

Allen v Coeyman's Landing Mar. Servs., Inc.
2024 NY Slip Op 35424(U)
June 26, 2024
Supreme Court, Albany County
Docket Number: Index No. 909285-22
Judge: Denise A. Hartman
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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

ERIC ALLEN AND LORI ALLEN,

Plaintiffs,

-against-

COEYMAN'S LANDING MARINE SERVICES, INC.,
COEYMANS LANDING MARINE INC., CARVER
CONSTRUCTION, INC. AND CARVER REALTY
LLC,

Defendants.

COEYMAN'S LANDING MARINE SERVICES, INC.,

Third-Party Plaintiffs,

-against-

CARVER COMPANIES PAYROLL, LLC, CARVER
REALTY, LLC, AND COEYMANS LANDING
MARINA, INC.

Third-Party Defendants

HON. DENISE A. HARTMAN, AJSC

APPEARANCES

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DECISION & ORDER
(MOTION NO. 1)

Index No. 909285-22

June 26, 2024

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Hartman, J.

Travelers Property Casualty Company of America (Travelers) moves for leave to intervene in this personal injury action pursuant to CPLR 1012 or CPLR 1013 to recover moneys it paid to insureds, third-party defendant Coeymans Landing Marina, Inc. (Coeyman's Landing Marina) and non-party Coeyman's Marine Towing, LLC (CMT), for property damage sustained as a result of an explosion at the Coeymans marina in January 2021. Travelers seeks to assert claims of negligence against defendant/third-party plaintiff Coeyman's Landing Marine Services, Inc. (CLMSI), the owner/operator of the boat repair shop where the explosion occurred.*

Plaintiffs in the underlying personal injury action, Eric and Lori Allen, and defendant/third-party plaintiff CLMSI oppose Travelers' motion. For the reasons that follow Travelers' motion to intervene is granted.

Background

On January 20, 2022, an explosion occurred while plaintiff Eric Allen was performing welding work inside a boat shop at the Coeymans marina. Carver Realty, LLC (Carver Realty) owns the property upon which the marina

* The other named defendant/third-party plaintiff, Coeymans Landing Marine Inc. (CLMI) has not appeared in this case and may be a defunct company. If so, the parties are urged to stipulate to removing CLMI from the case. For the sake of clarity, this decision and order will refer only to CLMSI and omit mention of CLMI.

is located, which it leases to Coeymans Landing Marina. Coeymans Landing Marina in turn, subleases the property to boat shop owner/operator CLMSI.

At the time of the explosion, plaintiff Eric Allen was an employee of Carver Companies Payroll, LLC (Carver Companies Payroll). According to plaintiffs, defendant Carver Construction, Inc. (Carver Construction) was the entity overseeing and controlling the welding work Eric Allen was performing at defendant CLMSI's boat repair shop.

Procedural History

Plaintiffs Eric and Lori Allen commenced this action in December 2022 against defendants CLMSI, Carver Construction, and Carver Realty to recover damages for personal injuries Eric Allen allegedly sustained when a fuel tank on which he was performing welding work inside the boat repair shop exploded, and for Lori Allen's alleged loss of services and consortium. As relevant, plaintiffs alleged that CLMSI's regular business included the removal of waste oil, gas, and other combustible liquids from marine engines. Plaintiffs alleged that CLMSI acted negligently by storing combustible liquids in the boat repair shop and/or disposing of such liquids into the waste oil heating system that serviced the boat shop. Plaintiffs filed an amended complaint on January 9, 2023, which clarified their theories of negligence against CLMSI and alleged that Eric Allen's suffered catastrophic burn injuries. CLMSI answered the

amended complaint, denied the allegations contained therein, and asserted numerous affirmative defenses.

On June 29, 2023, CLMSI commenced a third-party action against third-party defendants Carver Companies Payroll, Carver Realty, and Coeymans Landing Marina, asserting claims for contribution and/or indemnification. CLMSI alleged that the plaintiffs' injuries were the result of Eric Allen's sole negligence or the negligence of the third-party defendants. And, as relevant, CLMSI alleged a cause of action for indemnification or contribution from Carver Companies Payroll, asserting that Eric Allen may have received payments under the Workers' Compensation Law for "grave injury."

On August 17, 2023, plaintiffs filed a second amended complaint in which plaintiffs reasserted their cause of action for negligence against CLMSI; asserted new causes of action against Carver Construction and Carver Realty for violations of Labor Law §§ 200 and 241; and asserted or reasserted causes of action for loss of services and consortium against all defendants. CLMSI answered the second amended complaint, denied the allegations contained therein insofar as asserted against it, raised various affirmative defenses, and asserted cross-claims for contribution and/or indemnification against Carver Realty and Carver Construction. Carver Realty also answered the second amended complaint, denied the allegations contained therein insofar as asserted against it, raised various affirmative defenses, and asserted cross-

claims for contribution and/or indemnification against CLMSI and Carver Construction.

On September 20, 2023, Carver Realty and Coeymans Landing Marina answered CLMSI's third-party complaint, denied the allegations contained therein, and asserted various affirmative defenses. They asserted a counterclaim of negligence against CLMSI, alleging that it breached its duty to exercise reasonable care by disposing waste oil into the waste oil tank without the knowledge of Carver Realty or Coeymans Landing Marina and that CLMSI's negligence proximately caused the January 20, 2022 explosion, which destroyed the boat shop, Coeymans Landing Marina's boatlift, and seven boats owned by private individuals. Carver Realty and Coeymans Landing Marina sought damages on their counterclaim against CLMSI on their own behalf and on behalf of Travelers, which had paid out on insurance policies for the damage caused to Carver Realty's and Coeymans Landing Marina's property and for the seven damaged boats. CLMSI answered and denied the allegations asserted in Carver Realty's and Coeymans Landing Marina's counterclaims.

The Instant Motion

By notice of motion, Travelers seeks to intervene pursuant to CPLR 1012 or CPLR 1013. In support of its motion, Travelers proffers its proposed intervenor complaint in which it asserts a single cause of action of negligence,

as subrogee of third-party defendant Coeymans Landing Marina and non-party CMT, against CLMSI. The proposed intervenor complaint alleges that CLMSI negligently caused the January 20, 2022 explosion by failing to exercise reasonable care in the disposal of waste oil. Travelers seeks to recover \$1,240,926.99 from CLMSI for the \$842,664.99 that Travelers paid to Coeymans Landing Marina pursuant to two separate casualty insurance policies for damage sustained to Coeymans Landing Marina's boat shop and boatlift and for the \$398,262.00 it paid to non-party CMT for damage sustained to seven boats, all allegedly resulting from the explosion.

Travelers first argues that it is entitled to intervention as of right pursuant to CPLR 1012 (a) on the basis that its insured, third-party defendant Coeymans Landing Marina, cannot adequately protect its interest because any recovery Coeymans Landing Marina obtains will be limited to damages in excess of the amounts Travelers has already paid it under the insurance policies. Therefore, Travelers argues, no resolution of the action will account for the amounts it paid on behalf of Coeymans Landing Marina or non-party CMT, and Travelers will likely be bound by any judgment.

Travelers alternatively argues that it is entitled to permissive intervention pursuant to CPLR 1013 on the basis that its proposed cause of action involves common factual and legal questions to the claims asserted in the main action. Travelers contends that intervention will not unduly delay

resolution of the action or prejudice the substantial rights of any parties because its claims arise from the same occurrence and involve the same issues of liability, factual determinations, and witnesses. Travelers also posits that intervention will further judicial efficiency by avoiding the need for a separate subrogation action.

CLMSI opposes, arguing that Travelers has failed to establish entitlement to intervention as of right because it has not demonstrated that the present parties will not adequately represent its interests and, in any event, Travelers is not prohibited from commencing a separate subrogation action. CLMSI contends that permitting intervention in this case, which already involves numerous parties and third-party claims, cross-claims and counterclaims, will confuse the jury and prejudice CLMSI's rights. And, because there has been no finding as to CLMSI's liability, Travelers has not established the right to recover from CLMSI for moneys paid out pursuant to its insurance policies. As for permissive intervention, CLMSI argues that although Travelers' claims involve the same accident at the core of the action and third-party action, Travelers' "claims are not identical and do not involve the same discovery" (NYSCEF Doc No. 49 at ¶ 11). CLMSI avers that Travelers' subrogation claims will involve depositions of Travelers' claims adjuster and other individuals who made determinations regarding the property damage, which would unnecessarily delay the main action.

Plaintiffs also oppose Travelers' motion, arguing first that mandatory intervention is unwarranted because Travelers' interests is adequately represented by and already seeks full recovery through Coeymans Landing Marina's counterclaims. And, plaintiffs argue, though the doctrine of res judicata would bind Travelers from recouping based on the damages sustained by Coeymans Landing Marina, it would not bind Travelers with respect to the damages relating to the seven damaged boats. Further, conceding that Travelers' subrogation claims share common questions of law and fact with their underlying personal injury claims, plaintiffs argue that intervention is nevertheless inappropriate because Travelers' claim as to the seven damaged boats is purely incidental to plaintiff's claims and exists exclusively as between the defendants and third-party defendants. Plaintiffs also argue that permitting intervention would complicate this action and lead to jury confusion, and require discovery, depositions, witnesses, and proof at trial wholly separate from the underlying claims in their personal injury action. Plaintiffs note their intent to move for separate trials as to the third-party defendants' property damage claims at a later time.

In reply, Travelers argues, among other things, that should Coeyman's Landing Marina's counterclaims fail, Travelers will be foreclosed as a matter of res judicata and collateral estoppel from asserting its own claims against CLMSI. Travelers asserts that permissive intervention will promote judicial

efficiency because common questions of law and fact exist as to its proposed cause of action and plaintiffs' and Coeymans Landing Marina's claims, involve the same discovery, and the same witnesses would testify at a trial. Travelers concedes that the underlying action and its subrogation claims could be severed should the issue of jury confusion arise.

Analysis

CPLR 1012 (a) (2) authorizes intervention as of right "when the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment" CPLR 1013 authorizes discretionary intervention "when the person's claim or defense and the main action have a common question of law or fact." "[U]nder liberal rules of construction . . . whether intervention is sought as a matter of right under CPLR 1012 (a), or as a matter of discretion under CPLR 1013 is of little practical significance [and] intervention should be permitted where the intervenor has a real and substantial interest in the outcome of the proceedings" (*Roman Catholic Diocese of Brooklyn, N.Y. v Christ the King Regional High Sch.*, 164 AD3d 1394, 1396 [2d Dept 2018]; *Wells Fargo Bank, Nat. Ass'n v McLean*, 70 AD3d 676, 677 [2d Dept 2010]).

The Court concludes that Travelers has established entitlement to intervention as of right. Plaintiffs concede that, should Coeymans Landing Marina's counterclaim against CLMSI fail, Travelers would be bound by such

judgment and precluded by res judicata from recovering from CLMSI for the insurance proceeds Travelers paid to Coeymans Landing Marina (see *Vantage Petroleum v Bd. of Assessment Review of Town of Babylon*, 61 NY2d 695, 697-698 [1984]; cf. *Linette v Hanover Ins. Co.*, 29 AD3d 338, 338 [1st Dept 2006]). It is also doubtful that Coeymans Landing Marina can adequately represent Travelers' rights in this litigation, as any recovery obtained by Coeymans Landing Marina against CLMSI would be limited to damages beyond the insurance payment remitted by Travelers. And plaintiffs and CLMSI do not dispute that neither Coeymans Landing Marina nor any other party can adequately represent Travelers' interest with respect to the insurance proceeds it paid out to non-party CMT. Accordingly, the Court concludes that Travelers has established the right to intervene under CPLR 1012 (a) (2).

In any event, Travelers has demonstrated that it has a real and substantial interest in the outcome of this action such that permissive intervention under CPLR 1013 is warranted. Travelers has paid out more than one million dollars on three casualty insurance contracts to third-party defendant Coeymans Landing Marina and non-party CMT for property damages ostensibly resulting from the January 20, 2022 explosion—the same explosion giving rise to plaintiffs' claims in the underlying personal injury action, the claims asserted in the third-party complaint, and Coeymans Landing Marine's counterclaim. And, as Travelers' proposed negligence cause

of action is premised on a common theory of liability, it satisfies the requirement of CPLR 1013 that its cause of action involves common questions of law and fact.

Permitting Travelers to intervene at this early stage of the litigation will promote judicial economy and not work any substantial prejudice. Much of the paper discovery and depositions will overlap and depositions have not yet been completed. To the extent that any duplicative depositions may be necessary, the same result would ensue if Travelers were to commence a separate subrogation action. In any event, the Court will fix a discovery schedule that minimizes delay of plaintiffs' personal injury action. Insofar as plaintiffs and CLMSI raise concerns regarding potential jury confusion as trial approaches, nothing precludes any party from moving to bifurcate the underlying personal injury action from the subrogation action pursuant to CPLR 603. Notwithstanding bifurcation, Travelers' proposed intervenor action adds only one new claim—that is, for the damaged boats—and only clarifies the extent of recovery, if any, Coeymans Landing Marina may be entitled to as against CLMSI. Consequently, the Court concludes that Travelers has established that discretionary intervention is appropriate pursuant to CPLR 1013 (*see Matter of Global Cos. LLC v New York State Dept. of Envtl. Conservation*, 155 AD3d 93, 97 [3d Dept 2017]; *Oakes v Patel*, 23 AD3d 1023, 1024 [4th Dept 2005]).

The Subrogation Waiver Issue

Discovery exchanges revealed a subrogation waiver clause in the lease between Carver Realty and Coeymans Landing Marina which may come into play on this motion, and the Court permitted the parties to submit supplemental letter briefing on the issue. The waiver of subrogation clause does not warrant a different result at this stage of the litigation.

Plaintiffs have argued that Travelers' motion to intervene must be denied because Travelers waived all subrogation rights. The relevant clause in the lease between Carver Realty and Coeymans Landing Marina, provides, in relevant part,

Landlord [Carver Realty] and Tenant [Coeymans Landing Marina] shall each secure an appropriate clause in, or an endorsement upon, each property damage insurance policy obtained by it and covering the Premises, or the personal property, fixtures and equipment located therein or thereon, pursuant to which the respective insurance companies waive subrogation and permit the insured, prior to any loss, to agree with a third party to waive any claim it might have against said third party. The waiver of subrogation or permission for waiver of any claim hereinbefore referred to shall extend to the agents of each party and its employees and, in the case of Tenant, shall also extend to all other persons and entities occupying or using the Premises by, through or under Tenant.

Plaintiffs contend that this waiver applies to any property damage Travelers seeks through its proposed subrogation claim, that it applies to CLMSI because it was a subtenant of Coeymans Landing Marina, and that it applies to CMT

because that entity was using and/or occupying the marina to store boats at the time of the explosion. Accordingly, plaintiffs aver, Travelers is precluded from pursuing its proposed subrogation claims and its motion to intervene must be denied. CLMSI adopts plaintiffs' arguments concerning the subrogation waiver (*see* NYSCEF Doc No. 61).

In response, Travelers argues that the waiver of subrogation has no effect on its ability to intervene in this action. According to Travelers, the waiver does obtain because, among other things, the subrogation waiver is limited to claims for damages "to the tenant's (i.e. Coeymans Landing Marina's) 'personal property, fixtures and equipment located'" at the premises (NYSCEF Doc No. 62 at 2). And, Travelers argues, the amounts for which it seeks subrogation "were for unrelated persons' and entities' property that was being stored on site" (*id.*). With respect to the portion of its proposed subrogation claim relating to the insurance payout to CMT, Travelers contends that the waiver does not apply because CMT was not even a tenant at the marina. Plaintiffs counter that the subrogation waiver applies to CMT because it was "occupying or using" the premises and was an agent of Carver Realty.

But because neither plaintiffs nor CLMSI has cross-moved for any relief, the Court will not render a determination as to the merits of the subrogation waiver arguments in the context of plaintiffs' and/or CLMSI informal requests such relief in their opposition to the motion to intervene (*see* CPLR2211, 2215;

Police Benevolent Assn. of New York State Troopers, Inc. v James, 218 AD3d 881 [3d Dept 2023]; *New York State Div. of Human Rights v Oceanside Cove II Apt. Corp.*, 39 AD3d 608, 609 [2d Dept 2007]; *cf. Barrett v Watkins*, 52 AD3d 1000, 1002-1003 [3d Dept 2008]). The present record is insufficient for the Court to conclude, as a matter of law, that Travelers' proposed subrogation rights have been waived. Though plaintiffs and CLMSI persuasively argue that the waiver of subrogation clause may extend to CLMSI as a subtenant of Coeymans Landing Marina, no party has proffered the lease agreement between Coeymans Landing Marina and CLMSI to establish this subtenancy, the Travelers insurance policies at issue, or any competent evidence to establish these facts. Further, no party has submitted any agreement as between Carver Realty, Coeymans Landing Marina, or any other party and non-party CMT, or any competent evidence upon which the Court can determine the applicability of the subrogation waiver clause to CMT. Indeed, CMT's purported affiliation with Carver Realty is premised exclusively on representations made by plaintiffs' counsel. Notwithstanding the foregoing, the parties will have the opportunity to adjudicate Travelers' subrogation rights upon the filing of a properly supported dispositive motion.

Accordingly, it is

ORDERED that Travelers' motion to intervene is granted; and it is further

ORDERED that counsel for all parties shall appear for ^{the previously scheduled} a discovery/case management conference on August 9, 2024, via Microsoft Teams. (DH)

This constitutes the Decision of the Court, the original of which, along with the accompanying Order, is being uploaded to NYSCEF for electronic entry by the Albany County Clerk. Upon such entry, counsel for Travelers shall promptly serve notice of entry on all other parties entitled to such notice.

Dated: Albany, New York
June 26, 2024


HON. DENISE A. HARTMAN, AJSC



06/27/2024

Papers Considered

NYSCEF Doc Nos. 40-65