

Cushman & Wakefield U.S., Inc. v K Land, LLC

2021 NY Slip Op 30212(U)

January 21, 2021

Supreme Court, New York County

Docket Number: 651520/2019

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

CUSHMAN & WAKEFIELD U. S., INC.

Plaintiff,

- v -

K LAND, LLC,

Defendant.

-----X

INDEX NO. 651520/2019

MOTION DATE 01/20/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

were read on this motion to/for AMEND CAPTION/PLEADINGS

The motion by plaintiff to amend the caption to substitute plaintiff for the "real party in interest" is granted.

Background

This case concerns the recovery of a real estate broker's commission arising out of a brokerage agreement dated March 4, 2013. Plaintiff insists that until about August 2016, it operated under the name Cassidy Turley Commercial Real Estate Services, Inc. and in 2014 Cassidy and nonparty DTZ Americas, Inc. ("DTZ") merged. Eventually Cassidy, DTZ and other companies were merged under Cushman and Wakefield, plc, a company based in the United Kingdom.

Plaintiff submits the affidavit of a senior counsel who explains that she recently investigated the subject broker's commission (which was allegedly owed to DTZ) and discovered that DTZ had not formally assigned these receivables to plaintiff (NYSCEF Doc. No. 12 at 3). She concludes that DTZ is therefore the real party in interest and the commission is

owed to this party. The senior counsel points out that DTZ sent invoices to defendant for the commissions that are the subject of this lawsuit.

In opposition, defendant argues that DTZ cannot be substituted pursuant to CPLR 1021 because its interest did not accrue after this action was commenced. It emphasizes that DTZ is not a successor to plaintiff and that plaintiff never had standing to bring this case. Defendant also claims that amendment under CPLR 3025 is inappropriate because the affidavit from plaintiff's senior counsel was notarized out of state and did not have the requisite certificate of conformity. It maintains that there are no documents submitted to demonstrate that DTZ has standing to be the plaintiff in this case. Defendant also asks for legal fees as a condition of granting amendment.

In reply, plaintiff attaches a certificate of conformity for the affidavit of its senior counsel. And it argues that substitution is appropriate under the circumstances.

Discussion

The Court grants the motion. As an initial matter, the Court observes that CPLR 1021 permits a motion for substitution to be made by "any party." Here, plaintiff contends that it is not the right party in interest and that the entity that sent the invoices should be substituted. The Court sees no reason not to grant the motion. Of course, the substituted plaintiff will have to meet its prima facie burden for the commission. Granting a substitution has nothing to do with whether plaintiff is actually entitled to the commission. The Court also finds that failure to file a certificate of conformity for the affidavit from plaintiff is not fatal to this motion.

Even if the Court were to deny the motion under CPLR 1021, it would grant amendment under CPLR 3025 as leave to amend should be freely given. Defendant has not been prejudiced in any way since the substance of the claims is exactly the same as alleged in the complaint: that plaintiff is owed a broker's commission. The Court also rejects defendant's demand for legal

fees; the fact is that plaintiff is merely changing the caption to reflect who it believes is the right party in interest. Defendant could have saved money by not opposing an ordinary motion to amend but it chose to oppose (which it was absolutely entitled to do). But defendant cannot oppose and then complain that it should receive legal fees. And, as plaintiff points out there has not been any depositions in this case. In fact, there hasn't even been a preliminary conference (the RJI was not filed until this motion). If defendant wanted to move the case, it should have filed an RJI.

Accordingly, it is hereby

ORDERED that the motion for leave to amend the caption is granted and DTZ Americas, Inc. shall be substituted for plaintiff; and it is further

ORDERED that this action shall bear the following caption:

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 14**

----- X
DTZ AMERICAS, INC.,

Plaintiff,

-against-

K LAND, LLC

Defendants.

----- X

and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the new plaintiff pursuant hereto; and it is further

ORDERED that such service upon the County Clerk 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/suptctmanh)); and it is further

ORDERED that plaintiff shall serve an amended complaint reflecting the substitution within 21 days via e-filing; and it is further

ORDERED that counsel are directed to appear for a remote conference on February 25, 2021.

1/21/2021
DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	DENIED
			<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT