

Broadstreet N.Y. Inc. v L3 Capital Income Fund, LLC
2023 NY Slip Op 30806(U)
March 15, 2023
Supreme Court, New York County
Docket Number: Index No. 650218/2023
Judge: Margaret Chan
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49M

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BROADSTREET NEW YORK INC.,

Plaintiff,

- v -

L3 CAPITAL INCOME FUND, LLC and ALTERNATIVE
 GLOBAL MANAGEMENT, LLC,

Defendants.

INDEX NO. 650218/2023

MOTION DATE 02/17/2023,
02/17/2023

MOTION SEQ. NO. (MS) 001 002

**DECISION + ORDER ON
 MOTION**

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HON. MARGARET CHAN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 24, 48, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77 were read on this motion to/for ORDER TO PAY MONIES INTO COURT

The following e-filed documents, listed by NYSCEF document number (Motion 002) 15, 16, 17, 18, 19, 20, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 50, 51, 52, 53 were read on this motion to/for INTERIM RELIEF

In this interpleader action pursuant to CPLR 1006 (a), interpleader plaintiff Broadstreet New York Inc. (plaintiff) seeks a judgment to permit plaintiff to deposit its funds with the court for interpleader defendants L3 Capital Income Fund, LLC (L3 Capital) and Alternative Global Management, LLC (AGM) (together with L3 Capital, defendants), and upon such payment, to discharge plaintiff and its affiliates from any and all liability to the defendants. In MS 001, L3 Capital seeks an order requiring plaintiff to: (i) make an immediate deposit of the funds with the court pursuant to CPLR 1006 and (ii) amend its complaint to make more definite statements, pursuant to CPLR 3024; and for (iii) expedite disclosure, pursuant to CPLR 3102. In MS 002, non-parties Alternative Global Two, LLC, Alternative Global Four, LLC, and Alternative Global Five, LLC (the Prospective Defendants) seek an order (i) permitting them to intervene pursuant to CPLR 1013, and (ii) for a trial of plaintiff's independent liability pursuant to CPLR 1006 (e), as well as for the relief sought by L3 Capital in MS001. Plaintiff opposes both motions.

Background

L3 Capital is an unregistered, private investment fund managed solely by Richard Cardinale (NYSCEF # 2 – Verified Interpleader Complaint, ¶ 2). Plaintiff explains that around November 2019, L3 Capital loaned funds and/or transacted business with the Prospective Defendants (*id.*, ¶ 5). In return for such funds, the

Prospective Defendants would generate monies from their business lines; the monies would flow through to AGM to first repay L3 Capital, and then split equally to its managers and members, Cardinale, Feingold, and Dazzo (*id.*, ¶'s 3, 8). Feingold and Dazzo had also been managers of the Prospective Defendants until January 28, 2022, when they resigned allegedly because of Cardinale's various fraud and misconduct, which allegations are in suit in Florida (*id.*, ¶ 6). Specifically, Feingold and Dazzo assert that Cardinale owed them money and fraudulently misrepresented undisclosed conflicts of interest and payout-structures to the Prospective Defendants (*id.*, ¶ 15). Feingold is the CEO of plaintiff's affiliate Broadstreet, Inc. (*id.* at 2, n 1).

Aside from the suit in Florida, there are three other pending cases involving Cardinale and various related entities in the state courts in New York and in the Federal District Court in South Carolina (and one recently dismissed case in the Delaware Chancery Court). Plaintiff states that neither plaintiff nor its affiliates is a party in these cases (*id.*, ¶ 14).

Plaintiff believes that over the next five years or so, substantial sums of money will come into plaintiff's or its affiliates' possession, some of which should be distributed to AGM and/or L3 Capital and ultimately to their investors or members (*id.*, ¶ 12). Plaintiff states that it cannot effect any disbursement without being exposed to potential liability as a result of L3 Capital and AGM's adverse claims, which is why it seeks to deposit the funds into the court (*id.*, ¶'s 18, 20).

In support of MS001, L3 Capital argues that plaintiff should indeed make an immediate deposit with the court of "all of the funds that it has, or will have," but it opposes releasing plaintiff from liability upon plaintiff's deposits with the court (NYSCEF # 12 – MS001 MOL at 1, 3). L3 Capital doubts that plaintiff is an innocent stakeholder and posits that plaintiff is a dummy corporation through which plaintiff's affiliates seek to wash misappropriated funds (*id.* at 2). In light of the claims against plaintiff's affiliates, L3 Capital asserts that the absolution plaintiff seeks is premature and inappropriate, especially in light of the Prospective Defendants' and other related entities' claims against Feingold and Dazzo in the Florida action (*id.*).

In addition to seeking the deposit of funds, L3 Capital seeks information from plaintiff via an amended complaint and expedited discovery. L3 Capital states that plaintiff's complaint contains certain deficient allegations such as the failure to identify exactly what property it is holding now and how it came into possession of the property, and how it may be exposed to multiple liability obligations. L3 Capital requests expedited discovery for "contracts, accounting records, and communications related to the distributions allegedly arriving within weeks" (*id.* at 3-4).

Plaintiff, in opposition, asserts that L3 Capital's demand for deposit of "all of the funds that it has, or will have," should be denied as there is no explanation as to an entitlement to "all" such funds, and plaintiff is prepared to proceed with depositing the funds actually at issue (NYSCEF # 76 – MS001 Opp at 17). As for the

claim that discharging plaintiff upon payment of funds is premature and improper, plaintiff notes that it has not yet moved for discharge nor has Cardinale provided any basis to block such discharge (*id.*). As for the demand for an amended complaint, plaintiff asserts that CPLR 3024 (c) requires such motion be made within twenty days after service of the challenged pleading, which did not happen here (*id.* at 18). Moreover, plaintiff denies that its complaint is vague or ambiguous, instead properly meeting the minimal notice pleading requirement of CPLR 3013 (*id.* at 19). Finally, as to the expedited discovery request, plaintiff argues that it is Cardinale's way of seeking an improper fishing expedition (*id.* at 21). Plaintiff notes that this interpleader case was brought "because there are so many lawsuits pending, that it was determined to simply deposit money with one Court, in New York, the home state of L3 Capital which would not involve any of the discovery or other issues being handled by all of the other courts" (*id.* at 20).

The Prospective Defendants, in support of MS002, speculate that the funds plaintiff seeks to deposit involve proceeds related to \$17,561,300 that they had transferred to Blackstream Development, LLC in real estate development projects in South Carolina from May 2020 through January 2022 (NYSCEF # 20 – MS002 MOL at 1, 7). Furthermore, the Prospective Defendants point out that plaintiff's complaint itself specifies that they are to receive monies, which also allegedly entitles them to intervene as claimants because they would be affected by the disposition or distribution of the funds (*id.* at 2-3, n 2 citing NYSCEF # 2, ¶ 8). As to their demand for a trial, the Prospective Defendants suggest that plaintiff is controlled by Feingold and Dazzo, allegedly rogue former members of the Prospective Defendants who have allegedly absconded with financial records and assets and face independent liability (NYSCEF # 20 at 15). Their remaining requests echo L3 Capital's arguments.

Plaintiff opposes the Prospective Defendants' intervention contending that they are controlled by Cardinale, and the goal of the action in the first place is to avoid Cardinale given plaintiff's various concerns with him and that 70% of L3 Capital's investors have apparently requested redemption of their capital (NYSCEF # 47 at 1, 4). Plaintiff adds that the intervention motion should be denied as it is (i) unsupported by competent evidence and (ii) noncompliant with CPLR 1014 (requiring a proposed pleading setting forth their claim or defense); (iii) the Prospective Defendants have no ultimate right to the funds as they are not the ultimate beneficiaries of the funds, (iv) they already chose another forum to litigate (South Carolina in an action by the Prospective Defendants against Blackstream Development, LLC) and any purported claims covered by those litigations should not properly be the subject of this interpleader action, (v) their intervention will cause delay, duplicative work and unnecessary expenditures of time and resources by litigants and the courts and also threaten inconsistent results in view of the numerous pending proceedings, and (vi) allowing intervention would thwart this action (*id.* at 3-4, 8, 15).

Plaintiff denies that Feingold and Dazzo have gone “rogue” and “absconded” with records and assets, indicating that Cardinale contradicted this when he previously testified that Feingold and Dazzo had not stolen anything (*id.* at 5). Plaintiff posits that no facts have been provided to warrant a trial of plaintiff’s liability, and further, any such trial here would make no sense in view of the pending litigations covering the same subject matter (*id.* at 22).

In Reply, the Prospective Defendants reject plaintiff’s contention that their motion is not supported by competent evidence, indicating that their counsel has sufficient first-hand knowledge of the relevant facts (NYSCEF # 53 – MS002 Reply at 5). They also deny that they must file a proposed pleading prior to the relief they seek (*id.* at 5-6). The Prospective Defendants further contend that they do not need to have an ultimate right to the funds at issue to intervene (*id.* at 7). As to their demand for a more definite statement, movants charge plaintiff with amplifying the ambiguities already present in its pleadings rather than attempting to provide information in an affidavit (*id.* at 10). Finally, movants argue that a proper interpleader stakeholder is not an advocate for any claimant to the stake but should rather be indifferent toward claimants, which neutrality plaintiff is allegedly lacking on account of Feingold’s involvement (*id.* at 11).

Discussion

The demand for a more definite statement pursuant to CPLR 3024 is denied. Even putting aside that L3 Capital failed to follow the statutory requirements, it is not the case that the complaint is “so vague or ambiguous that a party cannot reasonably be required to frame a response” (*State v New York Movers Tariff Bureau, Inc.*, 48 Misc 2d 225, 254-255 [Sup Ct, NY County 1965] [denying motion for a more definite statement where, at least for the purpose of being able to respond thereto the complaint sufficiently alleged claims, and party seeking relief was properly relegated to utilizing other discovery tools to gain greater specificity]).

The demand for the funds to be immediately deposited into court is also denied; the moving papers have failed to cite to any authority allowing interpleader defendants such relief (*compare Bernstein v Indep. Properties Corp.*, 124 Misc 2d 270, 271 [Civ Ct, NY County 1984] [“only a stakeholder has the option to apply for the order of discharge or to deposit money”]).

As to the Prospective Defendants’ motion to intervene, CPLR 1012 (a)(3) provides that “any person shall be permitted to intervene in any action . . . when the action involves the disposition or distribution of, or the title or a claim for damages for injury to, property and the person may be affected adversely by the judgment.” “A timely motion for leave to intervene should be granted when the intervenor has a real and substantial interest in the outcome of the proceedings” (*Deutsche Bank Nat’l Tr. Co. v Allenstein*, 201 AD3d 783, 784-85 [2d Dept 2022]). Here, the Prospective Defendants are correct that the complaint supports their right to intervene since the Prospective Defendants are to receive monies from the relevant business lines. Even if plaintiff is correct that the Prospective Defendants have no

ultimate right to the funds (an issue that need not be addressed now), that would not be a basis for denying intervention where plaintiff does not dispute that the funds are, apparently by design, to flow through the Prospective Defendants. Nonetheless, as the Prospective Defendants have not filed a proposed answer relief must be denied without prejudice (*see New Hope Missionary Baptist Church, Inc. v 466 Lafayette Ltd.*, 169 AD3d 811, 812 [2d Dept 2019] “[a] motion seeking leave to intervene. . . must include the proposed intervenor’s proposed complaint or answer (CPLR 1014). . . . The court has no power to grant leave to intervene where, as here, the prospective intervenor[] did not include . . . a proposed pleading setting forth the claim or defense for which intervention is sought. . . . Nevertheless, we find that [the prospective intervenor] made a threshold showing” and accordingly may “renew its motion upon proper papers”) [quotation marks and citations omitted]).

L3 Capital’s demand for expedited discovery is denied without prejudice. As stated above, plaintiff has not moved for an order of discharge and L3 Capital has failed to establish its entitlement to discovery ahead of plaintiff’s motion for an order of discharge (CPLR 1006 (f)). While L3 Capital asserts that courts have broad discretion to control the timing and scope of discovery, the cases it cites in support do not involve interpleaders and are therefore distinguishable. Moreover, the discovery in the Florida and South Carolina cases, which L3 Capital claims are related to this case, serve as another reason for this court to deny discovery at this juncture.

Conclusion

In light of the foregoing, it is

ORDERED that defendant L3 Capital Income Fund, LLC’s motion (MS 001) is denied in its entirety, however, the branch of the motion seeking expedited discovery is denied without prejudice; and it is further

ORDERED that the motion of non-party prospective intervenor defendants Alternative Global Two, LLC, Alternative Global Four, LLC, and Alternative Global Five, LLC (MS 002) is denied without prejudice.

03/15/2023

DATE



MARGARET CHAN, 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