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

PRESENT: BRANSTEN Justice PART 3

EAST 115 ST REALTY CORP

-v-

FOCUS STRUGA BUILDING DEVELOPERS

INDEX NO. 604164/07

MOTION DATE 3/2/2011

MOTION SEQ. NO.

MOTION CAL. NO.

The following papers, numbered 1 to 3 were read on this motion to/for SEVER

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1
Answering Affidavits — Exhibits	2
Replying Affidavits	3

Cross-Motion: ☐ Yes ☑ No

Upon the foregoing papers, it is ordered that this motion

IS DECIDED

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

FILED

MAY 31 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: May 31, 2011

EILEEN BRANSTEN J.S.C.

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

Check one: ☐ FINAL DISPOSITION ☑ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/ JUDG. ☐ SETTLE ORDER/ JUDG.

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

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EAST 115th STREET REALTY CORP.,

Plaintiff,

-against-

FOCUS & STRUGA BUILDING DEVELOPERS LLC, GREAT AMERICAN INSURANCE COMPANY OF NEW YORK, ABAD CONSULTING (a corporation), I. ARTHUR YANOFF & CO. LTS, MAZZOCCHI WRECKING INC., SHARON ENGINEERING, P.C., and S IRON WORK INCOPORATED

Defendants.

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FOCUS & STRUGA BUILDING DEVELOPERS LLC,

Third Party Plaintiff,

-against-

SHARON ENGINEERING, P.C. and S IRON WORK INCORPORATED,

Third Party Defendants

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Index No.: 604164/2007
Motion Date: 03/02/2011
Motion Seq. No.: 010

PRESENT: EILEEN BRANSTEN, J:

In its decision and order filed on January 13, 2011 (the "Decision and Order"), the court granted plaintiff East 115th Street Realty Corp.'s ("Plaintiff") motion for summary judgment (motion sequence 006) against defendant Abad Consulting ("Abad") on the issue of negligence. Plaintiff now moves, pursuant to CPLR § 603, to sever the issue of damages

on its negligence claim and proceed to trial for determination thereof. Abad and defendant I. Arthur Yanoff & Co. Ltd. ("Yanoff") oppose.

ANALYSIS

I. Standard of Law

CPLR § 603 permits the court to sever any claim or issue from all others within a case "in furtherance of convenience or to avoid prejudice." The court has discretion to order severance, but should exercise its discretion sparingly. *Shanley v. Callanan Industries*, 54 N.Y.2d 52, 57 (1981). Severance "increases litigation and places an unnecessary burden on court facilities by requiring two separate trials instead of one." *Id.*; *see also Rothstein v. Milleridge Inn, Inc.*, 251 A.D.2d 154, 155 (1st Dep't 1998).

II. Judicial Economy Dictates that Severance is Unwarranted

Plaintiff argues that requiring it to wait until the outcome of the other claims and counterclaims pending in the underlying case before ascertaining their damages against Abad would be burdensome and an undue delay. Affirmation of Matthew S. Aboulafia in Support of Motion to Sever ("Aboulafia Affirm."), ¶ 4. Plaintiff contends that it seeks bifurcation of the issues of liability and damages on its claims against Abad, and that bifurcation would "save time and reduce the expense on Plaintiff's [*sic*] in having to wait until the end of the instant action to recoup its losses." *Id.*, ¶ 5. Plaintiff lastly contends that severing its damage

claim against Abad could potentially dispose of the entire case if the damages as assessed are sufficient to cover Plaintiff's alleged losses. *Id.*

Abad's opposition is threefold. First, Abad contends that judicial economy disfavors severance. Affirmation of Anthony Grande in Opposition to Plaintiff's Motion ("Grande Affirm."), ¶ 9. Second, Abad argues that potentially delayed recovery is in itself insufficient to warrant severance. *Id.*, ¶ 10. Third, Abad contends that the intertwined nature of its (and other parties') claims for indemnification and contribution with the underlying merits of the case make a single trial the most desirable course upon which to proceed. *Id.*, ¶¶ 11-12.

On reply, Plaintiff argues "to avoid two damages trials all together [*sic*] we can invite all the defendants to participate in the damage trial against Defendant Abad." Reply Affirmation of Matthew Aboulafia in Support of Motion to Sever ("Aboulafia Reply Affirm."). Plaintiff offers no basis on which to do so and no indication as to why all defendants would be so inclined to increase their litigation costs. Furthermore, the other parties' respective liability as against both Plaintiff and one another has yet to be determined. Plaintiff's suggested remedy does not mitigate the burden that multiple trials place on judicial economy.

Nor does Plaintiff sufficiently explain how it is that the entire case would be disposed of if sufficient damages are assessed against Abad. It appears that Plaintiff implies that its involvement in the case would be ended. However, the fact remains that several other

parties' claims for indemnification and contribution may continue, a fact that Plaintiff concedes, stating that an "assessment of damages against [Abad] would not defray [Abad's] cross-claims for contribution and indemnification." Aboulafia Reply Memo, ¶ 7. While this might be a more desirable outcome for Plaintiff, it does not detract from the core issues posed by fragmented litigation where unified litigation is perfectly plausible.

Finally, Plaintiff claims that it will be prejudiced by the delay associated with a trial involving multiple parties, multiple issues, and possible appeals. *Id.*, ¶ 8. Plaintiff does not explain how the normal incidents of litigation instituted by the Plaintiff constitute prejudice. *C.f. Rosenbaum v. Dane & Murphy, Inc.*, 189 A.D.2d 760, 761 (2d Dep't 1993) (finding severance appropriate to avoid delay that would be imposed by statutory stay following one party's bankruptcy in a multi-party case). It is somewhat disingenuous for Plaintiff to suggest, upon the court finding one of the seven defendant against whom Plaintiff brought this action liable, that it is prejudiced because other aspects of the litigation are going to proceed to trial. Nor does the fact that various defendants have interposed counter- and cross-claims validate Plaintiff's claim of prejudice. Indeed, the Court of Appeals stated in *Shanley* that "[w]here complex issues are intertwined, albeit in technically different actions, it would be better not to fragment trials, but to facilitate one complete and comprehensive hearing and determine all the issues involved between the parties at the same time." *Shanley v. Callahan Industries*, 54 N.Y.2d at 57.

Plaintiff has not shown that severance is necessary to further convenience or avoid prejudice. Rather, the court finds that severance would place an unnecessary burden on court resources and defendants in this action.

Accordingly, it is

ORDERED that Plaintiff's Motion to Sever is DENIED

This constitutes the decision and order of the court.

Dated: New York, New York
May 31, 2011

ENTER

Hon. Eileen Bransten, J.S.C.