

<b>Rubino v 330 Madison Co., LLC</b>
2014 NY Slip Op 33652(U)
August 21, 2014
Supreme Court, New York County
Docket Number: 110134/2011
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

EA  
9/30/14  
E

PRESENT: CYNTHIA S. KERN  
J.S.C.  
Justice

PART 55

WILLIAM and NICOLE RUBINO,

INDEX NO. 110134/11

-v-

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

330 MADISON COMPANY LLC et al.

MOTION SEQ. NO. 007

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that ~~this motion is~~ the remaining portion of Plaintiff's' motion seeking to compel discovery has been withdrawn by movant.

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

**FILED**

OCT 01 2014

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Dated: 9/30/14

CgK, J.S.C.

CYNTHIA S. KERN  
J.S.C.

- 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 55

-----X  
WILLIAM RUBINO and NICOLE RUBINO,

Plaintiffs,

Index No. 110134/2011

-against-

**DECISION/ORDER**

330 MADISON COMPANY, LLC, TISHMAN  
CONSTRUCTION CORPORATION, W5 GROUP  
LLC d/b/a WALDORF DEMOLITION and  
MICHAEL MAZZEO ELECTRIC CORP.,

Defendants,

-----X  
330 MADISON COMPANY, LLC and TISHMAN  
CONSTRUCTION CORPORATION,

Third-Party Plaintiffs,

-against-

WALDORF DEMOLITION, MICHAEL MAZZEO  
ELECTRIC CORP. and CORPORATE ELECTRIC  
GROUP, INC.,

Third-Party Defendants.

**FILED**

OCT 01 2014

NEW YORK  
COUNTY CLERK'S OFFICE

-----X  
MICHAEL MAZZEO ELECTRIC CORP.,

Second Third-Party Plaintiff,

-against-

SELECT SAFETY CONSULTING SERVICES, INC.,  
FOREST ELECTRIC CORP. and C.B. GREENE, INC.,

Second Third-Party Defendants.

-----X  
HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Affirmations in Opposition.....	<u>2,3</u>
Reply Affidavits.....	<u>          </u>
Exhibits.....	<u>          </u>

Plaintiff William Rubino (“plaintiff”) commenced the instant action to recover damages stemming from personal injuries he allegedly sustained after receiving an electrical shock while performing work at a construction site. Plaintiffs have brought the present motion to sever the third party action from the remainder of the action and for preclusion based on failure to provide discovery.

The relevant facts and procedural history are as follows. On or about August 5, 2011, plaintiff allegedly sustained personal injuries while performing work on the building located at 330 Madison Avenue, New York, New York (the “building”). Specifically, plaintiff was allegedly injured when the back of his head came into contact with an electrified BX cable.

Plaintiffs commenced this action in August 2011. In April 2012, defendants commenced a third party action against Michael Mazzeo Electric Group (“Mazzeo”), as well as third-party defendants Waldorf Demolition and Corporate Electric Group, Inc. Mazzeo appeared in this action in September 2012. After third-party plaintiffs sued Mazzeo, plaintiffs brought a direct claim against Mazzeo for negligence based on their claim that Mazzeo performed electrical work at the site. In May of 2013, the deposition of defendant Tishman Construction Corporation (“Tishman”) was held. Based on the testimony provided at Tishman’s deposition, Mazzeo filed a second third-party action against Select Safety Consulting Services , Inc. (“Select”), Forest

Electric Corp. (“Forest”) and C.W. Greene Inc., all entities hired by Tishman, seeking contribution and common-law indemnification. Mazzeo commenced this second third-party action on April 30, 2013, one week after the Tishman deposition. In its second third-party complaint, Mazzeo alleges that plaintiff’s accident arose out of, was related to and/or resulted from the work and/or services of the second third-party defendants. The third-party defendant Select did not appear in this action until recently in June 2014. Although Mazzeo had previously moved for a default judgment against Select in August 2013, it was denied on the ground that no affidavit of someone with personal knowledge was attached to the motion. According to Mazzeo, the reason it was unable to obtain an affidavit from somebody with personal knowledge was because Mazzeo was in bankruptcy at the time it brought the motion for a default judgment. The note of issue has not yet been filed in this case and the next conference in this case is scheduled for November 25, 2014.

The court now turns to third-party defendants’ motions to sever the third-party action. Pursuant to CPLR § 603, “[i]n 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.” CPLR 1010 provides as follows:

The courts 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.

It is well-settled that “[i]t is preferable to try related actions together, in order to avoid a waste of judicial resources and the risk of inconsistent verdicts.” *Williams v Property Servs.*, 6

