

Central Park Studios, Inc. v Slosberg

2013 NY Slip Op 33653(U)

September 12, 2013

Supreme Court, New York County

Docket Number: 110490/08

Judge: Donna M. Mills

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SUPREME COURT OF THE STATE OF NEW YORK—NEW YORK COUNTY

PRESENT : DONNA M. MILLS
Justice

PART 58

CENTRAL PARK STUDIOS, INC. et al.,

INDEX NO. 110490/08

Plaintiffs,

FILED

MOTION DATE _____

-v-

SEP 20 2013

MOTION SEQ. No. 007

MICHAEL SLOSBERG, et al.,

Defendants.

**NEW YORK
COUNTY CLERK'S OFFICE**

MOTION CAL No. _____

The following papers, numbered 1 to _____ were read on this motion for _____.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits.... 1

Answering Affidavits- Exhibits 2-4

Replying Affidavits 5

CROSS-MOTION: YES NO

Upon the foregoing papers, it is ordered that this motion is:

DECIDED IN ACCORDANCE WITH ATTACHED ORDER.

Dated: 9/12/13

Donna M. Mills
DONNA M. MILLS, J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 58

CENTRAL PARK STUDIOS, INC., GERARD J.
PICASO, INC. and INSURANCE COMPANY
OF GREATER NEW YORK,

Plaintiff,

- against -

MICHAEL SLOSBERG, JANET COHN
SLOSBERG, PACIFIC INDEMNITY COMPANY
formerly known as SIRIUS AMERICA
INSURANCE COMPANY, HAGEDORN &
COMPANY and STEVE DWYER,

Defendants.

INDEX NO.
110490/08

DECISION/ORDER

FILED

SEP 20 2013

NEW YORK
COUNTY CLERK'S OFFICE

DONNA MILLS, J.:

In this declaratory judgment action, proposed intervenor Federal Insurance Company ("Federal"), seeks an order pursuant to CPLR § 1013 granting it leave to intervene in this action. Defendant Delos Insurance Company f/k/a Sirius America Insurance Company ("Delos") opposes the motion on the grounds that it is not timely, and that Federal's claims do not involve a common question of law or fact with the current claims between the existing parties in this case. Defendants DSA Builders, Inc. ("DSA") and Hagedorn & Company ("Hagedorn") do not oppose Federal's motion to intervene in this action.

The Amended Complaint in this action contains seven causes of action. The sixth cause of action seeks a declaration regarding the priority of coverage available to plaintiff Central Park Studios, Inc. ("CPS") for losses arising out of an action commenced by defendant Steve Dwyer ("Dwyer action").

CPLR 1012 (a) provides that a party may intervene as of right "[w]hen the action involves the disposition or distribution of, . . . or a claim for damages for injury to, property, and the person may be affected adversely by the judgment." CPLR 1013 provides that "any

person may be permitted to intervene in any action . . . in the discretion of the court, or when the person's claim or defense and the main action have a common question of law or fact."

"Intervention is liberally allowed by courts, permitting persons to intervene in actions where they have a bona fide interest in an issue involved in that action" (Yuppie Puppy Pet Prods., Inc. v Street Smart Realty, LLC, 77 AD3d 197, 201 [1st Dept 2010]). Moreover, "[w]hether 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, since intervention should be permitted 'where the intervenor has a real and substantial interest in the outcome of the proceedings' " (Global Team Vernon, LLC v Vernon Realty Holding, LLC, 93 AD3d 819, 820 [2d Dept 2012]).

It is undisputed that CPS is afforded coverage by four policies issued by three insurers, Insurance Company of Greater New York ("GNY"), Delos, and Federal. Two of the three insurers (GNY and Delos) are currently parties to this action and in the sixth cause of action of the Amended Complaint GNY seeks a declaration regarding the priority of coverage as between GNY and Delos.

Here, GNY, Delos and Federal each issued policies which provided coverage to CPS pertaining to the Dwyer action. Clearly the intervenor has a real and substantial interest in the outcome. Therefore, Federal should be allowed to intervene and join GNY in seeking a declaration regarding priority of coverage amongst CPS' relevant insurers.

It should be noted that Delos' request in its opposition papers that reconsideration be given to its previously denied summary judgment motion, is not properly before this Court. Were it properly before this Court it would be denied as per Justice Feinman's decision dated June 19, 2012.

Accordingly, it is

ORDERED that Federal Insurance Company is granted leave to intervene in this action; and it is further

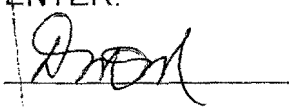
ORDERED that Federal Insurance Company is directed to serve its Complaint on all parties within ten days of the date of this Order; and it is further

ORDERED that answers to the Intervenor's Complaint must be served within ten days after service of the Complaint; and it is further

ORDERED that Federal Insurance Company shall move or cross move for summary judgment seeking the declaration regarding priority of coverage within forty five days of the date of this Order.

Dated: 9/12/13

FILED
 SEP 20 2013
 NEW YORK
 COUNTY CLERK'S OFFICE

ENTER:

 J.S.C.
 BONNIE M. WILLS, J.S.C.