Pacific Indem. Co. v Pentair Residential Filtration, LLC
2020 NY Slip Op 31710(U)
June 2, 2020
Supreme Court, New York County
Docket Number: 150377/2019
Judge: W. Franc Perry
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. W. FRANC PERRY** **PART** **IAS MOTION 23EFM**

Justice

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PACIFIC INDEMNITY COMPANY A/S/O DAVID MANDELBAUM AND KAREN MANDELBAUM,

Plaintiff,

- v -

PENTAIR RESIDENTIAL FILTRATION, LLC, ARISTA AIR CONDITIONING CORP.

Defendant.

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INDEX NO. 150377/2019

MOTION DATE 08/15/2019

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

were read on this motion to/for DISMISS.

In this property damage subrogation action, plaintiff Pacific Indemnity Company ("Pacific") seeks to recover $81,165.10 in damages paid by Pacific to its insureds, David Mandelbaum and Karen Mandelbaum ("the Mandelbaums"), for water damage to their condominium unit located at 15 Central Park West, Apt. 38C, New York, NY ("the premises"). In motion sequence number 001, defendant Arista Air Conditioning Corp. seeks an order pursuant to CPLR 3211 (a) (5) to dismiss the complaint claiming that the statute of limitations had already expired when this action was filed. Plaintiff Pacific a/s/o David Mandelbaum and Karen Mandelbaum, opposes the motion.

BACKGROUND

This property damage claim arises out of an incident that occurred on January 28, 2016, when a water filter located in Apartment 40A, owned by non-party Alex Kogan, is alleged to have failed and discharged water. Plaintiff alleges that the filter was manufactured by defendant Pentair Residential Filitration, LLC, ("Pentair") and maintained prior to that date pursuant to

contract by defendant Arista Air Conditioning Corp. ("Arista"). Pacific commenced this action against Pentair on January 15, 2019 and then amended its complaint as of right to add Arista as a defendant pursuant to claims alleged in the amended complaint, filed on February 4, 2019, seeking to recover the funds it expended on behalf of its insured. (NYSCEF Doc. Nos, 1, 2). It is alleged that "the Mandelbaum premises sustained extensive water damage due to the defective water filter which had been manufactured and distributed by the defendant Pentair and installed by Arista at the Kogan apartment." (NYSCEF Doc. No. 2, ¶¶ 14). The water traveled downstairs, causing property damage to the Mandelbaums' premises, as well as damage to other apartments on the 40th and 39th floors. (NYSCEF Doc. No. 2, ¶¶ 11-14).

It is alleged that as a result of the water infiltration and damages sustained by plaintiff's subrogor, claims were made on the Pacific policy on or about February 2, 2016 and were duly paid by Pacific on or about April 26, 2016 as such, Pacific became subrogated to certain rights and interests of its insured for monies paid giving rise to the instant action. (id., ¶¶ 15-16; NYSCEF Doc. Nos. 23, 24).

Pacific claims that Arista was negligent in performing HVAC services at non-party Kogan's apartment and that Arista's alleged negligence was the proximate cause of the damage sustained to the Mandelbaum's apartment. Arista was named as a defendant in an action commenced in this court pending before another justice, related to the water infiltration in Kogan's apartment, entitled Metropolitan Group Property and Casualty a/s/o Alex Cogan v Pentair Residential Filtration, LLC, and Arista Air Conditioning, ("the Met Life action"), filed on April 9, 2018 under Index No. 153189/2018.

Pacific admits that the statute of limitations expired prior to commencing this action against Arista, however, argues that it should be permitted to pursue its claims against Arista

pursuant to CPLR 203 (f) because Arista will not be prejudiced as it had notice of the claims asserted herein, as early as April 9, 2018 by being named as a defendant in the Met Life action related to the water damage in the Kogan apartment.

In seeking to dismiss the amended complaint, Arista argues that the subrogation claim accrued on January 29, 2016 and because Pacific failed to commence this negligence action within the applicable three-year statute of limitations, subrogation plaintiff cannot sustain a negligence claim against Arista. Arista maintains that it does not have any legal relationship with Pentair and is not united in interest with Pentair in any way. Arista avers that it cannot be charged with notice of the institution of this action, and it will be severely prejudiced in maintaining its defense on the merits, and as such, this court should not allow the claims alleged in the amended complaint to relate back.

STANDARD OF REVIEW/ANALYSIS

The relation-back doctrine allows causes of action asserted against a new defendant in an amended complaint to relate back to causes of action previously asserted against a codefendant in the same action for statute of limitations purposes (see CPLR 203 [b]). "[N]ew parties may be joined as defendants in a previously commenced action, after the statute of limitations has expired on the claims against them, where the plaintiffs establish that each of the following three criteria are satisfied" (*Higgins v City of New York*, 144 AD3d 511, 512, 43 N.Y.S.3d 1 [1st Dept 2016]). First, plaintiff must show that the claims against the new defendant arise from the same conduct, transaction, or occurrence as the claims against the original defendant. Second, plaintiff must show that the new defendant is "united in interest" (CPLR 203 [b], [c]), with the original defendant, and will not suffer prejudice due to lack of notice. Third, plaintiff must show that the new defendant knew or should have known that, but for the plaintiff's mistake, they would have

been included as a defendant (*id*., at 513); see also (*Garcia v New York-Presbyt. Hosp*., 114 AD3d 615, 981 NYS2d 84 [1st Dept 2014]).

Pacific maintains that this court should excuse its mistake in failing to add Arista as a defendant prior to the expiration of the statute of limitations because Arista had notice of the claims asserted here as early as April 9, 2018. Pacific avers that the allegations against Arista as set forth in the amended complaint here, are identical to those alleged by the plaintiff in the Met Life action. As such, Pacific argues that no prejudice to Arista will result from having to defend itself in this action, while noting that Pacific will suffer significant prejudice in pursuing its claims against Pentair contending that it anticipates that "Pentair will decline liability for this loss on the ground that the damages alleged were due to the failure by Arista to properly maintain its equipment." (NYSCEF Doc. No. 22, ¶ 16).

Arista does not dispute that Pacific has satisfied the first element of the relation back doctrine as the claims against Arista arise from the same occurrence as the claims asserted against Pentair. In support of dismissal, however, Arista contends that Pacific cannot satisfy the second and third criteria of the relation back doctrine, as it has failed to demonstrate that Pentair and Arista are "united in interest" or have any legal relationship such that Arista should have known that it would be added as a defendant to this action. In support of its contention and in response to the affidavit submitted by Pacific in opposition to dismissal, Arista submits the affidavit of Vincent Eckerson, Vice President of Operations of defendant Arista. (NYSCEF Doc. No. 31). Eckerson states that "Arista does not have any legal relationship with Pentair. Arista is in no way affiliated or related to Pentair, nor has Arista ever conducted any business with Pentair. Thus, Pentair and Arista are not united in interest in any way to Subrogation Plaintiff's Action." (id. at ¶ 13).

"[U]nity of interest will not be found unless there is some relationship between the parties giving rise to the vicarious liability of one for the conduct of the other" (*Higgins*, 144 AD3d at 513). Joint tortfeasors are typically not united in interest, since they often have different defenses (see *LeBlanc v Skinner*, 103 AD3d 202, 210, 955 N.Y.S.2d 391 [2d Dept 2012]).

Here, Pacific contends that Arista will not be prejudiced in defending these time-barred claims because it had notice of the claims as early as April 9, 2018 by being named as a defendant in the Met Life action related to the water damage in the Kogan apartment. Relying on the affidavit of its Vice President, Arista contends that it is not a proper party in the Met Life action, because it did not install or maintain the water filter in the HVAC system in Kogan's apartment, nor did it have any legal relationship with Pentair. (NYSCEF Doc. No. 31, ¶¶ 9, 13). As such Arista argues that it reasonably concluded that no meritorious claims could have been brought against it and therefore, it will be prejudiced if it is now forced to defend against the stale claims being alleged here by Pacific.

Once defendant Arista established that plaintiff's claims against it were time barred, the burden shifted to plaintiff to demonstrate that the relation back doctrine applies. (*Raymond v. Melohn Props., Inc.*, 47 A.D.3d 504, 505, 851 N.Y.S.2d 17 [1st Dep't 2008]; *Cintron v Lynn*, 306 AD2d 118, 119, 762 N.Y.S.2d 355 [1st Dept 2003]). As noted, plaintiff must establish all three elements of the relation back criteria, in order to assert time barred claims against a new defendant. (*Higgins v City of New York, supra* at 512).

Pacific contends that it mistakenly relied on counsel for insureds in two related claims arising out of the same incident, when it originally filed suit naming only Pentair as a defendant in this action and is seeking to correct its mistake and add Arista as a defendant even though the statute of limitations expired before the filing of the summons and amended complaint naming

Arista as a party. Pacific argues that its mistake in failing to timely commence suit against Arista should be excused because the Pentair equipment that allegedly failed and caused the water infiltration was located in the Kogan unit and maintained by Arista pursuant to a contract between Kogan and Arista. As such, Pacific contends that its insured tenants living two floors below the origin apartment had no opportunity to find out who was responsible for maintaining the equipment or to review its maintenance agreement with Kogan prior to filing suit. Pacific does not however, identify what steps it took to investigate the cause of the water infiltration in the origin apartment even though claims were made on its policy on or about February 2, 2016 and were duly paid by Pacific on or about April 26, 2016.

Pacific maintains that it should be permitted to pursue its time-barred claims against Arista because it anticipates that Pentair will argue that the damages alleged were due to the failure by Arista to properly maintain its equipment. Pacific does not identify what it did to investigate the merits of its subrogation claim to determine the proper party defendants and rather, simply concludes that its failure should be excused because it is likely that Pentair will raise a defense that may defeat its recovery.

In the exercise of its discretion, the court concludes that Pacific has simply failed to meet its burden to establish application of the relation back doctrine so as to revive the time barred claims it seeks to assert against Arista here. Pacific has failed to show that the new defendant is "united in interest" (CPLR 203 [b], [c]), with the original defendant, and that Arista will not suffer prejudice due to lack of notice. (*Higgins v City of New York, supra*). In these circumstances, there is no basis for permitting plaintiff to avoid the statute of limitations bar.

Accordingly, it is

ORDERED that the motion (sequence number 001) of defendant Arista Air Conditioning Corp., to dismiss the amended complaint herein is granted and the amended complaint is dismissed in its entirety as against said defendant, without costs and disbursements to said defendant, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendant; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; 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 General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office 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).

Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied and this constitutes the decision and order of this Court.

6/2/2020
DATE

W. FRANC PERRY, J.S.C.

CHECK ONE:		CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
		GRANTED	[X] DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE