

Selective Ins. Co. of the Southeast v Marcus & Millichap

2017 NY Slip Op 32494(U)

November 27, 2017

Supreme Court, New York County

Docket Number: 155191/2017

Judge: Robert D. Kalish

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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. _____ Robert D. KALISH
Justice

PART 29

**SELECTIVE INSURANCE COMPANY OF THE
SOUTHEAST a/s/o THE AMERICAN KENNEL CLUB,
INC.,**

INDEX NO. 155191/2017

MOTION DATE 10/12/17

Plaintiff,

MOTION SEQ. NO. 001

- v -

**MARCUS & MILLICHAP and MARLBORO GROUP
INTERNATIONAL LLC,**

Defendants.

The following papers, numbered 8-14, were read on this motion for leave to amend the complaint.

Notice of Motion—Affirmation in Support—Exhibits A-C—RJI

█ Nos. 8-14

Motion by Plaintiff Selective Insurance Company of the Southeast a/s/o The American Kennel Club, Inc. pursuant to CPLR 3025 (b) for leave to amend its complaint against Defendants Marcus & Millichap and Marlboro Group International LLC (“Marlboro”) is granted, there being no opposition submitted.

BACKGROUND

In the instant action, Plaintiff alleges that its subrogor, The American Kennel Club, Inc. (“AKC”), suffered extensive water damage on January 13, 2016 at its office space, at 260 Madison Avenue, Fourth Floor, New York, New York 10016, from a burst pipe due to the negligence of Defendants. Plaintiff further alleges that AKC’s landlord, 260-261 Madison Ave. LLC (“Madison”), contracted with Marlboro to have construction work done on or around January 13, 2016, on the floor above AKC’s office space.

In the instant motion, Plaintiff moves to add Madison as a defendant. Plaintiff recently learned through discovery that Madison had contracted with Marlboro and may be liable for damages. (Bart affirmation, exhibit B.) Plaintiff argues that Madison is a necessary party to the action. (Affirmation of Bart ¶ 6.)

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Defendants have submitted no opposition to the instant motion.

DISCUSSION

CPLR 3025 provides

“(b) Amendments and supplemental pleadings by leave. A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading.”

“As a general rule, leave to amend a pleading should be freely granted in the absence of prejudice to the nonmoving party where the amendment is not patently lacking in merit . . . , and the decision whether to grant leave to amend a complaint is committed to the sound discretion of the court.” (*Davis v South Nassau Communities Hosp.*, 26 NY3d 563, 580 [2015] [internal quotation marks omitted]; see also *Y.A. v Conair Corp.*, 154 AD3d 611 [1st Dept 2017] [holding that leave should be granted “absent . . . surprise resulting therefrom”].) “To obtain leave, a plaintiff must submit evidentiary proof of the kind that would be admissible on a motion for summary judgment.” (*Velarde v City of New York*, 149 AD3d 457, 457 [1st Dept 2017].) “[P]laintiff need not establish the merit of its proposed new allegations, but simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit.” (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 500 [1st Dept 2010].)

Here, Plaintiff submits an affirmation by counsel along with a letter from Chubb, dated July 12, 2017 informing Madison of Plaintiff’s potential claim against it for damages. As such, the Court finds that Plaintiff has supported its proposed amendment with a sufficient showing for the purposes of the instant motion.

CONCLUSION

Accordingly, it is

ORDERED that Plaintiff Selective Insurance Company of the Southeast A/S/O The American Kennel Club, Inc.'s motion for leave to amend the complaint is granted, there being no opposition submitted; and it is further

ORDERED that the amended complaint in the form annexed to the moving papers shall be deemed to have been served upon service of a copy of this order with notice of entry upon all parties who have appeared in the action; and it is further

ORDERED that defendants Marcus & Millichap and Marlboro Group International LLC shall serve an answer to the amended complaint or otherwise respond thereto within 20 days of said service; and it is further

ORDERED that a supplemental summons and amended complaint, in the form annexed to the motion papers, shall be served, in accordance with the CPLR, upon the additional party in this action within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that 260-261 Madison Ave. LLC shall answer the amended complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that the action shall bear the following caption:

-----X
SELECTIVE INSURANCE COMPANY OF THE
SOUTHEAST a/s/o THE AMERICAN KENNEL CLUB,
INC.,

Plaintiff,

- against -

MARCUS & MILLICHAP, MARLBORO GROUP
INTERNATIONAL LLC and 260-261 MADISON
AVE. LLC,

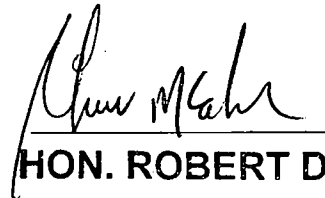
Defendants.
-----X

And it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158M), who are directed to mark the court's records to reflect the additional party.

The foregoing constitutes the decision and order of the Court.

Dated: ²⁷ November 27, 2017
New York, New York


J.S.C.
HON. ROBERT D. KALISH

- 1. Check one:.....
- 2. Check if appropriate:..... MOTION IS:
- 3. Check if appropriate:.....

- CASE DISPOSED NON-FINAL DISPOSITION
- GRANTED DENIED GRANTED IN PART OTHER
- SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE