

Santamaria v Simon Prop. Group, Inc.

2012 NY Slip Op 30073(U)

January 4, 2012

Supreme Court, Nassau County

Docket Number: 23478/09

Judge: Denise L. Sher

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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

ADAM SANTAMARIA,

Plaintiff,

- against -

TRIAL/IAS PART 31
NASSAU COUNTY

Index No.: 23478/09
Motion Seq. No.: 03
Motion Date: 11/01/11

SIMON PROPERTY GROUP, INC., ROOSEVELT FIELD
MALL, SONY CORPORATION OF AMERICA, SONY
COMPUTER ENTERTAINMENT OF AMERICA, INC.,
and IPC INTERNATIONAL, INC.,

Defendants.

SIMON PROPERTY GROUP, INC., ROOSEVELT FIELD
MALL and IPC INTERNATIONAL, INC.,

Third-Party Plaintiffs,

- against -

SONY ELECTRONICS INC. and SEL RETAIL
OPERATIONS, INC.,

Third-Party Defendants.

The following papers have been read on this motion:

	Papers Numbered
<u>Order to Show Cause, Affirmation and Exhibits</u>	<u>1</u>
<u>Affirmation in Opposition and Exhibits</u>	<u>2</u>
<u>Reply Affirmation</u>	<u>3</u>

Upon the foregoing papers, it is ordered that the motion is decided as follows:

Third-party defendants Sony Electronics, Inc. and SEL Retail Operations, Inc. ("SEL")

move, pursuant to CPLR §§ 603 and 1010, for an order granting severance of the third-party action from the main action. Defendants/third-party plaintiffs Simon Property Group, Inc., Roosevelt Field Mall and IPC International, Inc. (“IPC”) oppose the motion.

Plaintiff Adam Santamaria (“Santamaria”) alleges that on November 17, 2006, he was caused to fall and injure himself due to an overcrowding of mall patrons at defendant/third-party plaintiff Roosevelt Field Mall. At the time of the incident, the Sony style store was sponsoring the Play Station 3 Launch Event. According to plaintiff Santamaria’s deposition testimony in the main action, plaintiff Santamaria entered the interior space of defendant/third-party plaintiff Roosevelt Field Mall from the parking structure entrance located on the second floor of said Mall. From that entrance, plaintiff Santamaria proceeded down the escalator (which was not operating at the time of the incident). Plaintiff Santamaria alleges that he was pushed from behind by another patron. To avoid falling forward, plaintiff Santamaria asserts he elected to jump over the escalator handrail to the floor below, injuring his leg.

Defendants/third-party plaintiffs Simon Property Group, Inc., Roosevelt Field Mall and IPC commenced a third-party action against third-party defendants Sony Electronics, Inc. and SEL. The third-party defendants Sony Electronics, Inc. and SEL contend that, on November 17, 2006, The Retail Property Trust was the owner of defendant/third-party plaintiff Roosevelt Field Mall. It appears that the name “Roosevelt Field Mall” does not refer to any business entity, but rather the common name of the property located at 630 Old Country Road, Garden City, New York and allegedly owned by The Retail Property Trust. Prior to the date of the subject incident, The Retail Property Trust entered into a lease agreement with third-party defendant Sony Electronics, Inc. for the operation of a Sony style store in defendant/third-party plaintiff Roosevelt Field Mall.

Third-party defendant SEL, a wholly owned subsidiary of third-party defendant Sony

Electronics, Inc., managed the subject store.

In support of the motion for severance, the attorneys for the movants argue as follows:

Defendants/third-party plaintiffs Simon Property Group, Inc., Roosevelt Field Mall and IPC offer no excuse for their failure to timely serve the third-party action. This Court, in its order dated June 14, 2011, directed that all third-party actions be filed by June 30, 2011, yet defendants/third-party plaintiffs Simon Property Group, Inc., Roosevelt Field Mall and IPC did not file their Verified Third-Party Complaint until July 14, 2011. There is no evidence in the record of the date the Verified Third-Party Complaint was actually served on the third-party defendants Sony Electronics, Inc. and SEL.

The main action is already certified. Plaintiff Santamaria has not submitted any papers in opposition to or in support of the third-party defendants Sony Electronics, Inc. and SEL's motion seeking severance of the third-party action, nor has plaintiff even sought to implead third-party defendants Sony Electronics, Inc. and SEL as direct defendants.

Third-party defendants Sony Electronics, Inc. and SEL have sought discovery from defendants/third-party plaintiffs Simon Property Group, Inc., Roosevelt Field Mall and IPC that is still outstanding. For example, third-party defendants Sony Electronics, Inc. and SEL intend to depose a witness on behalf of defendant/third-party plaintiff IPC to probe the claims that defendant/third-party plaintiff IPC alleges in its Verified Third-Party Complaint. Defendant/third-party plaintiff IPC was in charge of security at the mall.

On or about September 16, 2011, third-party defendants Sony Electronics, Inc. and SEL tendered their defense and requested indemnification from non-party The Retail Property Trust. Movants assert that, to date, The Retail Property Trust has not responded to third-party defendants Sony Electronics, Inc. and SEL's tender. As a result, third-party defendants Sony Electronics, Inc. and SEL contend they will be compelled to bring a third-party action against

The Retail Property with causes of actions sounding in contractual and common law indemnification, breach of contract and contribution.

In opposition to the motion, defendants/third-party plaintiffs Simon Property Group, Inc., Roosevelt Field Mall and IPC argue that, since the third-party defendants Sony Electronics, Inc. and SEL leased and managed the store where plaintiff Santamaria intended to attend the Sony Play Station 3 Launch Event, their knowledge as to procedures and coordination for security for the event is directly related to and intertwined with the issues in the main action. Defendants/third-party plaintiffs Simon Property Group, Inc., Roosevelt Field Mall and IPC also argue that the law firm that represents defendants Sony Corporation of America and Sony Computer International, Inc. in the main action also represents third-party defendants Sony Electronics, Inc. and SEL. Therefore, the attorneys are familiar with the issues and parties in the third-party action.

Movants argue that since the third-party action is seeking contractual and common law indemnification, as well as contribution from the third-party defendants Sony Electronics, Inc. and SEL based on their contract with the non-party Retail Property Trust, a determination of whether defendants/third-party plaintiffs Simon Property Group, Inc., Roosevelt Field Mall and IPC are entitled to defense and indemnification pursuant to the contract are issues separate and apart from the main action.

Pursuant to CPLR §§ 603 and 1010, the Court has discretion to sever a third-party action from the main action where any party would be prejudiced by non-severance or where non-severance would delay the determination of the main action. *See Klein v. City of Long Beach*, 154 A.D.2d 346, 545 N.Y.S.2d 825 (2d Dept. 1989). Where factual and legal issues raised by the third-party are not overly complex and are closely related to the questions involved in the underlying action, the denial of a severance is not an improvident exercise of discretion. *See Rago v. Nationwide Ins. Co.*, 110 A.D.2d 831, 488 N.Y.S.2d 80 (2d Dept. 1985). Although there has been considerable delay in the progress of this action, there has been no demonstration that

any brief additional delays to permit discovery in the third-party action will cause substantial prejudice to plaintiff Santamaria in the main action or to third-party defendants Sony Electronics, Inc. and SEL in the third party action. *See Klein v. City of Long Beach, supra; Johnston Products Corporation v. ATI, Inc.*, 87 A.D.2d 604, 448 N.Y.S.2d 48 (2d Dept. 1982). *Compare Falk v. Palm Beach Home for Adults*, 71 A.D.2d 963, 420 N.Y.S.2d 22 (2d Dept. 1979). A single trial is appropriate in the furtherance of the interests of judicial economy. *See Shanley v. Callanan Indus.*, 54 N.Y.2d 52, 444 N.Y.S.2d 585 (1981). This action will appear for the first time in the DCM Trial Part on February 8, 2012, and will probably not be reached for trial for several months. Any further outstanding discovery can be conducted in the interim. It is within the Court's discretion to allow the case to remain on the trial calendar while discovery is ongoing. *See Nikpour v. City of New York*, 179 Misc.2d 928, 686 N.Y.S.2d 920 (Supreme Court New York County 1999).

The parties are directed to complete outstanding discovery in the third-party action no later than March 29, 2012. Failure to follow the directions set forth herein may result in sanctions and the issuance of preclusion orders.

Third-party defendants Sony Electronics, Inc. and SEL's motion, pursuant to CPLR §§ 603 and 1010, for an order granting severance of the third-party action from the main action is hereby **DENIED**.

This constitutes the Decision and Order of this Court.

ENTER:



 DENISE L. SHER, A.J.S.C.

Dated: Mineola, New York
 January 4, 2012

ENTERED
 JAN 06 2012
 NASSAU COUNTY
 COUNTY CLERK'S OFFICE