

TH Dean St., LLC v Wallace
2017 NY Slip Op 32988(U)
October 2, 2017
Supreme Court, Kings County
Docket Number: 501218/2017
Judge: Carl J. Landicino
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At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 2nd day of October, 2017.

P R E S E N T:

HON. CARL J. LANDICINO,
Justice.

-----X
TH DEAN STREET, LLC,

Plaintiff,

Index No.: 501218/2017

DECISION AND ORDER

- against -

Motion Sequence #1, #2

SHEILA WALLACE, LOUISE REID,

Defendants.
-----X

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

	<u>Papers Numbered</u>
Notice of Motion/Cross Motion and Affidavits (Affirmations) Annexed.....	1/2, _____
Opposing Affidavits (Affirmations).....	3, _____
Reply Affidavits (Affirmations).....	4, _____

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After oral argument and upon review of the papers in this matter, the Court finds as follows:

This is an action whereby Plaintiff TH Dean Street, LLC (hereinafter “the Plaintiff”) alleges in its complaint that non-party 686 Dean Street CH, LLC had previously entered into an agreement with the Defendants Sheila Wallace and Louise Reid (hereinafter “the Defendants”) to purchase the subject property located at 686 Dean Street, Brooklyn, New York. The Plaintiff further alleges that thereafter, the Plaintiff entered into an agreement with 686 Dean Street CH, LLC whereby it became the assignee of all of the right, title and interest in and to the contract 686 Dean Street CH, LLC had with the Defendant. The Plaintiff alleges in its complaint that the Defendants should be required to specifically perform their obligations to the Plaintiff and that the Defendants are in breach of a contract/assignment with the Plaintiff.

Proposed Intervenor-Defendant Crown Heights Management (hereinafter “Crown Heights”) now moves (Motion Sequence #1) for an Order pursuant to CPLR §1012 granting it leave to intervene as of right or in the alternative to permissively intervene pursuant to CPLR §1013. Crown Heights also seeks an Order pursuant to CPLR §§3211(a)(1)(3)(7) dismissing the Plaintiff’s complaint. Specifically, Crown Heights argues that it is the proper assignee of the contract in dispute in this matter and as a result, the Plaintiff’s complaint should be dismissed.

The Plaintiff opposes the motion by Crown Heights and cross moves (Motion Sequence #2) for separate relief. In opposition to the motion made by Crown Heights, the Plaintiff argues and alleges that the assignment that Crown Heights contends makes it the proper assignee of the subject contract of sale is invalid, since the assignment purportedly concerning Crown Heights was entered into after 686 Dean Street CH had already assigned its rights in the contract to the Plaintiff. The Plaintiff also moves for an Order pursuant to CPLR §3215(a) for default judgment. What is more, the Plaintiff also seeks an Order “pursuant to CPLR 3211(e) granting” it “leave to re-plead the Complaint” in this action, and an Order pursuant to CPLR 602(a) consolidating, for all purposes, this action with an action involving Crown Heights and the Defendants.¹ In opposition, Crown Heights argues that the cross-motion by the Plaintiff should be denied given that the Plaintiff is not in privity of contract with the Defendants. What is more, Crown Heights argues that the Plaintiff’s claim is premature as the contingencies upon which the Plaintiff’s purported assignment relies have not transpired.

Turning to the merits of Crown Heights motion seeking an Order pursuant to CPLR §1012 granting leave to intervene and pursuant to CPLR §§3211(a)(1)(3)(7) dismissing the

¹ That action is entitled Crown Heights Management, LLC as assignee of 686 Dean Street CH, LLC v. Sheila Wallace, Louise Reid, 686 Dean Street CH, LLC, and TH Dean Street, LLC (Index No. 502552/2017).

Plaintiff's complaint, the Court finds that the application is denied as Crown Heights has failed to annex a proposed answer to its application. CPLR §1014 provides that "[a] motion to intervene shall be accompanied by a proposed pleading setting forth the claim or defense for which intervention is sought." Given that Crown Heights has not complied with CPLR §1014 in as much as no proposed pleading is annexed to the instant application, the motion by Crown Heights is denied. *See Beneficial Homeowner Serv. Corp. v. Chambers*, 145 A.D.3d 750, 752, 44 N.Y.S.3d 87, 89 [2nd Dept, 2016]; *Farfan v. Rivera*, 33 A.D.3d 755, 823 N.Y.S.2d 199, 200 [2nd Dept, 2006].

Turning to the merits of the cross-motion by the Plaintiff, the Court finds that insufficient evidence has been provided to support the award of a default judgment pursuant to CPLR 3215(e) as against the Defendants. In support of this application, the Plaintiff attaches Affidavits of Service (Exhibit "I") that attest to service on both of the Defendants. However, the Affidavits of Service attached as Exhibit "I" do not relate to the instant proceeding but to Crown Heights Management, LLC as assignee of 686 Dean Street CH, LLC v. Sheila Wallace, Louise Reid, 686 Dean Street CH, LLC, and TH Dean Street, LLC (Index No. 502552/2017). Accordingly, that aspect of the Plaintiff's motion seeking a default judgment is denied. As to that aspect of the motion that seeks to consolidate the instant proceeding with Crown Heights Management LLC, as assignee of 686 Dean Street CH, LLC, v. Sheila Wallace et al. (Index Number 502552/2017) that relief is granted. "Where common questions of law or fact exist, a motion to consolidate should be granted absent a showing of prejudice to a substantial right by the party opposing the motion." *Kally v. Mount Sinai Hosp.*, 44 A.D.3d 1010, 844 N.Y.S.2d 415 [2nd Dept, 2007]. In the instant proceeding common questions of law and fact exist between the two actions and accordingly, the application to consolidate these two matters is granted. Accordingly, the caption shall be amended to reflect the consolidation of the instant proceeding with the above referenced matter.

Based on the foregoing, it is hereby ORDERED as follows:

The motion (Motion Sequence #1) by Crown Heights Management is denied.

The motion (Motion Sequence #2) by the Plaintiff for default judgment is denied. That aspect of the motion seeking a consolidation for all purposes is granted and the caption shall now read as follows:

-----X
TH DEAN STREET, LLC,
Plaintiff,

Action No. 1
Index No.: 501218/2017

- against -

SHEILA WALLACE, LOUISE REID,
Defendants.

-----X
CROWN HEIGHTS MANAGEMENT, LLC,
as assignee of 686 DEAN STREET CH, LLC,
Plaintiff,

Action No. 2
Index No.:502552/2017

-against-

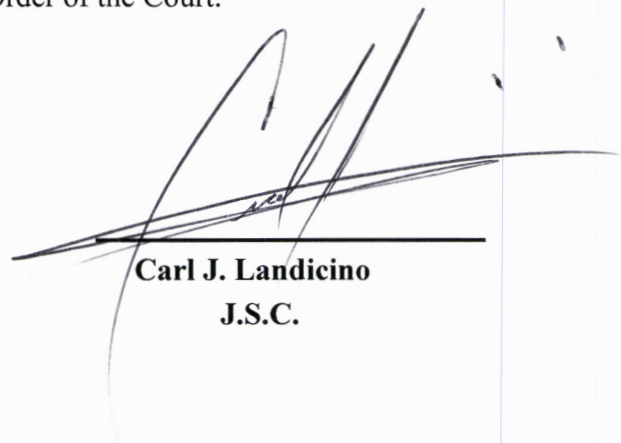
SHEILA WALLACE , LOUISE REID, 686 DEAN
STREET CH, LLC, and TH DEAN STREET, LLC
-----X

All other relief sought is denied.

The foregoing constitutes the Decision and Order of the Court.

Date: October 2, 2017

ENTER:



Carl J. Landicino
J.S.C.

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