

AIG Prop. Cas. Co. v CPS 1 Realty LP

2020 NY Slip Op 31091(U)

April 27, 2020

Supreme Court, New York County

Docket Number: 159848/2019

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. KATHRYN E. FREED **PART** **IAS MOTION 2EFM**

Justice

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INDEX NO. 159848/2019

AIG PROPERTY CASUALTY COMPANY, AS SUBROGEE
OF HAMPSHIRE INDUSTRIES, INC.,

Plaintiff,

MOTION SEQ. NO. 001

- v -

CPS 1 REALTY LP, PLAZA RESIDENTIAL OWNER LP,
THE PLAZA CONDOMINIUM, BOARD OF MANAGERS OF
THE PLAZA CONDOMINIUM

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17

were read on this motion to/for AMEND CAPTION/PLEADINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17

were read on this motion to/for LEAVE TO FILE.

In this subrogation action, plaintiff AIG PROPERTY CASUALTY COMPANY, as subrogee of Hampshire Industries, Inc., moves, pursuant to CPLR 3025(b), to amend its amended complaint, inter alia, to add as a defendant SAHARA PLAZA, LLC. After a review of the motion papers, as well as the relevant statutes and case law, the motion, which is unopposed, is granted.

This case arises from a property damage loss at the Plaza Hotel on January 10, 2018. Plaintiff was the insurer of Hampshire Industries, Inc., owner of condominium units 1507 and 1605 in the Plaza Hotel, located at 768 Fifth Avenue, New York, New York, 10019, which units sustained the water damage.

On or about October 9, 2019, plaintiff commenced the captioned action against defendants CPS 1 REALTY LP, PLAZA RESIDENTIAL OWNER LP, THE PLAZA CONDOMINIUM, and BOARD OF MANAGERS OF THE PLAZA CONDOMINIUM by filing a summons and complaint. Doc. 1.

On or about October 10, 2019, plaintiff filed a first amended complaint as of right, pursuant to CPLR 3025(a), in order to correct the ad damnum clause so that it alleged damages in the amount of \$1,106,675.09. Doc. 2.

Defendants THE PLAZA CONDOMINIUM AND PLAZA CONDOMINIUM THE RESIDENTIAL BOARD i/s/h/a BOARD OF MANAGERS OF THE PLAZA CONDOMINIUM joined issue by its answer filed December 10, 2019. Doc. 8.

After service of the amended complaint on defendants CPS 1 REALTY and PLAZA RESIDENTIAL OWNER LP, counsel for said defendants provided plaintiff's attorney with documentation establishing that they had no interest in the Plaza Hotel at the time of the loss, having transferred their interest in the hotel to SAHARA PLAZA LLC on November 26, 2012. Doc. 11 at par. 10. In light of

this development, plaintiff stipulated to discontinue its claims as against CPS 1 REALTY and PLAZA RESIDENTIAL OWNER LP. Doc. 9.

Plaintiff now moves, pursuant to CPLR 3025(b), to amend the complaint to name SAHARA PLAZA, LLC, owner of the Plaza Hotel at the time of the incident, as a defendant. Doc. 10. In support of the motion, plaintiff submits, inter alia, a proposed second amended complaint naming SAHARA PLAZA, LLC as a defendant and setting forth allegations as against that entity; removing from the caption discontinued defendants CPS 1 REALTY and PLAZA RESIDENTIAL OWNER LP; and amending the name of defendant BOARD OF MANAGERS OF THE PLAZA CONDOMINIUM to PLAZA CONDOMINIUM THE RESIDENTIAL BOARD based on how that entity identified itself in its answer. Doc. 14.

Pursuant to CPLR 3025 (b), "[a] party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties." "A request for leave to amend a complaint should be freely given, and denied only if there is prejudice or surprise resulting directly from the delay, or if the proposed amendment is palpably improper or insufficient as a matter of law'. *CIFG Assur. N. Am., Inc. v J.P. Morgan Sec. LLC*, 146 AD3d 60, 64-65 (1st Dept 2016) (internal quotation

marks omitted); CPLR 3025(b).” *Crossbeat NY v LIIRN, LLC*, 169 AD3d 604 (1st Dept 2019).

Plaintiff’s motion to amend the amended complaint is granted, as it has demonstrated that the proposed second amended complaint annexed to the instant motion is not devoid of merit or palpably insufficient, as it merely adds a new party, deletes from the caption parties which have been discontinued from the action, and corrects the name of a defendant.

Moreover, since no party has opposed the motion, defendants have not demonstrated that any prejudice would result from the granting of the instant motion.

Therefore, in light of the foregoing, it is hereby:

ORDERED that plaintiff’s motion to amend the amended complaint is granted, and the caption shall be amended as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

AIG PROPERTY CASUALTY COMPANY, as subrogee
of Hampshire Industries, Inc.,

Plaintiff,

Ind. No. 159848/19

-against-

SAHARA PLAZA, LLC; THE PLAZA CONDOMINIUM;
and PLAZA CONDOMINIUM THE RESIDENTIAL
BOARD,

Defendants.

and it is further

ORDERED that, within 20 days of entry of this order, plaintiff is directed to
serve a copy of the same, with notice of entry, upon the Clerk of the Court and

upon the Clerk of the General Clerk's office in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh), who are directed to amend their records to reflect the change in the caption herein; and it is further


ORDERED that, within 20 days of the entry of this order, plaintiff is directed to serve a copy of the same, with notice of entry, on counsel for defendants THE PLAZA CONDOMINIUM and PLAZA CONDOMINIUM THE RESIDENTIAL BOARD and on newly added defendant SAHARA PLAZA, LLC; and it is further

ORDERED that the second amended complaint, in the proposed form annexed to plaintiff's moving papers (Doc. 14) shall be deemed served on defendants THE PLAZA CONDOMINIUM and PLAZA CONDOMINIUM THE RESIDENTIAL BOARD upon service of a copy of this order with notice of entry on said defendants; and it is further

ORDERED that, within 20 days after entry of this order, plaintiff shall serve newly added defendant SAHARA PLAZA, LLC with a supplemental summons and second amended complaint in the proposed form annexed to plaintiff's moving papers (Doc. 14); and it is further

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

4/27/2020
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER
 INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER
 FIDUCIARY APPOINTMENT REFERENCE

CHECK IF APPROPRIATE: