

**North Moore St. Developers, LLC v Meltzer/Mandl
Architects, P.C.**

2004 NY Slip Op 30112(U)

December 22, 2004

Supreme Court, New York County

Docket Number: 0012166/2001

Judge: Sherry Klein Heitler

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

PRESENT: Sherry Klein Heitler
Justice

PART 30

0121665/2001

NORTH MOORE ST. DEVELOPERS
LLC
VS
MELTZER/MANDL ARCHITECTS,
P.C.

< NO. 121665/01

ON DATE _____

ON SEQ. NO. (004)

SEQ 4

ON CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...
Answering Affidavits -- Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

is decided in accordance with the memorandum decision dated 12-22-04

FILED

JAN - 6 2005

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 12-22-04

Sherry Klein Heitler
SHERRY KLEIN HEITLER J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 30**

-----X
NORTH MOORE STREET DEVELOPERS, LLC,

Plaintiff,

-against-

MELTZER/MANDL ARCHITECTS, P.C.

Defendant.

-----X
MELTZER/MANDL ARCHITECTS, P.C.,

Third-Party Plaintiff,

-against-

GILSANZ MURRAY & STEFICEK, LLP, ALAN R.
SCHWARTZ PE CONSULTING ENGINEERS, TRUE
NORTH SURVEYING, CLAUDIA AQUINO INTERIORS,
CLAUDIA AQUINO, HIGGINS & QUESBARTH,
METROPOLIS GROUP INC., RPH INC., H.P. ELECTRICAL
DESIGNS, INC., and ROMA ELEVATOR
CONSTRUCTION CORP.,

Third-Party Defendants.

-----X
SHERRY KLEIN HEITLER, J.:

Motion sequence numbers 004, 005 and 006 are consolidated for disposition herein.

In motion sequence number 004, defendant/third-party plaintiff Meltzer/Mandl Architects, P.C. (“Meltzer/Mandl”) move to vacate the Note of Issue and Certificate of Readiness on the ground that there is still outstanding discovery to be completed in this matter.

In motion sequence number 005, third-party defendants Gilsanz Murray Steficek, LLP, s/h/a Gilsanz Murray & Steficek, LLP, Metropolis Group Inc. and True North Surveying (“GMS,” “Metropolis” and “True North,” respectively) also move to vacate the Note of Issue and

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DECISION & ORDER

Certificate of Readiness. In addition, GMS, Metropolis and True North move to sever the third-party action from the main action pursuant to CPLR §1010, and to preclude defendant/third-party plaintiff Meltzer/Mandl from presenting certain evidence at trial on the ground that Meltzer/Mandl has failed to comply with GMS, Metropolis and True North's Demand for a Verified Bill of Particulars. Subsequent to the filing of this motion, however, Meltzer/Mandl served the third-party defendants with its Verified Bill of Particulars, which GMS, Metropolis and True North now allege is "wholly inadequate, incomplete and fails to provide any meaningful particulars as to or amplification of Meltzer's claims against the third-party defendants." On that basis, GMS, Metropolis and Truth North move for dismissal of the third-party complaint.

In motion sequence 006, defendant/third-party plaintiff Meltzer/Madl moves for an order compelling plaintiff to serve a further Bill of Particulars, on the ground that plaintiff's Bill of Particulars is "inadequate and insufficient in the event that Meltzer/Mandl is required to serve a supplemental bill of particulars upon third-party defendants" GMS, Metropolis and Truth North.

Although the Note of Issue and Certificate of Readiness have been filed, the court is mindful of the need for additional discovery to take place prior to proceeding to trial. For this reason, the court will permit continued discovery on a schedule to be approved by the court at a subsequent scheduling conference. Consequently, there is no need to vacate the Note of Issue and Certificate of Readiness, nor is it necessary to sever the third-party action from the main action in order to preserve the third-party defendants' rights to adequate discovery.

However, the complexity of this case necessitates a more detailed Bill of Particulars than plaintiff has heretofore provided, particularly in light of defendant/third-party plaintiff

Meltzer/Mandl's difficulty in providing an adequate Bill of Particulars to the third-party defendants. Therefore, plaintiff will provide a supplemental Bill of Particulars which will "elaborate upon facts previously set forth in the complaint and original bill of particulars, and, accordingly, should not be a source of unfair surprise or prejudice." Debellis v. NYU Hosp. Ctr., ___ A.D.3d ___, 2004 N.Y. App. Div. LEXIS 14414, *1, *2 (1st Dept. 2004). Thereafter, Meltzer/Mandl will provide a supplemental Bill of Particulars to all of the third-party defendants and discovery will proceed apace. Accordingly, it is hereby

ORDERED that defendant/third party plaintiff Meltzer/Mandl's motion to vacate the Note of Issue and Certificate of Readiness (motion sequence number 004) is denied; and it is further

ORDERED that third-party defendants GMS', Metropolis' and True North's motion to vacate the Notice of Issue and Certificate of Readiness (motion sequence number 005) is denied; and it is further

ORDERED that third-party defendants GMS', Metropolis' and True North's motion to sever the third-party action from the main action is denied (motion sequence number 005); and it is further

ORDERED that third-party defendants GMS', Metropolis' and True North's motion to preclude defendant/third-party plaintiff Meltzer/Mandl from presenting certain evidence at trial (motion sequence number 005) on the ground that Meltzer/Mandl has failed to provide the third-party defendants with an adequate Bill of Particulars is granted to the extent of ordering that Meltzer/Mandl shall provide the third-party defendants with a supplemental Bill of Particulars on or before February 7, 2004, and it is otherwise denied; and it is further

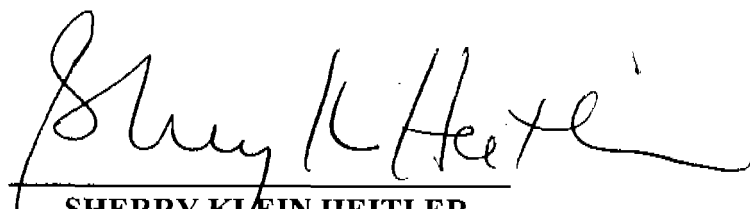
* 5]
ORDERED that third-party defendants GMS', Metropolis' and True North's motion to dismiss the third-party complaint (motion sequence number 005) is denied; and it is further

ORDERED that defendant/third-party plaintiff Meltzer/Mandl's motion for an order compelling plaintiff to serve a supplemental Bill of Particulars (motion sequence number 006) is hereby granted to the extent of ordering that plaintiff shall serve a supplemental Bill of Particulars upon defendant/third-party plaintiff Meltzer/Mandl on or before January 23, 2005; and it is further

ORDERED that counsel for the parties shall appear for a conference at 9:45 a.m. on February 14, 2005 at Room 438, 60 Centre Street, New York, New York 10007.

This shall constitute the decision and order of the court.

DATED: December 22, 2004


SHERRY KLEIN HEITLER
J.S.C.

FILED

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COUNTY CLERK'S OFFICE