specific representations made by Bowery in the Agreement concerning the rent regulatory status of the residential tenants in the Building including that the rents and leases were accurate and did not exceed those permitted under current law, and argues that since title has not yet closed on the sale between Bowery and Bleecker, the representations survive. Bleecker also points to paragraph 39 of the Net Lease which states that if the property is purchased, the owner (i.e. Bowery) shall be “relieved of all covenants and obligations hereunder thereafter accruing” and that the “purchaser [will] assume and agree to carry out any and all covenants of [the owner] hereunder.” Bleecker notes that Article 10 of the Agreement and paragraph 14 of the Net Lease provide that the covenants contained therein inure to the benefit of and are binding upon the parties’ successors and assigns. Bleecker asserts that after Bowery advised that it had sold its interest in the Building to the Purchasers and assigned the leases, Bleecker undertook to have Bowery’s counsel, who also appeared for the Purchasers as Bowery’s successor-in-interest by so-ordered

stipulation dated September 12, 2014, to stipulate to join the Purchasers as party-defendants but such efforts were unsuccessful.

Bowery opposes the motion, arguing that the delay in seeking to add the Purchasers warrants denial, and such relief is not warranted while the parties' motions for summary judgment are sub judice.² Bleecker notes that although the September 12, 2014 so-ordered stipulation reserved all parties' rights to add the Purchasers as parties-defendants by amending the pleadings, Bleecker did not seek such amendment until six months after the parties' summary judgment motions were argued and submitted.

"Leave to amend a pleading should be 'freely given' (CPLR 3025[b]) as a matter of discretion in the absence of prejudice or surprise." Zaid Theatre Corp v. Sona Realty Co, 18 AD3d 352, 355-356 (1st Dept 2005)(internal citations and quotations omitted). Leave to amend will be granted as long as the proponent submits sufficient support to show that proposed amendment is not "palpably insufficient or clearly devoid of merit." MBIA Ins Corp v. Greystone & Co, Inc, 74 AD3d 499 (1st Dept 2010)(citation omitted). In addition, "[o]nce a prima facie basis for the amendment has been established, that should end the inquiry, even in the face of a rebuttal that might provide the ground for a subsequent a motion for summary judgment" Pier 59 Studios, LP v. Chelsea Piers, LP, 40 AD3d 363, 365 (1st Dept 2007).

Here, the Purchasers, as the current owners of the Building, are properly named as party-defendants. Any delay in adding the Purchasers is at least partly attributable to Bleecker's

²Simultaneously with the issuance of this decision and order, the court is issuing a decision and order denying Bowery's summary judgment motion, and granting in part, plaintiffs' cross-motion for summary judgment. The court makes no determination as to the effect of that decision on the new party-defendants, or the merits of any potential defenses they may have.

mistaken impression that Bowery would agree to add the Purchasers under the circumstances as presented. In this connection, it is well established that mere lateness does not establish grounds to reject an amendment. See Edenwald Contracting Co. Inc. v. City of New York, 60 NY2d 957, 959 (1983). Instead, the delayed request must be accompanied by extreme prejudice as well. See id. In this context, prejudice is defined as “some special right lost in the interim, some change of position, or some significant trouble or expense that could have been avoided had the original pleading contained what the amended one wants to add.” Barbour v. Hospital for Special Surgery, 169 AD2d 385, 386 (1st Dept. 1991)(citations omitted). Here, Bowery has failed to identify any prejudice of that nature.

Accordingly, it is

ORDERED the motion to amend by defendant 4-6 Bleecker Street LLC is granted, and said defendant shall file and serve a supplemental summons and amended complaint on plaintiffs, co-defendant 316 Bowery Realty Corp., and the newly added defendants Walsam 316 LLC, Walsam 316 Bowery LLC, Walsam Bleecker LLC, Lawber Bowery LLC, and 316 Bowery Next Generation LLC, within 20 days of the e-filing of this order; and it is further

ORDERED that within 20 days of said service, the parties including the newly named defendants Walsam 316LLC, Walsam 316 Bowery LLC, Walsam Bleecker LLC, Lawber Bowery LLC, and 316 Bowery Next Generation LLC, shall serve their answers to the supplemental summons and amended complaint; and it is further

ORDERED in view of the dismissal of defendant Bapple I LLC a/k/a Bapple Inc., and the addition of the new party-defendants, Walsam 316 LLC, Walsam 316 Bowery LLC, Walsam Bleecker LLC, Lawber Bowery LLC, and 316 Bowery Next Generation LLC , the caption, as

amended shall read as follows:

PETER ARNOLD ELI LAZARUS, SEAN ROCHA
and MICHAEL SCHILLER,

Plaintiffs,

-against-

4-6 BLEECKER STREET, LLC, 316 BOWERY REALTY CORP.,
WALSAM 316, LLC, WALSAM 316 BOWERY LLC, WALSAM
BLEECKER LLC, LAWBER BOWERY LLC and 316 BOWERY
NEXT GENERATION, LLC,


Defendants.

and it is further

ORDERED that defendant 4-6 Bleecker Street LLC shall forthwith serve a copy of this order with notice of entry on the Clerk of the Trial Support Office (Room 158) and the County Clerk, so the court's records may be altered to reflect the changes in the caption removing Bapple I LLC a/k/a Bapple Inc. as a defendant, and adding new defendants Walsam 316 LLC, Walsam 316 Bowery LLC, Walsam Bleecker LLC, Lawber Bowery LLC, and 316 Bowery Next Generation LLC; and it is further

ORDERED that the parties, including new defendants Walsam 316 LLC, Walsam 316 Bowery LLC, Walsam Bleecker LLC, Lawber Bowery LLC, and 316 Bowery Next Generation LLC, shall appear for a preliminary conference on December 10, 2015 at 9:30 am, in Part 11, Room 351, 60 Centre Street.

Dated: October 19, 2015



HON. JOAN A. MADDEN
J.S.C.