

**Burgdoerfer v CLK/HP 90 Merrick, LLC**

2014 NY Slip Op 32287(U)

August 25, 2014

Supreme Court, New York County

Docket Number: 105644/2010

Judge: Eileen A. Rakower

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This opinion is uncorrected and not selected for official publication.

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8/28/14  
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# SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. EILEEN A. RAKOWER  
Justice

PART 15

Index Number : 105644/2010  
BURGDOERFER, JANE  
vs.  
CLK/HP 90 MERRICK LLC  
SEQUENCE NUMBER : 003  
DISMISS

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	No(s) <u>1-4</u>
Answering Affidavits — Exhibits _____	No(s) <u>5</u>
Replying Affidavits _____	No(s) <u>0</u>

Upon the foregoing papers, it is ordered that this motion is

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

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

**FILED**

AUG 28 2014


NEW YORK  
COUNTY CLERK'S OFFICE

**RECEIVED**

AUG 28 2014

GENERAL CLERK'S OFFICE  
NYS SUPREME COURT - CIVIL

Dated: 8/25/2014

 J.S.C.

**HON. EILEEN A. RAKOWER**

1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

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

-----X

JANE BURGDOERFER and  
STEVEN BURGDOERFER,

Plaintiffs,

Index No.  
105644/2010

- against -

**DECISION  
and ORDER**

CLK/HP 90 MERRICK, LLC and  
ABM JANITORIAL SERVICES- NORTHEAST, INC.,

Mot. Seq.: 003

Defendants.

-----X

CLK/HP 90 MERRICK, LLC and  
ABM JANITORIAL SERVICES- NORTHEAST, INC.,

Third-party Plaintiffs,

**FILED**

-against-

AUG 28 2014

SUPERMEDIA SALES, INC., IDEARC MEDIA LLC, NEW YORK  
IDEARC MEDIA CORP., SUPERMEDIA LLC, COUNTY CLERK'S OFFICE  
SUPERMEDIA SERVICES-EAST, INC., and  
IDEARC MEDIA SERVICES-EAST, INC.,

Third-party Defendants.

-----X

HON. EILEEN A. RAKOWER, J.S.C.

This is a personal injury action. Plaintiffs' action is based upon Jane Burgdoerfer's alleged slip and fall on a wet floor in the kitchen area located on the fourth floor of the premises known as 90 Merrick Avenue, East Meadow, New York, NY.

On or about March 27, 2014, defendants/third-party plaintiffs, CLK/HP 90-Merrick LLC (“Merrick”) and ABM Janitorial Services-Northeast, Inc. (“ABM”), commenced a third-party action against Third-Party Defendants, Supermedia Sales, Inc., Idearc Media LLC, Idaerc Media Corp., Supermedia LLC, Supermedia Services-East, Inc., and Idearc Media Services-East, Inc. (collectively, “Third Party Defendants”) seeking contractual indemnification, common law indemnity and contribution and breach of contract for personal injuries sustained by Plaintiff. On or about April 23, 2014, Third-Party Defendants served an answer.

Plaintiffs now move, pursuant to CPLR §1010 and/or 603, for an Order dismissing the third-party claims against Third-Party Defendants or in the alternative, severing claims against the Third-Party Defendants. Third-Party Defendants cross move, pursuant to CPLR § 603, for an Order severing the third party action and ordering discovery from Plaintiffs. Defendants, Merrick and ABM, oppose Plaintiffs’ and Third-Party Defendants’ motions.

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.

CPLR §1010 states:

The Court may dismiss a third-party complaint without prejudice, order a separate trial of the third-party claim or of any separate issue thereof, or make such other order as may be just. In exercising its discretion, the court shall consider whether the controversy between the third-party plaintiff and the third-party defendant will unduly delay the determination of the main action or prejudice the substantial rights of any party.

Where a defendant unduly delays bringing a third-party action, discovery is substantially 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. Geshel Realty Corp.*, 280 A.D.2d 440, 440-41 [1st Dept. 2007]).

Defendants/third-party plaintiffs did not commence the third party action against Third-Party Defendants until after four years after Plaintiffs commenced their action and after discovery was substantially completed. The Court is mindful of the Third Party Defendants' right to conduct their own meaningful discovery and Plaintiffs' interest in proceeding to trial without further delay.

Wherefore it is hereby

ORDERED that Plaintiffs' motion to sever is granted; and it is further

ORDERED that Third-Party Defendants' cross motion to sever is granted; and it is further


ORDERED that the main and third party 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 main action in all other respects continues.

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

Dated: AUGUST 25, 2014

**FILED**  
AUG 28 2014  
NEW YORK COUNTY CLERKS OFFICE  
  
**EILEEN A. RAKOWER**

Check one:      **FINAL DISPOSITION**    X    **NON-FINAL DISPOSITION**  
Check if appropriate:     **DO NOT POST**     **REFERENCE**