

MD CBD 180 Franklin LLC v State Natl. Ins. Co.

2022 NY Slip Op 30676(U)

March 1, 2022

Supreme Court, New York County

Docket Number: Index No. 651332/2019

Judge: Arlene Bluth

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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. ARLENE BLUTH PART 14

Justice

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MD CBD 180 FRANKLIN LLC,
Plaintiff,

INDEX NO. 651332/2019
MOTION DATE 02/28/2022
MOTION SEQ. NO. 013

- v -

STATE NATIONAL INSURANCE COMPANY, 168
FRANKLIN HOLDINGS, LLC, BRITT REALTY,
LLC, LIBERTY INSURANCE UNDERWRITERS,
INC., NAVIGATORS INSURANCE COMPANY, ISSAC &
STERN ARCHITECTS, P.C., A & F FIRE PROTECTION
CO., INC., MEC GENERAL CONSTRUCTION, NETT
PROJECT LLC, P & B HEATING & AIR CONDITIONING
CORP., TRIED N' TRUE PLUMBING & HEATING CO., TOP
SHELF ELECTRIC CORP., MAR-SAL CONTRACTING
INC., MAG BUILDERS INC.,

DECISION + ORDER ON
MOTION

Defendant.

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168 FRANKLIN HOLDINGS, LLC, BRITT REALTY, LLC
Plaintiff,

Third-Party
Index No. 595201/2021

-against-

MAG BUILDERS, INC, MEC GENERAL CONSTRUCTION,
NETT PROJECT, LLC, TRIED N' TRUE PLUMBING AND
HEATING CO.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 013) 446, 447, 448, 449,
450, 451, 452, 455, 456, 457, 458, 459, 460

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

The motion by plaintiff to amend the caption and for leave to file a first amended
complaint is granted.

Background

This dispute arises out of alleged defects in a large residential real estate project in Brooklyn. Plaintiff explains that during the deposition of non-party Manan Raval, it learned new facts that form the basis of the instant motion. It claims that the parties it wants to add are affiliates of, or related to, defendants 168 Franklin Holdings, LLC (“168”) and Britt Realty LLC (“Britt”). Plaintiff claims there will be little delay in the case and that there have only been two depositions in this case (plaintiff’s construction consultant and Mr. Raval).

It alleges that one of the proposed new defendants (referred to as “AARE”) controlled 168 and, along with another new defendant (Omri Sachs), fraudulently induced plaintiff to enter into an option agreement to purchase the property, to exercise the option and close on the property. Plaintiff insists that these defendants purposely misled it into believing that certain steps had been taken to address façade issues relating to potential water damage. Plaintiff points to an email from AARE in which it insisted that a façade expert had looked at the property twice already and plaintiff argues that this was a complete falsehood. That expert, Mr. Raval, allegedly had never visited the property when the email was sent. Plaintiff also explains that the Horizon defendants (additional proposed new defendants) actually managed and supervised the project while Britt was merely the construction arm.

In opposition, 168 and Britt claim that plaintiff failed to meet its prima facie burden for leave to amend. They claim the proposed pleading lacks merit and that the proposed Horizon defendants have nothing to do with this case. They point out that these entities’ names suggest they relate to other projects, such as Horizon at Ridge Hill, LLC d/b/a The Horizon Group.

In reply, plaintiff emphasizes that the amendment it seeks merely arose out of existing claims and that the new parties are united in interest with the existing parties. Plaintiff points to

an email from Shay Moskovich (allegedly defendants' point man for the building's construction) who has an email address that indicates he works for Horizon and has the Horizon entities in his signature block. It also relies upon an email from Tomer Yogev (a purported employee of AARE) who mentions getting an update on the construction from Horizon.

Discussion

“Leave to amend pleadings under CPLR 3025(b) 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. A party opposing leave to amend must overcome a heavy presumption of validity in favor of permitting amendment” (*McGhee v Odell*, 96 AD3d 449, 450, 946 NYS2d 134 [1st Dept 2012] [internal quotations and citations omitted]).

Here, the Court grants the motion. Plaintiff met its prima facie burden for leave to amend and the new causes of action alleged against the proposed new defendants state cognizable claims. Plaintiff's view is that these entities acted in concert with (or controlled) current defendants as part of the effort to induce plaintiff to purchase the subject building despite the many issues relating to the façade and water. Plaintiff's theory of the case is, after all, that defendants knew all about the shoddy construction work and tried to get plaintiff to purchase the property anyway.

168 and Britt's opposition does not compel the Court to deny the motion. The claims are not time-barred as these defendants claim; fraud and breach of contract claims have a six-year statute of limitations and the option agreement was not entered into until August 2015. When factoring in the pandemic-related tolling of applicable deadlines (from March 20, 2020 through November 3, 2020), the instant motion (filed on December 30, 2021) is timely.

With respect to the exact nature of the Horizon entities, the Court finds that plaintiff met its prima facie burden to show that these entities may have been involved in the project. Plaintiff need not submit evidence sufficient to win a summary judgment motion in order to prevail on a motion for leave to amend. And the opposing defendants did not attach any exhibits or affidavits in opposition that could lead the Court to conclude that the proposed amendment is utterly lacking in merit.

Accordingly, it is hereby

ORDERED that the motion by plaintiff for leave to amend is granted; and it is further

ORDERED that this action shall bear the following caption:

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 14**

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MD CBD 180 FRANKLIN LLC,
Plaintiff,

-against-

ADAM AMERICA LLC D/B/A ADAM AMERICA REAL ESTATE, OMRI SACHS, HORIZON AT RIDGE HILL LLC D/B/A THE HORIZON GROUP, HORIZON AT FOREST HILL LLC, D/B/A THE HORIZON GROUP, HORIZON AT ROSLYN LLC, D/B/A THE HORIZON GROUP, HORIZON AT WESTBURY LLC, D/B/A THE HORIZON GROUP, HORIZON AT JERICHO LLC, D/B/A THE HORIZON GROUP, BRITT REALTY LLC, D/B/A THE HORIZON GROUP, BRITT REALTY CONSTRUCTION, LLC D/B/A THE HORIZON GROUP, 168 FRANKLIN HOLDINGS, LLC, ISSAC & STERN ARCHITECTS, P.C., MEC GENERAL CONSTRUCTION, NETT PROJECT LLC, P & B HEATING & AIR CONDITIONING CORP., MAR-SAL CONTRACTING INC., MAG BUILDERS INC.,

Defendants.

----- X
168 FRANKLIN HOLDINGS LLC AND BRITT REALTY,

LLC,

Third-Party Plaintiffs

-against—

**MAG BUILDERS INC., MEC GENERAL CONSTRUCTION,
NETT PROJECT, LLC AND TRIED N’ TRUE
PLUMBING AND HEATING CO.**

Third-party Defendants.

----- X

; and it is further

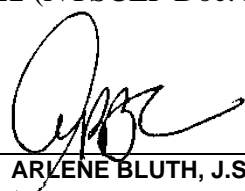
ORDERED that plaintiff shall upload the proposed amended pleading (now uploaded as NYSCEF Doc. No. 449) as a separately e-filed document within 7 days and effectuate service pursuant to the CPLR; and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk’s Office (60 Centre Street, Room 119), who are directed to immediately mark the court’s records to reflect the defendants added and removed hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk’s Office shall be made 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/suptmanh)).

Remote Conference: Already Scheduled for March 15, 2022 (NYSCEF Doc. No. 445).

3/1/2022
DATE


ARLENE BLUTH, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: