

1467 Bedford Holdings LLC v Spitzer

2021 NY Slip Op 30302(U)

February 1, 2021

Supreme Court, Kings County

Docket Number: 517788/2019

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8
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1467 BEDFORD HOLDINGS LLC, GEMCAP EQUITY
CORP., & MAZEL EQUITIES GROUP LLC,

Plaintiffs, Decision and order

- against -

Index No. 517788/2019

JOEL SPITZER a/k/a ELLIOT SPITZER and
COBBLESTONE EQUITY LLC,

February 1, 2021

Defendants,

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PRESENT: HON. LEON RUCHELSMAN

The defendant has moved pursuant to CPLR §2221 seeking to reargue a portion of a decision dated December 10, 2020. Specifically, the defendants sought to allow two proposed intervenors to intervene in the action and to deem the proposed answer served accepted as the answer. The plaintiff opposes the motion. Papers were submitted by the parties and after reviewing all the arguments this court now makes the following determination.

As recorded in the prior order, on December 5, 2013 the entity 1467 Bedford Holdings LLC was formed and it is owned by three entities, Gemcap Equity Corp., 50%, Mazel Equities Group LLC, 25% and Cobblestone Equity LLC, 25%. The purpose of the entity was to acquire, develop and maintain property located at 1467 Bedford Avenue in Kings County. Pursuant to the Operating Agreement the managers of the entity are Judah Zelmanovitz and Sam Wieder (see, Operating Agreement, §5).

In the prior order the court granted an injunction preventing defendant Spitzer from acting as a manager. The court did not

specifically address defendant's motion seeking the intervention of two parties or the acceptance of the answer. The court did hold that the landlord tenant action had been discontinued but did not specifically rule upon the defendant's requests. This motion seeks resolution of those requests.

Conclusions of Law

It is well settled that pursuant to CPLR §1012(a)(2) a party may intervene as a matter of right "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" (id). The Court of Appeals has explained the right of intervention as available only where the judgement will bind the potential intervenor "by its res judicate effect" (Vantage Petroleum v. Board of Assessment Review of the Town of Babylon, 61 NY2d 695, 472 NYS2d 603 [1984]). That definition was further refined to cases where the potential intervenor is in "privity" with the parties to the lawsuit (Green v. Sante Fe Industries Inc., 70 NY2d 244, 519 NYS2d 793 [1987]). Thus, a party demonstrating a possible legitimate ownership interest in property may intervene in a real tax property lien case (NYCTL 1999-1 Trust v. Chalom, 47 AD3d 779, 851 NYS2d 211 [2d Dept., 2008]). However, where the potential intervenor has no interest in either the real property or the outcome of the litigation then the motion seeking intervention should be denied

(Citibank N.A. v. Plagakis, 8 AD3d 604, 779 NYS2d 576 [2d Dept., 2004])).

The two potential intervenors are an entity called Triboro Realty Asset Management LLC and an entity called Alpha Space LLC. Both entities are owned by defendant Spitzer. Triboro had acted as managing agent and claims money is owed. Alpha was a tenant and was the subject of a landlord tenant action that has since been discontinued. The complaint in this case alleges breach of contract against Spitzer for allegedly violating the operating agreement, trespass against Spitzer, tortious interference with contract, conversion, breach of fiduciary duty, declaratory judgement and permanent injunction. Concerning Triboro, even if Spitzer has claims for offsets or payments that does not mean that Triboro is a necessary party in this action. Any claims that Triboro may assert have nothing whatsoever to do with the allegations against Spitzer at all. Surely, Triboro is not "necessary" in any legal way. Likewise, concerning Alpha, the landlord tenant action has been discontinued and any claims Alpha has for improvements do not touch upon the claims of this action at all. Again, Alpha is not a "necessary" party to an action that essentially argues Spitzer acted improperly. Therefore, the motion to permit intervention is denied.


Concerning the proposed amended complaint the plaintiffs asserted that intervention is not necessary since Spitzer can

pursue any claims he may have yet argue the proposed amended complaint should not be accepted thereby foreclosing any possibility for Spitzer to pursue his claims. The court has reviewed the amended complaint including the counterclaims and affirmative defenses. They support Spitzer's assertions without the need for any intervention of any of those other entities. Indeed, Mr. Spitzer should be given an opportunity to pursue his claims. Therefore, the portion of the motion seeking to deem the amended complaint served and filed is granted.

So ordered.

ENTER:

DATED: February 1, 2021
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC