

Modi v Admiral Indem. Co.

2016 NY Slip Op 32432(U)

December 9, 2016

Supreme Court, New York County

Docket Number: 651652/2015

Judge: Eileen A. Rakower

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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 15

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Shweta Modi,

Plaintiff,

- v -

Index No.
651652/2015

**DECISION
and ORDER**

Mot. Seq. #002

Admiral Indemnity Company;
The Standard Fire Indemnity Company;
The Travelers Indemnity Company;
310 West 57th Street Condominium;
Midboro Management, Inc., and
MIH Systems Group, LLC,

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

Defendants Admiral Indemnity Company i/s/h/a 310 West 57th Street Condominium and Midboro Management, Inc. (“Midboro”) (collectively, “Moving Defendants”), move for an Order, pursuant to CPLR § 602, consolidating the above captioned action (“Action No. 1”) with the action with the action captioned *Donstev LLC, Steven Gartner, Donna Gartner, Robarc Realty LLC and Marc Abrams v. Shweta Modi v. 310 West 52nd Street Condominium and Midboro* bearing Index No.152343/2016 (“Action No. 2”), for joint trial under Index No. 651652/2015.

Shweta Modi, plaintiff in Action No. 1 and defendant/third party plaintiff in Action No 2, opposes. The Standard Fire Insurance Company (“Standard”) and The Travelers Indemnity Company (“Travelers”), defendants in Action No. 1, oppose. MIH Systems Group, LLC (“MIH”), defendant in Action No. 1, opposes.

Actions No. 1 and 2 relate to claims arising from a burst and broken pipe in apartment 31B (the “Apartment”) located in a condominium building at 310 West 52nd Street, in New York, New York (“the Building”) that allegedly caused flooding and resulting property damage to the Apartment as well as to other units and areas at the Building. Shweta Modi is the owner of the Apartment, which is a residential

unit within the Condominium. Donstev LLC, Steven Gartner, and Donna Gartner and Donna Gartner were the owners of Apartment 29B located in the Building. Robarc Realty and Marc Abrams were the owners of Apartment 25B.

Action No. 1 was commenced by the filing of a Summons and Complaint under Index No. 651652/2015 on May 13, 2015. Action No. 1 contains the following five cause of actions: (1) deceptive acts and trade practices in violation of General Business Law 349 (“GBL” against Travelers and Standard, Modi’s insurance carriers; (2) negligence against 310 West 57th Street Condominium (“Condominium”), Midboro and MIH; (3) breach of contract for failure to procure adequate insurance against Midboro; (4) interference with contractual relations against Midboro; and (5) breach of duty to defend by Travelers and Standards. Midboro is alleged to be “a real estate management company employed by the Condominium to manage” the Building. MIH is alleged to be “an approved vendor of HVAC unit servicing in the Condominium.” By Decision and Order dated October 25, 2016, the Court dismissed the GBL and punitive damages claim.

Action No. 2 was thereafter commenced by Donstev LLC, Steven Gartner, Donna Gartner, Robarc Realty LLC and Marc Abrams by the filing of a Summons and Complaint in Supreme Court, New York County, under Index No, 152343/2016 and subsequently, an Amended Complaint. Plaintiffs claim that Shweta Modi is liable to them for the property damage sustained to their apartments as a result of the frozen pipes and subsequent leak emanating from Modi’s Apartment. Plaintiffs allege that Modi was negligent in her maintenance of the Apartment in that she failed to maintain adequate heat and secure the windows. Modi served her Answer to the Amended Complaint and commenced a third party action against the Condominium and Midboro.

CPLR § 602(a) gives the trial court discretion to consolidate actions involving common questions of law or fact. “[C]onsolidation is generally favored by the courts in the interest of judicial economy and ease of decision making where there are common questions of law and fact, unless the party opposing the motion demonstrates that consolidation will prejudice a substantial right.” (*Amtorg Trading Corp. v Broadway & 56th St. Assoc.*, 191 AD2d 212, 213 [1993]). The burden of demonstrating prejudice to a substantial right is on the party opposing consolidation. (*Sokolow, Dunaud, Mercadier & Carreras v Lacher*, 299 AD2d 64, 74 [2002]).” (*Amcan Holdings, Inc. v. Torys LLP*, 32 A.D.3d 337, 339 [1st Dep’t 2006]).

Moving Defendants claim that Actions No. 1 and No. 2 arise from a common incident, i.e., the bursting of pipes in Apartment 31B at the Building, which caused

damages to various parties, and no depositions have been held in either action. Moving Defendants argue that consolidation should be granted in the interests of judicial expediency and economy and to avoid inconsistent results.

The opposing parties argue that the two actions lack common questions of law and fact, are distinct in nature, and jury confusion will result from consolidating the property damage/insurance coverage action (Action No. 1) with a property damage action solely (Action No. 2). They argue that only the second cause of action of the Complaint in Action No. 1, which involves the negligence of the Condominium and Midboro in causing the subject flood and leak, is similar to the claim alleged in Action No. 2.

Both Action No. 1 and Action No. 2 arise out of the same incident involving a pipe burst in Modi's apartment and involve claims of several plaintiffs for damages to their property arising out of the incident, which is alleged to be caused by the negligence of various parties including Moving Defendants. As such, the actions share common questions of law and fact. Consolidation for purposes of discovery and trial is therefore warranted in the interest of judicial economy and ease of decision-making. The opposing parties fail to demonstrate that such consolidation will prejudice a substantial right.

Wherefore, it is hereby

ORDERED that Moving Defendants' motion for consolidation is granted only and Action No. 1 is joined for purposes of trial and discovery with Action No. 2, and the two actions shall travel together; and it is further

ORDERED the consolidated action shall bear the following caption:

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

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Shweta Modi,

Plaintiff,

Index No.
651652/2015

- v -

Admiral Indemnity Company;
The Standard Fire Indemnity Company;

The Travelers Indemnity Company;
310 West 57th Street Condominium;
Midboro Management, Inc., and
MIH Systems Group, LLC,

Defendants.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
Donstev LLC, Steven Gartner, Donna Gartner, Index No. 152343/2016
Robarc Realty LLC and Marc Abrams,

Plaintiffs,

Action #2

- v -

Shweta Modi,

Defendant.

-----X
Shweta Modi,

Third-Party Plaintiff,

-v-

310 West 52nd Street Condominium and
Midboro Management, Inc.,

Third-Party Defendants.

-----X

And it is further;

ORDERED that movant is directed to serve a copy of this order with notice of entry on the County Clerk (Room 141 B), who shall consolidate the papers in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that movant is directed to serve a copy of this order with notice of entry on the Clerk of the Trial Support Office (Room 158), who is hereby directed to mark the court's records to reflect the consolidation.

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

DATED: December 9 2016

DEC 09 2016



EILEEN A. RAKOWER, J.S.C.

HON. EILEEN A. RAKOWER