

**The I Grace Co. Commissioned Private Residences,
Inc. v The 740 Corp.**

2020 NY Slip Op 31792(U)

June 10, 2020

Supreme Court, New York County

Docket Number: 157284/2019

Judge: Arlene P. Bluth

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ARLENE P. BLUTH **PART** **IAS MOTION 14**

Justice

-----X

INDEX NO. 157284/2019

THE I. GRACE COMPANY COMMISSIONED PRIVATE
RESIDENCES, INC.,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 001

- v -

THE 740 CORPORATION, STATE OF THE ART WOOD
FLOOR GALLERY CORP., PAM AIR-SERVICES, INC.,ABC
CORPORATIONS 1-100, JOHN DOES 1-100,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49

were read on this motion to/for PARTIES - ADD/SUBSTITUTE/INTERVENE.

The motion to intervene by non-parties Jeffrey and Elizabeth Leeds is granted.

Background

Plaintiff entered into a contract with the Leeds to do a multimillion-dollar renovation of their coop apartment. Defendant The 740 Corporation (“740”) is the cooperative at the property where the Leeds’ apartment is located. Plaintiff contends that it was paid for some, but not all, of its work and is owed \$3,125,127.90. Plaintiff put a mechanic’s lien against the property and this case is to foreclose on that lien.

The Leeds move to intervene on the ground that plaintiff put a lien on their apartment and they should have the right to participate and file an answer with a counterclaim. They claim that they entered into an agreement with plaintiff where plaintiff would be paid for construction work under a cost-plus method (plaintiff would be paid as costs were incurred if supported by

documentation). The Leeds contend that plaintiff's billings were unsupported and vague and plaintiff declined to provide supporting documentation when requested. They speculate that plaintiff hired at least six subcontractors that were not licensed to provide home improvement work and, therefore, that work should not be included in the bill.

In opposition, plaintiff argues that the Leeds have failed to establish sufficient grounds to intervene. It contends that their requested relief is simply to foreclose on its mechanic's lien which does not involve the Leeds. Plaintiff contends the Leeds have shown no standing and that they seek to circumvent the arbitration ordered in a related case. It emphasizes that any relief granted in this case will not bind or adversely affect the Leeds. Plaintiff contends that the Leeds do not own any real property at the building; they simply own shares in a cooperative corporation and have a proprietary lease with defendant 740.

In reply, the Leeds point out that the lien at issue named the Leeds as owners of the premises and then plaintiff initiated this lien foreclosure proceeding without naming the Leeds. They point out that they filed a separate proceeding seeking an order directing plaintiff to foreclose against them. In that case, plaintiff opposed, in part, on the ground that the Leeds should simply move to intervene in this case.

Discussion

"CPLR 1012(a), specifically, subdivisions 2 and 3, provides that upon timely motion, any person shall be permitted to intervene in an action 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 (subdivision 2) or 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 (subdivision 3). CPLR 1013 provides that upon timely motion, a court may, in its

discretion, permit intervention when, inter alia, the person's claim or defense and the main action have a common question of law or fact, provided the intervention does not unduly delay determination of the action or prejudice the rights of any party” (*Yuppie Puppy Pet Products, Inc. v Street Smart Realty, LLC*, 77 AD3d 197, 200-01, 906 NYS2d 231 [1st Dept 2010] [internal quotations and citations omitted]).

“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. Distinctions between intervention as of right and discretionary intervention are no longer sharply applied” (*id.* at 201) [internal quotations and citations omitted]).

Here, the mechanic’s lien filed by plaintiff specifically names the Leeds (NYSCEF Doc. No. 8). In fact, it says “The name and address of the owners of real property against whose interest therein a lien is: The 740 Corporation, 740 Park Avenue, New York, NY 10021; Jeffrey Leeds, Elizabeth Leeds aka Elizabeth Marshall, 71 East 71st Street Unit 2/3D, New York, NY 10021. Given that intervention is liberally allowed and the Leeds’ interest is clearly affected, the Court grants the motion. The fact is that this case about work done by plaintiff on the *Leeds*’ apartment pursuant to a contract between the *Leeds* and plaintiff They have an interest in this case and should be permitted to intervene.

Plaintiff cannot suggest, as it did in another proceeding where the Leeds requested that plaintiff be directed to foreclose against them, that the Leeds should move to intervene in this case and then claim the Leeds have no interest in this case. While plaintiff did not explicitly agree to permit the Leeds to intervene, it makes no sense to suggest the Leeds should move to intervene in this case and then oppose that motion. Moreover, if the coop had sought to add the Leeds, as the contracting party, that application would, of course, be granted. Here, the Leeds

have done whatever they can to minimize the coop’s annoyance and expenses – they asked that the foreclosure be against them and now ask to intervene here. The fact is that the Leeds should be in this case and this Court allows them to intervene.

Accordingly, it is hereby

ORDERED that the motion to intervene by the Leeds is granted; and it is further

ORDERED that the caption shall be amended to read as follows:

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

-----X
THE I. GRACE COMPANY COMMISSIONED
PRIVATE RESIDENCES, INC.,

Plaintiff(s),

v.

THE 740 CORPORATION, STATE OF THE ART
WOOD FLOOR GALLERY CORP., PAM AIR-
SERVICES, INC., JEFFREY LEEDS, ELIZABETH
LEEDS, ABC CORPORATIONS 1-100, JOHN DOES
1-100,

Defendant(s).

-----X

and it is further

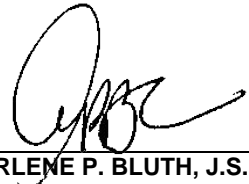
ORDERED that movants shall serve their proposed verified answer with counterclaim (NYSCEF Doc. No. 15) by e-filing it as a separate NYSCEF document (renamed Verified Answer) within 14 days; and it is further

ORDERED that movants shall serve this order in accordance with e-filing protocol upon the clerk of trial support and the county clerk, who are respectfully requested to change the caption in their records; and it is

ORDERED that there shall be a conference on September 15, 2020 at 10 a.m. The parties are directed to consult the docket and the part’s rules to determine whether the conference will be

held virtually. They are encouraged to e-file a discovery order for the Court's approval prior to the conference.

6/10/2020
DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE