

Broadstreet N.Y. Inc. v L3 Capital Income Fund, LLC

2023 NY Slip Op 33835(U)

October 27, 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.

ALTERNATIVE GLOBAL TWO, LLC,
 ALTERNATIVE GLOBAL FOUR, LLC, and
 ALTERNATIVE GLOBAL FIVE, LLC,

[Proposed] Intervenor Defendants

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INDEX NO. 650218/2023

MOTION DATE 03/22/2023,
03/22/2023

MOTION SEQ. NO. (MS). 003 004

**DECISION + ORDER ON
 MOTION**

HON. MARGARET CHAN:

The following e-filed documents, listed by NYSCEF document number (MS 003) 78, 79, 80, 88, 89, 90, 91, 92, 94, 95, 96, 97, 98

were read on this motion to/for ORDER TO PAY MONIES INTO COURT

The following e-filed documents, listed by NYSCEF document number (MS 004) 84, 85, 86, 87, 93, 99

were read on this motion to/for RENEWAL

In this interpleader action pursuant to CPLR 1006 (a), plaintiff Broadstreet New York Inc.¹ moves in MS 003 for an order pursuant to CPLR 1006 and 2601: (i) authorizing plaintiff to pay into the court certain funds; (ii) upon such payment, discharging plaintiff from liability to any of the defendants or any other individuals with respect to such funds; and (iii) dismissing plaintiff from this action with prejudice as to such funds. Defendant L3 Capital Income Fund, LLC opposes the latter two aspects of the relief plaintiff seeks. In MS 004, proposed intervenor defendants Alternative Global Two, LLC; Alternative Global Four, LLC; and Alternative Global Five, LLC (the AG Companies) renew their motion for an order permitting them to intervene pursuant to CPLR 1012 (a) (3). Plaintiff opposes their motion. MS 003 and MS 004 are consolidated for disposition.

For the reasons stated below, MS 003 is denied and MS 004 is granted.

¹ Feingold is the CEO of plaintiff's affiliate Broadstreet, Inc. as of July 2022 (*id.* at 2, n 1).

Background

L3 Capital is an unregistered, private investment fund managed solely by non-party Richard Cardinale (NYSCEF # 2 – Verified Interpleader Complaint [Compl]), ¶ 2). According to plaintiff, around November 2019, L3 Capital loaned funds and/or transacted business with the AG Companies (*id.*, ¶ 5). In return for those funds, the AG Companies would generate money from their business lines, which included land development and restaurants. The money would flow through the AG Companies to defendant Alternative Global Management, LLC (AGM), which would use that money to first repay L3 Capital, and then split equally among its managers and members, who were Cardinale, Feingold, and Dazzo (*id.*, ¶'s 3, 8). Feingold and Dazzo were also managers, along with Cardinale, of the AG Companies until January 28, 2022, when Feingold and Dazzo resigned allegedly because of Cardinale's various fraud and misconduct, which allegations are in suit in Florida (*id.*, ¶ 6). Feingold and Dazzo assert in the Florida action that Cardinale engaged in a pattern of fraudulent misrepresentation about undisclosed conflicts of interest and payout-structures, and Cardinale owes them both money (¶ 15).

Aside from this suit and two in Florida – one in federal court (disposed) and one in state court, there are other pending cases involving Cardinale and various related entities in the state court in the Federal District Court in South Carolina, and one in the Delaware Chancery Court (dismissed), and an arbitration (NYSCEF # 93, pltf's MOL at 12-13). Plaintiff states that neither plaintiff nor its affiliates is a party in these cases (Compl ¶ 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 make 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).

One month after plaintiff filed its petition, L3 Capital moved by order to show cause in MS 001 for an order requiring plaintiff to: (i) make an immediate deposit of the funds with the court pursuant to CPLR 1006; (ii) amend its complaint to make more definite statements pursuant to CPLR 3024; and (iii) expedite disclosure, pursuant to CPLR 3102. This court denied the order to show cause entirely (NYSCEF # 81, Order date March 15, 2023).

The court's March 15, 2023 order also considered the AG Companies' motion to permit them to intervene pursuant to CPLR 1013 (MS 002) and denied it because the AG Companies had not filed a proposed answer. The denial was without prejudice as the court concluded that the AG Companies were correct that the complaint supports their right to intervene since they are said to receive monies from the relevant business lines. L3 Capital now files an unsigned proposed answer with affirmative defenses and counterclaim in support of its renewal motion seeking to intervene (NYSCEF # 86).

Discussion

Intervention (MS004)

The court first considers the AG Companies' motion to renew, which now includes a proposed answer. Plaintiff argues against intervention on the grounds that the AG Companies are "merely a flow through and take nothing" (NYSCEF # 93, pltf's MOL at 4; *see also* Compl ¶ 8). The AG Companies, however, point to plaintiff's allegation in the complaint that "the 'Alternative Global Numbered Entities are to receive certain monies generated by the Business Lines . . .'" (NYSCEF # 87, AG Co.'s MOL at 8 quoting Compl ¶ 8).

As the ultimate entitlement to the funds is the question raised by plaintiff's interpleader complaint,² if the funds at issue are required to flow through the AG Companies, that would support their right to intervene (CPLR 1012 [a] [3] ["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"]). While plaintiff argues that the AG Companies are merely a conduit, plaintiff has not shown that the AG Companies have no interest in this proceeding (*see Deutsche Bank Nat'l Tr. Co. v Allenstein*, 201 AD3d 783, 784-785 [2d Dept 2022] ["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"]). Thus, the intervenor defendant's motion to renew is granted (*see New Hope Missionary Baptist Church, Inc. v 466 Lafayette Ltd.*, 169 AD3d 811, 812 [2d Dept 2019] [denying intervention where proposed pleading lacking but, given threshold showing, inviting renewal of the motion upon the proper papers]). And upon renewal, the AG Companies' motion to intervene in this matter is granted.

Payment of Funds and Discharge (MS003)

L3 Capital previously demanded that plaintiff deposit funds into court, which the court denied, noting that L3 Capital failed to cite any authority allowing it, as claimant, the right to seek this relief rather than it being the option of plaintiff as the would-be stakeholder (NYSCEF # 81 at 4). In that plaintiff, being the putative stakeholder, now moves to pay into the court certain funds, the court considers this aspect of the present motion.

"'In order to qualify as a stakeholder . . . and thus be eligible for discharge, it is . . . necessary to show that there is exposure to double or multiple liability as a result of adverse claims. These adverse claims, therefore, must rest on some reasonable basis'" (*Genworth Life Ins. Co. of New York v Laraque*, 2011 WL 4443499 (Sup Ct, NY County 2011) [] [quoting *Nelson v Cross & Brown Co.*, 9 AD2d 140, 140 [1st Dept 1959]). "If the court has any doubt about whether [the movant] is

² For the avoidance of doubt, this decision does not reach the declaratory relief sought by the Intervenor Defendants, which would have this court declare them to be "claimants" "entitled" to the funds at issue (NYSCEF # 86 at 14).

just a stakeholder, or for any good reason feels that [the stakeholder] should remain in the action as a party, it will deny [the stakeholder's] motion to be discharged In addition, . . . a court's determination of a stakeholder's application for discharge from liability is discretionary" (*Jackson Nat. Life Ins. Co. of New York v Vita*, 2014 WL 1333962 at *6 [Sup Ct, NY County 2014]; see also *Nelson v Cross & Brown Co.*, 9 AD2d 140, 144 [1st Dept 1959] ["Obviously, a bare assertion of a claim is not enough"]; *First Am. Title Ins. Co. v Cumberland Farms, Inc.*, 62 Misc 3d 1205(A) [Sup Ct, Kings County 2019] ["To prevail on a summary judgment motion seeking interpleader relief, a plaintiff must make a prima facie showing that it is a neutral stakeholder with no interest in the funds or property in question"] citing *Fid. & Deposit Co. of Maryland v Barroga-Hayes*, 129 AD3d 773, 774 [2d Dept 2015]).

Plaintiff's motion to pay funds into the court attendant with a discharge is denied. Even putting aside that plaintiff has not yet responded to the AG Companies' counterclaim and the direction of CPLR 1006 (f) for a stakeholder's motion for an order of discharge coming only "[a]fter the time for all parties to plead has expired," still plaintiff's motion is deficient. CPLR 1006 (f) also requires plaintiff as putative stakeholder to "submit proof by affidavit or otherwise of the allegations in" the complaint. Plaintiff's affidavit of David Feingold (NSYCEF # 79) fails to provide the specificities missing from the complaint as to where exactly the funds came from or even how much plaintiff seeks to initially deposit. Answers to such questions would allow deeper probing into whether plaintiff is, as it posits, a stakeholder without an interest in the final disposition of the funds and without liability for the transactions allegedly at issue (NYCSEF # 80 at 7).

Further, plaintiff states that "this interpleader proceeding has been brought . . . primarily to insure that the investors in [L3 Capital] receive appropriate distributions" (*id.* at 2; NYSCEF # 79, ¶ 3). Plaintiff cites no authority for the use of CPLR 1006 where the averred ultimate beneficiaries of funds have not been brought into the court but plaintiff's liability to them would nonetheless be discharged (*see e.g. New York City Asbestos Litigation*, 2019 WL 3501560 at *4 (Sup Ct, NY County 2019) [finding interpleader movant "inappropriately [seeks] to have this court distribute funds to litigants with claims located in various courts in multiple states located outside of the jurisdiction of New York, without establishing jurisdiction over those claims or stating a basis for the distribution of funds to those claimants under New York's impleader statutes" and rejecting the use of interpleader to offload the burdens of multiparty mass litigation onto the court systems]).

Plaintiff's cases cited in support are inapposite to the present situation (NYSCEF # 80 at 6-8); to wit: *Nelson*, 9 AD2d 140 [interpleader not applicable on real estate commission of stated amounts allegedly owed to competing parties]; *Boden v Arnstein*, 293 NY 99 [1944] [all claimants were brought into the action on competing claims to life insurance proceeds]; *New York Life Ins. Co. v Lowy*, 40 AD3d 295 [1st Dept 2007] [same]; *Sun Life Ins. & Annuity Co. of New York v Braslow*, 38 AD3d 529 [2d Dept 2007] [competing annuity claims where there was no issue of an independent liability of the movant]; *Mahon, Mahon, Kerins &*

O'Brien, LLC v Moskoff, 85 AD3d 738 [2d Dept 2011] [neutral stakeholder discharged where there were no competing claims or issue on plaintiff's independent liability]; *see also* NYSCEF # 98 at 6-12, citing *Genworth Life Ins.*, 2011 WL 4443499 [case involving prospective competing claims to annuities by parties to the action]; *Credito Italiano, New York Branch v Cellulose Converting Equipments, S.R.L.*, 173 AD2d 350 [1st Dept 1991] [discharge of stakeholder appropriate where the controversy was between two claimants to bank deposit in which plaintiff bank had no interest]; *First Am. Title*, 62 Misc 3d 1205(A) [approving use of interpleader statute for stakeholder escrow agent where claimants were named parties to the action for definite amount of escrow deposit]).

Nor does plaintiff support the use of interpleader for rolling distributions over a multi-year period (*compare Nelson*, 9 AD2d at 145 [identifying issues with partial discharge to the extent of the sum tendered]). Confusingly, plaintiff "seeks a discharge to permit [it] to withdraw from this action after" making the initial deposit (NYSCEF # 98 at 12). But plaintiff does not explain what would happen with the subsequent amounts that rolls in related to this action.


Accordingly, it is

ORDERED that the motion of plaintiff Broadstreet New York Inc. for an order under CPLR 1006 authorizing it to pay into the court funds and upon such payment be discharged from any and all liability to any of the defendants, or any other individuals, and dismissed from the action (MS 003) is denied; it is further

ORDERED that the motion of Alternative Global Two, LLC, Alternative Global Four, LLC, and Alternative Global Five, LLC to renew their motion to intervene (MS 004) is granted, and upon renewal, the motion to intervene is granted; it is further

ORDERED that the Intervenor Defendants shall serve their answer within ten days of the e-filing of this Decision and Order; and it is further

ORDERED that plaintiff shall answer or otherwise move on the Intervenor Defendants' counterclaim within three weeks of the e-filing of such answer.

<u>10/27/2023</u> DATE	 MARGARET CHAN, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE