

**Kales v New York City Health & Hosps.  
Corp.**

2007 NY Slip Op 33080(U)

September 17, 2007

Supreme Court, New York County

Docket Number: 0112216/2002

Judge: Eileen A. Rakower

Republished from New York State Unified Court  
System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for  
any additional information on this case.

This opinion is uncorrected and not selected for official  
publication.

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

PRESENT:

*R. Rakower*

PART 5

Index Number : 112216/2002

KALES, NIKITAS

INDEX NO. \_\_\_\_\_

vs

HEALTH AND HOSPITALS

MOTION DATE \_\_\_\_\_

Sequence Number : 001

MOTION SEQ. NO. \_\_\_\_\_

SEVER ACTION

MOTION CAL. NO. \_\_\_\_\_

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

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

PAPERS NUMBERED

1

Answering Affidavits — Exhibits \_\_\_\_\_

2, 3

Replying Affidavits \_\_\_\_\_

4, 5

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

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

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION / ORDER**

**FILED**  
SEP 21 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 9/17/07



**EILEEN A. RAKOWER**

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION *J.S.G.*

DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 5

-----X  
NIKITAS KALES,

Plaintiff,

Index No.  
112216/02

- against -

Decision and  
Order

NEW YORK CITY HEALTH AND HOSPITAL  
CORPORATION and THE CITY OF NEW YORK,

Defendants.

-----X  
NEW YORK CITY HEALTH AND HOSPITAL  
CORPORATION and THE CITY OF NEW YORK,

Third-Party Plaintiff,

Third-Party Index  
No.  
590378/07

- against -

KNS BUILDING RESTORATION, INC.,  
Third-Party Defendants.

**FILED**  
SEP 21 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

HON. EILEEN A. RAKOWER

Plaintiff brings this action for personal injuries allegedly caused while he was working at Metropolitan Hospital located at 1901 First Avenue New York, New York on September 24, 2001. Defendant KNS Building Restoration, Inc. ("KNS") moves to sever its third party action from the main action pursuant to CPLR §603 and dismiss the third party complaint or in the alternative order a separate trial of the third party cause of action. Defendants the City of New York and the New York City

Health and Hospitals Corporation (“City”) and plaintiff oppose KNS’s motion.

On June 6, 2002 plaintiff commenced the main action as against City. A preliminary conference was held on August 19, 2003 at which time depositions were scheduled and additional discovery was requested as between plaintiff and City. According to court records, two compliance conferences were held before plaintiff filed his note of issue on September 7, 2004. A final compliance conference was held on October 12, 2004. On April 25, 2007 City commenced a third party action against KNS for indemnification and KNS served its answer on May 23, 2007 which included a demand for a bill of particulars, combined demands and notice to take depositions. After several mediation sessions and early settlement conferences, a trial was scheduled for October 27, 2007.

KNS argues that the City and plaintiff have substantially completed discovery and that, as of the date of its motion, it has received no discovery and has not had the opportunity to depose any party. Further, KNS argues that City unduly delayed commencing its third-party action since it knew that KNS would be a party but waited two and a half years to bring the action.

Plaintiff, in opposition, claims that KNS has been served with all discovery responses, a bill of particulars, medical records, EBT transcripts, and the 50-h hearing transcript. City, in opposition, argues that since plaintiff was employed by KNS, it had notice of the accident since the date of its occurrence. Additionally, City points out that there is a pending declaratory judgment action against both KNS and its insured, INSCO, which gives KNS access to all relevant documents. Thus, City argues, KNS has had ample time to investigate and prepare for trial.

KNS, in reply, argues that the limited discovery conducted between plaintiff and City is insufficient for it to properly defend its case. KNS claims that plaintiff has not been deposed and that it also needs the depositions of City witnesses in order to defend against the indemnification claims. In addition, KNS argues that it needs time to examine plaintiffs medical records and to conduct an independent medical examination.

CPLR §603 states:

In furtherance of convenience or to avoid prejudice the court may order

a severance of claims, or may order a separate trial of any claim, or of any separate issue. The court may order the trial of any claim or issue prior to the trial of the others.

Where a defendant unduly delays bringing a third-party action, discovery is substantiality completed in the main action and the third-party defendant is prevented from conducting its own meaningful discovery, severing of the action is warranted. (Ramos v. City of New York, 30 A.D.3d 201[1st Dept. 2006]). Despite the fact that a main and third-party action contain common issues of fact, it may be severed when not doing so would cause further delay, thereby prejudicing the plaintiff. (Garcia v. Gesher Realty Corp., 280 A.D2d 440[1st Dept. 2007]).

City waited over two and a half years after discovery was deemed complete in the main action to bring its third-party action against KNS. City delayed despite its awareness that it had a cause of action against KNS for indemnification. The Court is mindful of KNS's right to conduct its own meaningful discovery and Ms. Kale's interest in proceeding to trial without further delay.

Wherefore it is hereby

ORDERED that defendant KNS Building Restoration, Inc.'s motion to sever is granted, and it is further

ORDERED: that these actions are hereby severed for separate trials, and it is further

ORDERED: that a copy of this order with notice of entry shall be served upon the Clerk of the Trial Support Office(Room 158), who is hereby directed to divide the case records into appropriately separate files and assign the appropriate index numbers to each file, and it is further

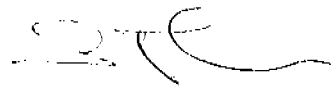
ORDERED: that the parties shall appear for a compliance conference on OCTOBER 9, 2007 at 2:00 p.m., and it is further

ORDERED that the main action in all other respects continues.

This constitutes the decision and order of the court. All other relief requested

is denied.

DATED: SEPTEMBER 17, 2007



---

EILEEN A. RAKOWER, J.S.C.

**FILED**  
SEP 21 2007  
NEW YORK  
COUNTY CLERK'S OFFICE