

Trinity NYC Hotel, LLC v Metropolitan Tr. Auth.

2020 NY Slip Op 33814(U)

November 16, 2020

Supreme Court, New York County

Docket Number: 150665/2020

Judge: Suzanne J. Adams

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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. SUZANNE J. ADAMS PART IAS MOTION 21

Justice

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TRINITY NYC HOTEL, LLC, INDEX NO. 150665/2020
Plaintiff, MOTION DATE N/A
MOTION SEQ. NO. 003

- v -

METROPOLITAN TRANSIT AUTHORITY, NEW YORK CITY TRANSIT AUTHORITY, DEFICION + ORDER ON MOTION
Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 135, 136, 137, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 174 were read on this motion to/for DISMISS

This matter arises out of a hotel construction project located at 50 Trinity Place, New York, New York (the "50 Trinity Project"), of which Trinity NYC Hotel, LLC ("Trinity"), is the developer, as well as the fee owner of the underlying property at 50 Trinity Place. Trinity initiated this action in January of this year, a petition pursuant to CPLR Article 78 for permanent relief and for declaratory judgment pursuant to CPLR § 3001. Simultaneously, Metropolitan Transportation Authority ("MTA") brought a petition and complaint for permanent relief pursuant to CPLR Article 78 and CPLR §§ 6301 and 6311 against Trinity as well as against Anthony T. Rinaldi, LLC, and The Rinaldi Group, LLC (together, "Rinaldi"). Trinity's action was referred to as Action No. 1 and MTA's action as Action No. 2 after these actions were consolidated pursuant to the order of this court dated March 5, 2020.

By Decision and Order dated March 25, 2020 (the "March Decision"), this court granted Trinity a preliminary injunction enjoining and restraining MTA and New York City Transit

Authority (“NYCTA”) from (1) moving or interfering with Trinity’s construction fence and (2) enforcing the Stop Work Order of January 13, 2020, pending resolution of Trinity’s petition (Action No. 1); denied MTA’s cross-motion to dismiss Action No. 1; granted Trinity’s cross-motion to dismiss Action No. 2; and dismissed MTA’s motion for preliminary injunctive relief in Action No. 2 as moot. In the Decision and Order dated June 10, 2020 (the “June Decision”), this court granted Trinity a preliminary injunction enjoining and restraining MTA and NYCTA from (1) maintaining MTA’s October 21, 2019, letter to the NYC Department of Transportation (“DOT”) on the basis of New York Public Authorities Law § 1266(12) (the “PAL Letter”), and (2) interfering with Trinity’s project and site permits, including the release thereof; and denied MTA and NYCTA’s cross-motion for leave to reargue and renew their prior motions decided by the March Decision. Reference is made to the March and June Decisions for a recitation of the underlying facts and the meaning of any defined terms used herein.

Subsequent to the June Decision, MTA and NYCTA served the Verified Answer and Counterclaims of Respondents Metropolitan Transportation Authority and New York City Transit Authority dated July 3, 2020. The Verified Answer asserts two counterclaims. The First Counterclaim sounds in trespass, encroachment and improper preliminary injunction, in violation of Public Authorities Law § 1266(12), and is asserted against Trinity as well as Rinaldi as counterclaim defendants. The Second Counterclaim, solely against Trinity, alleges breach of the implied covenant of good faith and fair dealing of the First Amendment to Easement Agreement dated November 29, 2017. Rinaldi now moves to dismiss the First Counterclaim as against it. MTA and NYCTA oppose the motion. (In separate motion sequences, Trinity moves to dismiss both counterclaims, and MTA and NYCTA cross-move to stay this action pending determination of their appeals of the March and June Decisions and for summary judgment dismissing Trinity’s

claims; and MTA and NYCTA move to strike certain materials submitted by Trinity on its motion to dismiss the counterclaims. These motions are being decided separately and concurrently with the instant motion.) For the reasons discussed below, Rinaldi's motion is granted in its entirety.

Rinaldi's first ground for dismissal is lack of personal jurisdiction, pursuant to CPLR 3211(a)(8). Rinaldi is not a party to the within action (Action No. 1), although it was a party to the now-dismissed Action No. 2. The consolidation of Action No. 1 and Action No. 2, prior to the latter's dismissal, was for the purpose of joint discovery and trial, and not a consolidation into a single action. "A joint trial is what is generally desired by litigants when they seek what is often colloquially described as consolidation." *Padilla v. Greyhound Lines, Inc.*, 29 A.D.2d 495, 497 (1st Dep't 1968). It is "inconsistent and improper" to consolidate two actions into one, where, as here, the same party would be both plaintiff and defendant. *Padilla*, 29 A.D.2d at 497. For Rinaldi to be named as a counterclaim defendant in this action, it must be formally served with MTA and NYCTA's answer and a summons. *Baychester Shopping Center, Inc. v. Llorente*, 175 Misc. 2d 739, 741 (Sup. Ct., New York Cty. 1997). Furthermore, Rinaldi's appearances before this court did not subject it to jurisdiction in this action, as the appearances were in connection with the motion practice in Action No. 2, to which Rinaldi was a party.

Even if jurisdiction over Rinaldi had been properly obtained, however, the First Counterclaim as to Rinaldi would still be subject to dismissal pursuant to CPLR 3211(a)(5). The First Counterclaim alleges that Trinity and Rinaldi have "unlawfully occupied, trespassed upon, and encroached upon the Trinity Place sidewalk without valid permits and approvals and in violation of section 1266(12) of the PAL." (Affirmation of Jack Rukab, Esq., Exh. 1, ¶ 195) The counterclaim is founded upon MTA's and NYCTA's allegation that the statute affords MTA

the right to occupy the sidewalk area at issue, despite that fact that the March Decision ruled that the statute is inapplicable to the circumstances of this matter. In light of the March Decision, MTA and NYCTA are barred from maintaining this claim against Rinaldi by virtue of the doctrines of *res judicata* and law of the case. “Under the doctrine of *res judicata*, a party may not litigate a claim where a judgment on the merits exists from a prior action between the same parties involving the same subject matter. . . . The rationale underlying this principle is that a party who has been given a full and fair opportunity to litigate a claim should not be allowed to do so again [citations omitted].” *Matter of Hunter*, 4 N.Y.3d 260, 269 (2005). The doctrine of law of the case “addresses the potentially preclusive effect of judicial determinations made in the course of a single litigation *before* final judgment [citations omitted].” *People v. Evans*, 94 N.Y.2d 499, 502 (2000). The doctrine “has been aptly characterized as ‘a kind of intra-action *res judicata*’ (Siegel, *New York Practice* § 448, at 723 [3d ed]).” *Evans*, 94 N.Y.2d at 502. Under either doctrine, the First Counterclaim as to Rinaldi must be dismissed: under *res judicata* because the March Decision dismissed Action No. 2, where MTA had already asserted the same claim against Rinaldi; and under law of the case because, as discussed in this court’s contemporaneous decision in Motion Sequence 004, the March Decision ruled in the instant action on the issue of the inapplicability of PAL § 1266(12) to the circumstances of this matter.

Accordingly, it is hereby

ORDERED that Rinaldi's motion is granted and MTA and NYCTA's First Counterclaim is dismissed as against Rinaldi.

This constitutes the decision and order of the court.

11/16/2020

DATE

SUZANNE J. ADAMS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE