

AIG Prop. Cas. Co. v Precision Aquatics Group, LLC

2023 NY Slip Op 31356(U)

April 25, 2023

Supreme Court, New York County

Docket Number: Index No. 155300/2019

Judge: Sabrina Kraus

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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. SABRINA KRAUS PART 57TR

Justice

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AIG PROPERTY CASUALTY COMPANY A/S/O BRAD PELTZ AND DARREN PELTZ, SENECA INSURANCE COMPANY, INC. A/S/O CAMELOT PROPERTY MANAGEMENT SERVICES CORP. AND 290 WEST STREET CONDOMINIUM, HAMILTON INSURANCE COMPANY INDIVIDUALLY AND AS SUBROGEE OF ITS INSURED, 290 WEST VE LLC, PACIFIC EMPLOYERS INSURANCE COMPANY A/S/O FRANZ-FERDINAND BUERSTEDDE,

Plaintiff,

- v -

PRECISION AQUATICS GROUP, LLC, FOUNDATIONS INTERIOR DESIGN CORP., BEST PLUMBING & HEATING, INC., RECREATION & FITNESS MANAGEMENT, LLC, CAVCO ROOFING & SIDINGS, INC.,

Defendant.

-----X

PRECISION AQUATICS GROUP, LLC,

Plaintiff,

-against-

RECREATION & FITNESS MANAGEMENT LLC

Defendant.

-----X

FOUNDATIONS INTERIOR DESIGN CORP.

Plaintiff,

-against-

RECREATION & FITNESS MANAGEMENT LLC, CAVCO ROOFING & SIDINGS, INC.

Defendant.

-----X

INDEX NO. 155300/2019
MOTION DATE 4/24/2023
MOTION SEQ. NO. 007

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595274/2020

Second Third-Party
Index No. 595926/2020

The following e-filed documents, listed by NYSCEF document number (Motion 007) 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247

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

BACKGROUND

Plaintiff commenced this action seeking reimbursement of the loss payment it made to its insureds, Brad Peltz and Darren Peltz (“Peltz”), in the sum of \$696,308.00 for water damage they sustained to their property as a result of the alleged negligence of the defendants in the installation of a rooftop swimming pool and overflow drainage system for that pool, which failed and caused water damage to the Peltz apartment and the property.

PENDING MOTION

AIG Property Casualty Company a/s/o Brad Peltz and Darren Peltz (“AIG”) moves for an order pursuant to CPLR §3025(b) granting leave to file and serve a second amended complaint, which adds three causes of action, each for breach of an indemnity agreement as against defendants Precision Aquatics Group, LLC (“Precision”), Best Plumbing & Heating Corp. (“Best”) and Cavco Roofing & Siding, Inc. (“Cavco”).

On April 24, 2023, the court heard oral argument and reserved decision. For the reasons stated below the motion is granted.

DISCUSSION

The initial complaint and amended complaint asserted only one cause of action against all defendants which sounded in negligence. However, AIG alleges that upon receiving the subcontracts in discovery, it found that three of the defendant subcontractors (Precision, Best and Cavco) that performed work on the swimming pool each executed separate subcontracts and each subcontract contained an indemnification clause whereby each subcontractor agreed to,

among other things, indemnify AIG's insured for any damages they sustained out of the respective subcontractor's work.

It is well established law, that absent any showing of prejudice or undue delay, a motion for leave to amend a complaint should be freely granted. *Global Liberty, Ins. Co. v. Tyrell*, 172 A.D.3d 499 (1st Dept. 2019). Further, a request for leave to amend a complaint should be granted unless there is prejudice of surprise or if the proposed amendment is palpably improper. *Crossbeat New York, LLC v. Liirn, LLC*, 169 A.D.3d (1st Dept. 2019).

On a motion to amend the movant need not establish the merits of the proposed amendment *Lucido v Mancuso* 49 AD3d 220 (3rd Dept. 2008). The party opposing the amendment bears the burden of demonstrating prejudice *Kimso Apartments, LLC v Gandhi* 24 NY3d 403 (2014). Here, defendants must overcome a presumption of validity in plaintiff's favor and demonstrate that the facts alleged and relied upon by plaintiff are obviously unreliable or insufficient to support the amendment. *Daniels v. Empire-Orr, Inc.*, 151 A.D.2d 370, 371 (1st Dept. 1989). They have failed to do so in their opposition papers.

Defendants essentially make two arguments in opposition. The first is that the facts adduced so far in discovery do not support the cause of action being asserted. The second is that AIG is misinterpreting the provisions in the subcontracts. The court finds that neither argument warrants denial of the motion. The facts in this action are still being developed and the clauses in the contract are susceptible to more than one interpretation.

Based on the foregoing, the motion is granted.

WHEREFOR it is hereby:

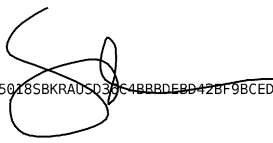
ORDERED that the plaintiff’s motion for leave to amend the first amended complaint herein is granted, and the second amended complaint in the proposed form annexed to the moving papers shall be deemed served as of the date of this order; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk 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/supctmanh); and it is further

ORDERED that the defendants shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

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


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<u>4/25/2023</u> DATE	<hr/> SABRINA KRAUS, J.S.C.			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE	