

Prima Contr., Ltd. v Taktl LLC
2018 NY Slip Op 33984(U)
November 20, 2018
Supreme Court, Nassau County
Docket Number: 604172-18
Judge: Timothy S. Driscoll
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**SUPREME COURT-STATE OF NEW YORK
SHORT FORM ORDER**

Present:

HON. TIMOTHY S. DRISCOLL
Justice Supreme Court

-----X **TRIAL/IAS PART: 11**
PRIMA CONTRACTING LTD.,

NASSAU COUNTY

Plaintiff,

Index No: 604172-18

-against-

**(formerly Queens County
Index No. 710802-16)**

**TAKTL LLC, ADELPHI UNIVERSITY, and
EDA CONTRACTORS, INC.,**

**Motion Seq. No. 5
Submission Date: 10/24/18**

Defendants.

-----X
The following papers having been read on this motion:

Notice of Motion, Affirmation in Support and Exhibits.....X
Correspondence dated October 4, 2018.....X

This matter is before the Court for decision on the unopposed motion filed by Plaintiff Prima Contracting Ltd. ("Prima" or "Plaintiff") on September 28, 2018 and submitted on October 24, 2018. The Court grants Plaintiff's motion to amend, and directs Plaintiff to file and serve an amended complaint, in the form of the proposed amended complaint annexed as Exhibit C to the Freeman Affirmation in Support, on or before December 14, 2018. In light of the fact that the Court previously dismissed this action as asserted against Defendant Adelphi University, the amended complaint shall not list Adelphi University as a defendant. In addition, the amended complaint that Plaintiff files and serves shall be titled the "Verified Amended Complaint" to distinguish it from the initial complaint filed in this action. The Court directs Defendants Taktl LLC and EDA Contractors, Inc. to answer the amended complaint on or before January 18, 2019. **The conference scheduled on November 30, 2018 at 11:00 a.m. is hereby adjourned to January 29, 2019 at 11:00 a.m. In addition, the conference scheduled on November 30, 2018 at 11:00 a.m. in the related matter titled *Prima Contracting, Ltd. v. EDA Contractors, Inc.*, Index Number 601767/17 is hereby adjourned to January 29, 2019 at 11:00 a.m.**

BACKGROUND

A. Relief Sought

Plaintiff moves for an Order, pursuant to CPLR § 3025(b), granting leave to amend Plaintiff's complaint.

By letter dated October 4, 2018, counsel for Defendants Taktl LLC and EDA Contractors, Inc. advised the Court that Defendants do not oppose the motion.

B. The Parties' History

The parties' history is outlined in the prior decisions ("Prior Decisions") of the Court dated July 11, 2018 and October 24, 2018 and the Court incorporates the Prior Decisions by reference as if set forth in full herein. The Prior Decision dated July 11, 2018 addressed the following prior motions: 1) the prior motion by Defendants Taktl, LLC ("Taktl"), and EDA Contractors, Inc. ("EDA") for an Order consolidating the above-captioned action (the "Instant Action") with the matter titled *Prima Contracting Ltd. v. EDA Contractors, Inc. and U.S. Specialty Insurance Company*, Nassau County Supreme Court Index Number 601767/17 (the "Second Action" or "Foreclosure Matter"), and 2) Plaintiff's prior cross motion for an Order severing Taktl's counterclaims against Plaintiff. In the Prior Decision dated July 11, 2018, the Court 1) granted Taktl and EDA's motion and directed that the Instant Action was joined for trial with the Second Action; and 2) denied Plaintiff's cross motion. The Prior Decision dated October 24, 2018 addressed the prior motion by Defendant Adelphi University ("Adelphi") to dismiss the Instant Action as against Adelphi. In the Prior Decision dated October 24, 2018, the Court granted Adelphi's motion and dismissed the Instant Action as asserted against Adelphi.

In support of the motion now before the Court, counsel for Plaintiff ("Plaintiff's Counsel") provides a copy of the Verified Complaint filed in this action (Ex. A to Freeman Aff. in Supp.) and the answer to the Complaint filed by Defendant Taktl (Ex. B to Freeman Aff. in Supp.), which contained counterclaims. Plaintiff's Counsel affirms that these counterclaims were based on alleged issues with a number of projects unrelated to the Adelphi project which is the basis of the Complaint.

Plaintiff's Counsel affirms that Plaintiff now seeks leave to amend the Complaint to add additional claims against Taktl relating to the projects in Taktl's counterclaims so that all issues relating to those projects may be resolved before the Court. Plaintiff's Counsel submits that granting leave to amend the Complaint is appropriate to permit all claims surrounding the additional projects to be adjudicated in one proceeding. Plaintiff's Counsel provides a copy of

the proposed amended complaint (Ex. C to Freeman Aff. in Supp.) which, he affirms, contains changes which have been highlighted and underlined. The caption of the proposed amended complaint provided by Plaintiff's Counsel names Adelphi as a defendant, in addition to naming Taktl and EDA as defendants.

C. The Parties' Positions

Plaintiff submits that the Court should permit Plaintiff to amend the Complaint to add additional claims against Taktl relating to the projects in Taktl's counterclaims, so that all issues relating to those projects may be resolved before the Court. Plaintiff submits that it is appropriate to grant leave to amend to permit all claims surrounding the additional projects to be adjudicated in one proceeding.

Defendants Taktl and EDA do not oppose the motion.

RULING OF THE COURT

A. Leave to Amend

Motions for leave to amend pleadings should be freely granted, absent prejudice or surprise directly resulting from the delay in seeking leave, unless the proposed amendment is palpably insufficient or patently devoid of merit. *Aurora Loan Services, LLC v. Thomas*, 70 A.D.3d 986, 987 (2d Dept. 2010), citing CPLR § 3025(b); *Lucido v. Mancuso*, 49 A.D.3d 220, 222 (2d Dept. 2008).

B. Application of these Principles to the Instant Action

The Court grants Plaintiff's motion to amend, and directs Plaintiff to file and serve an amended complaint, in the form of the proposed amended complaint annexed as Exhibit C to the Freeman Affirmation in Support, on or before December 14, 2018. In light of the fact that the Court previously dismissed this action as asserted against Defendant Adelphi University, the amended complaint shall not list Adelphi University as a defendant. In addition, Plaintiff shall title the amended complaint that it files and serves the "Verified Amended Complaint" to distinguish it from the initial complaint filed in this action. The Court directs Defendants Taktl LLC and EDA Contractors, Inc. to answer the amended complaint on or before January 18, 2019. In consideration of the liberal amendment policy, and in further consideration of Defendants' lack of opposition to the motion, the Court concludes that it is appropriate to grant the motion. **The conference scheduled on November 30, 2018 at 11:00 a.m. is hereby adjourned to January 29, 2019 at 11:00 a.m. In addition, the conference scheduled on November 30, 2018 in the related matter titled *Prima Contracting, Ltd. v. EDA Contractors*,**

***Inc.*, Index Number 601767/17 is hereby adjourned to January 29, 2019 at 11:00 a.m.**

All matters not decided herein are hereby denied.

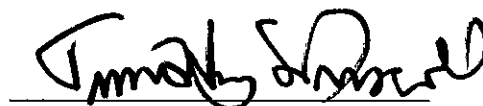
This constitutes the decision and order of the Court.

The Court reminds counsel for the parties in this action, as well as the related action titled *Prima Contracting Ltd. v. EDA Contractors Inc.*, Index Number 601767/17, of their required appearance before the Court for a Certification Conference on January 29, 2019 at 11:00 a.m., as directed herein. Both of these matters will proceed to trial, as previously scheduled, on May 13, 2019.

ENTER

DATED: Mineola, NY

November 20, 2018



HON. TIMOTHY S. DRISCOLL

J.S.C.

ENTERED

NOV 27 2018

NASSAU COUNTY
COUNTY CLERK'S OFFICE