

Weinrauch v Royal Summit Owners, Inc.

2015 NY Slip Op 32027(U)

October 28, 2015

Supreme Court, New York County

Docket Number: 159275/14

Judge: Cynthia S. Kern

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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HELENA WEINRAUCH,

Plaintiff,

Index No. 159275/14

-against-

DECISION/ORDER

ROYAL SUMMIT OWNERS, INC., AKAM
ASSOCIATES, INC. and AKAM LIVING SERVICES,
INC.,

Defendants,

-----X
ROYAL SUMMIT OWNERS, INC., AKAM
ASSOCIATES, INC. and AKAM LIVING SERVICES,
INC.,

Third-Party Plaintiffs,

-against-

MERCURY LOCK & DOOR SERVICE, INC.,

Third-Party Defendant.

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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.....	1
Affirmations in Opposition.....	2
Reply Affidavits.....	3
Exhibits.....	4

Plaintiff Helena Weinrauch commenced the instant action against defendants Royal Summit Owners, Inc. ("Royal"), Akam Associates, Inc. ("Associates") and Akam Living Services, Inc. ("Living Services") to recover damages for personal injuries she allegedly

sustained when she was struck by a defective entranceway door. Plaintiff now moves for an Order pursuant to CPLR §§ 603 and 1010 severing the third-party action from the main action. For the reasons set forth below, plaintiff's motion is denied.

The relevant facts and procedural history of the case are as follows. On or about June 18, 2014, plaintiff was allegedly injured when she attempted to open the front door of her apartment building and the door swung forcefully into her body, causing her to fall down a flight of stairs and sustain serious injuries (the "accident"), at the premises located at 310 West 86th Street, New York, New York (the "subject premises"). The subject premises is owned and operated by defendant Royal and is managed by defendants Associates and Living Services.

Plaintiff commenced this action in September 2014 and issued was joined in or around October 2014. Thereafter, in December 2014, a preliminary conference was held at which the parties entered into a discovery schedule. Depositions were conducted throughout February, April and June 2015 and plaintiff's Independent Medical Exam was conducted on April 20, 2015. In or around July 2015, defendants commenced a third-party action against Mercury Lock & Door Service, Inc. ("Mercury"). Specifically, the third-party complaint alleges causes of action for negligence, indemnification and failure to procure insurance based on the allegation that Mercury was hired by defendants to inspect the defective door prior to the accident.

Plaintiff now moves to sever the third-party action from the main 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 A.D.3d 255 (1st Dept 2004). Courts may grant separate trials if the party seeking them demonstrates “prejudice to a substantial right” in the absence of severance. *Id.*

In the present case, plaintiff’s motion for an Order severing the third-party action from the main action is denied as the main action and the third-party action involve common factual and legal issues and plaintiff has failed to demonstrate prejudice to a substantial right in the absence of severance. The issue of who was responsible for the fixing or identifying of any alleged defects with the door at issue, which caused plaintiff’s injuries, will have to be determined in both the main action and the third-party action. Moreover, the resolution of the third-party action will not unduly delay the determination of the main action or prejudice the substantial rights of any party as the note of issue has not yet been filed, the next status conference is not scheduled until December of this year and trials in New York county are not immediately tried even when the note of issue is filed. Additionally, plaintiff is still seeking to depose a representative of non-party MacKenzie Door Company, another company hired by defendants to examine the door at issue prior to the accident, and according to the most recent status conference order dated October 20, 2015, defendants are still waiting on plaintiff to respond to a demand for certain authorizations. Finally, defendants have affirmed that Mercury has not yet answered the third-party complaint and that if Mercury does not timely answer, they

