

Purcell v Metlife Inc.

2013 NY Slip Op 31930(U)

April 18, 2013

Sup Ct, New York County

Docket Number: 113495/09

Judge: Paul Wooten

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

PRESENT: HON. PAUL WOOTEN
Justice

PART 7

DANIEL PURCELL and JENNIFER PURCELL,

INDEX NO. 113495/09

Plaintiffs,

MOTION SEQ. NO. 009

- against -

METLIFE INC., BRAUSE REALTY INC. and
JRM CONSTRUCTION MANAGEMENT LLC,

Defendants.

METLIFE INC., and JRM CONSTRUCTION
MANAGEMENT LLC,

INDEX NO. 590061/10

Third-Party Plaintiffs,

- against -

NORTH EASTERN FABRICATORS, INC.,

Third-Party Defendant.

METLIFE INC., and JRM CONSTRUCTION
MANAGEMENT LLC,

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NEW YORK
COUNTY CLERK'S OFFICE

INDEX NO. 590282/11

Second Third-Party Plaintiffs,

-against-

H & L ELECTRIC, INC., and SWEENEY &
HARKIN CARPENTRY AND DRY WALL CORP.,

Second Third-Party Defendants.

The following papers were read on these motions for leave to reargue by Metlife Inc.

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

Answering Affidavits — Exhibits (Memo) _____

Replying Affidavits (Reply Memo)

PAPERS NUMBERED

Cross-Motion: Yes No

Before the Court is a motion by defendant/third-party plaintiff/second third-party plaintiff/third third-party plaintiff Metlife, Inc. (Metlife), pursuant to CPLR 2221(a) and (d), for leave to reargue this Court's previous Decision and Order dated March 30, 2012, to the extent that the Court granted the motions by second third-party defendants Sweeney & Harkin Carpentry and Dry Wall Corp. (Sweeney & Harkin) And H & L Electric Inc. (H & L) for severance of the second third-party action, and upon reargument denying Sweeney & Harkin and H & L's motions for severance.

Metlife argues that severance was improper as the Court has already determined that Sweeney & Harkin installed the plywood that is alleged to have caused plaintiff's accident, Sweeney & Harkin is an indispensable party to the litigation in the main action and third-party action as to liability. In support, defendant/third-party plaintiff/second third-party plaintiff JRM Construction Management LLC (JRM) states that it provided the third-party defendants with all discovery served in the main action so the parties would not be prejudiced if severance is not granted. Further, both Metlife and JRM proffer that denying severance would not cause delay or prejudice as the Note of Issue was stricken in the main and the third-party actions by an Order dated May 18, 2011. Additionally, all parties were able to take a further deposition of the plaintiff as to his continuing medical treatment.

In opposition, Sweeney & Harkin maintain that Metlife has not shown that the Court overlooked any material facts or misapplied the law and this motion should be denied. Severance of the second third-party action is necessary, Sweeney & Harkin states, otherwise there will be prejudice to the second third-party defendants who have not had an opportunity to delve into the topics relating to liability at plaintiff's deposition and further deposition, as well as depositions of the defendants/third-party plaintiffs. Further, Sweeney & Harkin proffer that no discovery has occurred regarding Jennifer Purcell's claim for loss of services as well as the

issues as to liability regarding third-party defendant North Eastern Fabricators, Inc. Lastly, Metlife has recently brought in Barclay's Bank, PLC as a third third-party defendant and no discovery has taken place with regard to the third third-party action. Barclay's submits papers in support of the motion to reargue and improperly attempts in its papers to seek severance of the third third-party action.

DISCUSSION

A motion for leave to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion" (CPLR 2221[d][2]; see *Kent v 534 E. 11th St.*, 80 AD3d 106, 116 [1st Dept 2010] ["A motion for reargument is addressed to the court's discretion and is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law"]; see also *Foley v Roche*, 68 AD2d 558, 567 [1st Dept 1979]).

The Court grants Metlife's motion, and upon reargument denies the motions for severance of the second third-party action. In granting Sweeney & Harkin and H & L's original motions for severance, the Court relied primarily on the different procedural stages of the actions because the Note of Issue had been filed in the main action and the third-party action. However, at the time the motions were decided the Note of Issue had in fact been stricken. Furthermore, all the actions arise from the same underlying accident. Moreover, a third third-party action was recently commenced and is not severed from the main action.

CONCLUSION

Accordingly, it is hereby

ORDERED that Metlife's motion, pursuant to CPLR 2221(a) and (d), for leave to reargue this Court's previous Decision and Order dated March 30, 2012, to the extent that the Court granted the motions by Sweeney & Harkin and H & L for severance of the second third-party

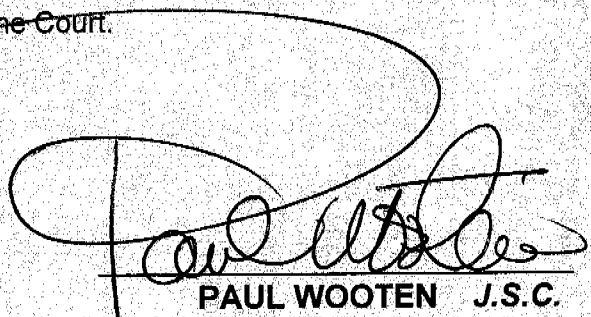
action is granted, and upon reargument the Court denies Sweeney & Harkin and H & L's motions for severance; and it is further,

ORDERED that the parties are directed to appear for a Status Conference on July 10, 2013 at 11:00 a.m. at Part 7, 60 Centre Street, Room 341; and it is further,

ORDERED that Metlife is ordered to serve a copy of this Order with Notice of Entry upon all parties and upon the Clerk of the Trial Support Office who is directed to join the previously severed actions.

This constitutes the Decision and Order of the Court.

Dated: 4-18-13


PAUL WOOTEN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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