

Garcia-Sjorgrim v Port Imperial Ferry Corp.
2007 NY Slip Op 31105(U)
May 8, 2007
Supreme Court, New York County
Docket Number: 0110717/2005
Judge: Walter B. Tolub
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SUPREME COURT OF THE STATE OF NEW YORK -- NEW YORK COUNTY

PRESENT: _____
Justice

PART _____

Index Number : 110717/2005
GARCIA-SJORGRIM, KATERINA
vs
PORT IMOERIAL FERRY
Sequence Number : 001
DISMISS

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits -- Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

IS DECIDED

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

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

FILED
MAY 08 2007
NEW YORK
COUNTY CLERK

Dated: 4/30/07

4
WALTER D. TORRES J.S.C.
NON-FINAL DISPOSITION

Check one: FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

-----x
KATERINA GARCIA-SJOGRIM and FERNANDO,
Plaintiffs,

-against-

Index No.: 110717/2005

PORT IMPERIAL FERRY CORP and PORT IMPERIAL
FERRY CORP d/b/a NEW YORK WATERWAY,
Defendants.

-----x
PORT IMPERIAL FERRY CORP and PORT IMPERIAL
FERRY CORP d/b/a NEW YORK WATERWAY,
Third-Party Plaintiffs,

-against-

AMTRAN CORP. and IC CORPORATION,
Third-Party Defendants

FILED
MAY 08 2007
NEW YORK
COUNTY CLERK'S OFFICE

-----x
WALTER TOLUB, J:

By this motion Third-Party Defendant IC Corporation (ICC) seeks an order severing the third-party complaint. ICC's motion is denied.

Facts

This case involves an accident which took place on June 27, 2005, when Plaintiff slipped and fell while stepping off of the stairs of a bus. The bus was owned and operated by Third-Party Plaintiffs Port Imerial Ferry Corp and Port Imerial Ferry Corp d/b/a New York Waterway (New York Waterway). Third-Party Defendant ICC manufactures, sells and distributes busses. Plaintiffs brought suit on August 2, 2005 and served a bill of particulars on October 13, 2005. The bill of particulars alleged, inter alia, that the Defendants/Third-Party Plaintiffs

were negligent in failing to provide handrails to facilitate exiting the bus.

The Third-Party Defendants argue that, in contrast to Plaintiff's vigorous prosecution, the Third-Party Plaintiffs are guilty of inexcusable delay by commencing a Third Party action on December 21, 2006, nearly 16 months after the action was started. They further argue that the Third-Party claims should be severed to avoid prejudice occasioned by the delay. Third-Party Plaintiffs argue that ICC cannot show prejudice and that the Third-Party action should not be severed because there are common facts and legal issues which should be tried together.

Discussion

Severance should be used sparingly and is inappropriate absent a showing that a party's substantial rights would be prejudiced. (Shanley v. Callanan, 54 NY2d 52 [1981]). Even if a third party action is commenced with delay, the mere delay absent a showing of prejudice is insufficient to support severance. (Wilson v. City, 1 AD3d 157 [1st Dept 2003]). Severance should not be favored when there are common issues of fact and law and the issues are inextricably interwoven.

Here, ICC contends that it will be prejudiced because it will not have sufficient discovery at the time of trial. However, the inspection of the bus and Plaintiff's deposition were only recently scheduled, and on the return date of this

motion the court directed ICC to depose the Plaintiff and ask the same questions as it sought in the interrogatories.

There are common issues of fact and law that are interwoven. Plaintiffs claim that Ms. Garcia fell on a bus owned by Port Imerial because the handrail was not properly maintained. Third-Party Plaintiff argues that at the bus inspection Plaintiffs expert focused on the and placement rather than maintenance. problem. In both cases, the issue is the handrail and whether the maintenance or design was the cause of Plaintiffs' accident. Moreover, the court has not set a trial date for this action and will not do so until it appears that sufficient discovery is provided.

Based on the foregoing, since ICC has not established prejudice and since both actions involve common issues of fact and law, ICC's motion to sever is denied in its entirety.

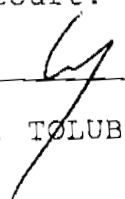
Accordingly, it is

ORDERED that ICC's motion to dismiss or sever the Third-Party Complaint is denied in its entirety.

Counsel for the parties are directed to appear, as scheduled, for a status conference on May 11, 2007 at 11:00 a.m. in room 335 at 60 Centre Street.

This constitutes the decision and order of the court.

4/30/07


WALTER B. TOLUB J.S.C

FILED
MAY 08 2007
NEW YORK
COUNTY CLERK