

TNG Nassimi Realty Corp. v C.A. White, Inc.

2023 NY Slip Op 31844(U)

May 30, 2023

Supreme Court, New York County

Docket Number: Index No. 653210/2020

Judge: Robert R. Reed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 43

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TNG NASSIMI REALTY CORP.,
Plaintiff,

- v -

C.A. WHITE, INC.,
Defendant.

INDEX NO. 653210/2020

MOTION DATE 02/01/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

-----X

C.A. WHITE, INC., 17-18 MANAGEMENT COMPANY L.L.C.
Plaintiff,

Third-Party
Index No. 595279/2021

-against-

GARY VINBAYTEL, RI W17W18 LLC, MN W18W17 LLC
Defendant.

-----X

HON. ROBERT R. REED:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 51, 52, 53, 54, 55, 56, 57, 58

were read on this motion to CONSOLIDATE/JOIN FOR TRIAL

On this motion, defendant/third-party plaintiff C.A. White, Inc. (C.A. White) moves for an order, pursuant to CPLR 602 (a), to consolidate the instant third-party action with another action entitled *17-18 Management Company L.L.C. v Gary Vinbaytel, et al.*, pending in the Supreme Court, New York County under Index No. 654857/2022 (“the 17-18 Management Action”).

No opposition to the motion was filed.

BACKGROUND

In July 2020, plaintiff TNG Nassimi Realty Corp. (TNG) commenced the instant action alleging that C.A. White breached an agreement pursuant to which C.A. White agreed to pay TNG a commercial real estate brokerage commission following the closing of a certain property located at 21 West 17th Street and 16 West 18th Street in Manhattan (the Property) (NYSCEF doc. no. 2). In March 2021, C.A. White commenced a third-party action against Gary Vinbaytel for contractual indemnification, alleging that Vinbaytel agreed to indemnify and hold it harmless from any claims brought by TNG related to the sale of the Property pursuant to an Agreement of Purchase and Sale (PSA) (NYSCEF doc. no. 6). C.A. White is not a party to the PSA but alleges that it is a third-party beneficiary of the indemnification provision contained therein. C.A. White is a managing member of 17-18 Management Company L.L.C. (17-18 Management), a party to the PSA.

A supplemental summons and amended third-party complaint was filed in the third-party action in October 2022, which added 17-18 Management as a third-party plaintiff (NYSCEF doc. nos. 41-42). The amended third-party complaint also added RI W17W18 LLC (RIW) and MN W18W17 LLC (MNW) as third-party defendants on the ground that Vinbaytel's interest in the PSA had been assigned to RIW and MNW. Upon objection, 17-18 Management discontinued its claims without prejudice (NYSCEF doc. no. 48), and thereafter filed the 17-18 Management Action under Index No. 654857/2022. All parties now consent to the consolidation of the instant third-party action with the 17-18 Management Action (NYSCEF doc. no. 53).

DISCUSSION

C.A. White argues that consolidation is appropriate given that both the instant third-party action and the 17-18 Management Action involve virtually identical claims for indemnification

arising under the same PSA, the only substantive difference being that in the instant third-party action, C.A. White is proceeding under a theory that it is a third-party beneficiary to PSA, whereas 17-18 Management is proceeding under the theory that it is a party to the agreement.

CPLR 602 (a) provides that “[w]hen actions involving a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all the matters in issue, may order the actions consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.” “[T]here is a preference for consolidation in the interest of judicial economy where there are common questions of law and fact, unless the party opposing the motion demonstrates that consolidation will prejudice a substantial right” (*Kukielka v Santana*, 191 AD3d 532, 532-533 [1st Dept 2021] [quotation marks and citation omitted]). “Denial of a motion to consolidate or for a joint trial may be warranted where common questions of law or fact are lacking, where the actions involve dissimilar issues or disparate legal theories, or where a joint trial would substantially prejudice an opposing party or pose a risk of confusing the jury or rendering the litigation unwieldy” and “the mere commonality of fact or law does not, ipso facto, require that consolidation or joinder of related actions always occur” (*HSBC Bank USA, N.A. v Francis*, 214 AD3d 58, 63 [2d Dept 2023][internal quotation marks and citations omitted]).

Here, C.A. White established that this third-party action arises out of the same facts as the 17-18 Management Action. In both actions, plaintiffs allege that they are entitled to indemnification under the same agreement. Thus, the actions involve common questions of law or fact. The motion is submitted to the court without opposition and upon consent of all parties.

Accordingly, it is hereby

ORDERED that the motion by defendant/third-party plaintiff C.A. White, Inc. for consolidation is granted and the above-captioned action is consolidated with the action entitled *17-18 Management Company L.L.C. v Gary Vinbaytel, et al.*, Supreme Court, New York County Index No. 654857/2022, also pending in this court; and it is further

ORDERED that the consolidation shall take place under Index No. 653210/2020 and the consolidated action shall bear the following caption:

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TNG NASSIMI REALTY CORP.,

Index No. 653210/2020

Plaintiff,

-against-

C.A. WHITE, INC.,

Defendant.

-----X

C.A. WHITE, INC. and
17-18 MANAGEMENT COMPANY L.L.C,

Third-Party Plaintiffs,

-against-

GARY VINBAYTEL, RI W17W18 LLC,
and MN W18W17 LLC,

Third-Party Defendants.

-----X

; and it is further

ORDERED that the pleadings in the action hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

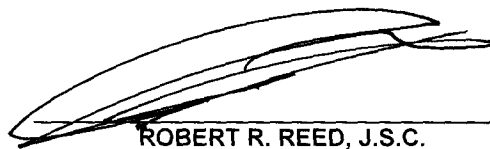
ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the Court (60 Centre Street, Room 141 B), who shall consolidate the documents in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that counsel for the movant shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed.

This constitutes the decision and order of the court.

05/30/2023

DATE



ROBERT R. REED, J.S.C.

CHECK ONE:

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CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

<input checked="" type="checkbox"/>
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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: