

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

Case No.: 06-61151-CIV-MIDDLEBROOKS

TWOSOME INVESTMENTS,

Plaintiff,

vs.

FLAGER LANDING, LP, and
THE WEITZ COMPANY,

Defendants.

MOTION TO FILE AN AMENDED COMPLAINT

Plaintiff, TWOSOME INVESTMENTS (“Twosome”), by and through its undersigned counsel, and pursuant to Rules 15 and 20 of the Federal Rules of Civil Procedure, and Rules 7.1 and 15.1 of the Local Rules of the United States District Court for the Southern District of Florida, hereby files its Motion to File an Amended Complaint, and states as follows:

1. Pursuant to recent discovery proceedings, Twosome has acquired information leading it to believe Drawdy Brothers Construction II, Inc. (“Drawdy”) shares liability in the above-referenced matter.
2. The Court’s Order Granting Joint Motion for Continuance, Resetting Jury Trial and Amending Pretrial Scheduling Order allows for amendment of pleading on or before June 20, 2007.
3. Pursuant to Local Rule 7.1, Twosome’s counsel has conferred with all defendants and they have no objection to this motion.

4. Pursuant to Local Rule 15.1, the Amended Complaint is attached in PDF format as "Exhibit A."

MEMORANDUM OF LAW

Drawdy's apparent liability only came to light during recent depositions of the defendants' representatives and employees. Leave to amend shall be freely given when justice so requires. Fed. R. Civ. P. 15(a); *Laurie v. Alabama Court of Criminal Appeals*, 256 F.3d 1266 (11th Cir. 2001). The Court has authorized amendments of pleadings occurring on or before June 20, 2007.

Fed. R. Civ P. 20 provides, in pertinent part: "All persons [...] may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action." It is within the Court's discretion to allow for amendment of pleadings joining additional parties to a lawsuit. See *Gentry v. Smith*, 487 F.2d 571, 580 (5th Cir. 1973).

The addition of Drawdy will allow for the efficient resolution of this matter. Defendants will not be prejudiced by the addition of Drawdy and no modifications to this Court's scheduling order should be required.

WHEREFORE, Plaintiff TWOSOME INVESTMENTS respectfully request this Court grant its Motion to Amend and accept the filing of the Amended Complaint attached as Exhibit A.

Respectfully submitted,

/s/ Robert Birthisel

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via U.S. MAIL to Benjamin Bedard, Esq., Roberts, Reynolds, Bedard & Tuzzio, P.A., 407 Columbia Drive, Suite 101C, West Palm Beach, FL 33409, on this 20th day of June, 2007.

/s/ Robert Birthisel
Robert Birthisel

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

Case No.: 06-61151-CIV-MIDDLEBROOKS

IN THE MATTER OF:

TWOSOME INVESTMENTS, LTD.

Plaintiff,

v.

**FLAGLER LANDING, LP,
THE WEITZ COMPANY, and
DRAWDY BROTHERS
CONSTRUCTION II, INC.**

Defendants.

AMENDED COMPLAINT

TWOSOME INVESTMENTS, LTD, (“TWOSOME”) for its amended complaint against defendants, FLAGLER LANDING, LP (“FLAGLER”), THE WEITZ COMPANY, LLC (“WEITZ”), and DRAWDY BROTHERS CONSTRUCTION II, INC. (“DRAWDY”) states as follows:

Jurisdiction and Venue

1. Jurisdiction is proper pursuant to 28 U.S.C. § 1332. The instant suit concerns a claim for damages in excess of \$75,000, exclusive of interest and costs, and is between parties who are citizens of different countries.

2. Venue is proper pursuant to 28 U.S.C. § 1391, as the events, acts, and omissions giving rise to the claim occurred within the district, and all defendants are subject to personal jurisdiction in the district.



Jury Demand

3. Plaintiff respectfully requests trial by jury for all issues triable of right by a jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Parties

4. TWOSOME is a Cayman Islands corporation with its principal address at One Capital Place, P.O. Box 847, Grand Cayman.

5. FLAGLER is a Florida Limited Partnership with its principal address at 639 East Ocean Ave., Suite 406, Boynton Beach, FL 33435.

6. WEITZ is a foreign corporation with its principal place of business at 400 Locust Street, Suite 300, Des Moines, IA 50309.

7. DRAWDY is a Florida corporation with its principal place of business at 2945 W. Midway Road, Ft. Pierce, FL 34981.

8. Personal jurisdiction over WEITZ is proper pursuant to Section 48.193, Florida Statutes, as WEITZ:

- a. is operating, conducting, engaging in, or carrying on a business or business venture in this state;
- b. has committed tortious acts within the state; and
- c. is engaged in substantial and not isolated activity within this state.

Operative Facts

9. At all times material to this Complaint, TWOSOME, or its predecessor, was the owner of the *M/Y COMPASS ROSE*, Hull Identification Number DOH07004E494 (the "Vessel").

10. At all times material to this Complaint, the Vessel was moored in Rybovich Marina undergoing repairs and maintenance.

11. At all times material to this Complaint, FLAGLER owned the property at 3900 North Flagler Drive, West Palm Beach, FL 33407 (the "Property").

12. FLAGLER contracted WEITZ to construct the condominium project "Flagler Landing" on the Property.

13. WEITZ contracted DRAWDY to form and pour the concrete structure for the condominium project's buildings.

14. At all times material to this Complaint, there were ongoing construction activities on the Property.

15. The Property is located immediately south of the Rybovich Marina on the Intercoastal Waterway.

16. On October 24, 2005, Hurricane Wilma struck the West Coast of Florida traveling across the state exiting just southeast of Jupiter, Florida.

17. During Hurricane Wilma, unsecured concrete forms, plywood decking, and construction debris and supplies from the Property were blown from the Property striking the Vessel and causing \$176,106.20 in damages.

COUNT I
(Negligence)

18. Plaintiff incorporates Paragraphs 1-17 as if set forth fully herein.

19. FLAGLER, WEITZ, and DRAWDY owed a duty to act reasonably in securing concrete forms, plywood decking, and construction debris and supplies on the Property in anticipation of Hurricane Wilma.

20. FLAGLER, WEITZ, and DRAWDY failed to exercise reasonable care in securing

concrete forms, plywood decking, and construction debris and supplies in anticipation of Hurricane Wilma.

21. FLAGLER, WEITZ, and DRAWDY failed to take even cursory steps to ensure all concrete forms, plywood decking, and construction debris and supplies were secured in anticipation of Hurricane Wilma, including, without limitation, leaving unsecured and inadequately secured plywood decking at the partially constructed condominium buildings.

22. FLAGLER's, WEITZ's, and DRAWDY's failure to exercise reasonable care resulted in the Vessel being struck by concrete forms, plywood decking, and construction debris and supplies from the Property during Hurricane Wilma.

23. As a direct and proximate result of FLAGLER's, WEITZ's, and DRAWDY's negligence, TWOSOME sustained damages in the amount of \$176,106.20, the exact amount to be proven at trial.

COUNT II

(Negligence - *Res Ipsa Loquitur*)

24. Plaintiff incorporates Paragraphs 1-17 as if set forth fully herein.

25. The damage to the Vessel was the direct and proximate result of concrete forms, plywood decking, and construction debris and supplies from the Property striking the Vessel during Hurricane Wilma.

26. FLAGLER, WEITZ, and DRAWDY were in exclusive control of the concrete forms, plywood decking, and construction debris and supplies on the Property.

27. TWOSOME did not have control over the concrete forms, plywood decking, and construction debris and supplies on the Property at any time material to the Complaint.

28. TWOSOME did not contribute to the damage to the Vessel caused by the unsecured concrete forms, plywood decking, and construction debris and supplies.

29. Had FLAGLER, WEITZ, and DRAWDY exercised reasonable care to secure the concrete forms, plywood decking, and construction debris and supplies on the Property in anticipation of Hurricane Wilma, the Vessel would not have been damaged.

30. As a direct and proximate result of FLAGLER's, WEITZ's, and DRAWDY's negligence, TWOSOME sustained damages in the amount of \$176,106.20; the exact amount to be proven at trial.

WHEREFORE, plaintiff, TWOSOME, respectfully requests this Court enter judgment in its favor and against FLAGLER, WEITZ, and DRAWDY, jointly and severally, for damages to the Vessel, the exact amount to be proven at trial, and award such costs, interest, and any other relief this Court deems appropriate.

Dated this 20th day of June, 2007

/s/ Robert B. Birthisel
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MICHAEL A. ZUPPA, JR.
Florida Bar No.: 0646555
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