

Coombes v Shawmut Designs
2016 NY Slip Op 30549(U)
April 1, 2016
Supreme Court, New York County
Docket Number: 155497/2014
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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DEREK COOMBES and ROISIN COOMBES,

Plaintiffs,

Index No. 155497/2014

-against-

DECISION/ORDER

SHAWMUT DESIGNS AND CONSTRUCTION
and APPLE, INC.,

Defendants,

-----X
SHAWMUT DESIGNS AND CONSTRUCTION and
APPLE, INC.,

Third-Party Plaintiffs,

-against-

ROCKMOR ELECTRIC ENTERPRISES,

Third-Party Defendant,

-----X
ROCKMOR ELECTRIC ENTERPRISES,

Second Third-Party Plaintiff,

-against-

CORD CONTRACTING CO., INC.,

Second Third-Party Defendant.

-----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</u>
Reply Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Plaintiffs Derek Coombes and Roisin Coombes commenced the instant action against defendants Shawmut Designs and Construction and Apple, Inc. to recover damages for personal injuries Derek Coombes allegedly sustained when he fell from an elevated platform to the floor while performing construction work. Plaintiff now moves for an Order severing the second third-party action between Rockmor Electric Enterprises (“Rockmor”) and Cord Contracting Co., Inc. (“Cord”) 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 October 26, 2011, Derek Coombes was allegedly injured when he fell from an elevated platform while performing construction work at an Apple store in Grand Central Terminal. In his deposition, Derek Coombes testified that there were concrete chips, a ladder and studs for drywall on the platform, and that he thought he got caught on one of the studs or another piece of material and then felt something move and hit his elbow. Rockmor claims that the materials were left on the platform by Cord.

Plaintiffs commenced this action in June 2014. Thereafter, on September 2, 2014, a preliminary conference was held at which the parties entered into a discovery schedule. On or about September 3, 2014, defendants commenced a third-party action against Rockmor, seeking indemnification, contribution and damages for breach of contract. Rockmor commenced a third-party action against Cord, seeking indemnification, contribution and damages for breach of contract, on or about October 6, 2015. Plaintiffs now move to sever the second 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, plaintiffs’ motion for an Order severing the second third-party action from the main action is denied as the main action and the second third-party action involve common factual and legal issues and plaintiffs have failed to demonstrate prejudice to a substantial right in the absence of severance. The issue of who was responsible for leaving construction materials on the platform, which may have caused Derek Coombes’ injuries, is relevant in both the main action and the second third-party action. Further, the resolution of the second third-party action will not unduly delay the determination of the main action or prejudice the substantial rights of any party as the deadline to file the Note of Issue has been extended until May 2016 to allow all parties the opportunity to complete discovery and an additional status conference has been scheduled to discuss the outstanding discovery. Moreover, the court previously denied plaintiffs’ motion for partial summary judgment as premature on the ground that discovery is not yet complete in the timely-commenced second third-party action. Based on

