

Johnson v Metropolitan Transp. Auth.
2017 NY Slip Op 32519(U)
October 2, 2017
Supreme Court, Queens County
Docket Number: 5826/2010
Judge: Robert J. McDonald
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OS

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

----- X

YVONNE JOHNSON,

Index No.: 5826/2010

Plaintiff,

Motion Date: 9/25/17

- against -

Motion No.: 77

METROPOLITAN TRANSPORTATION AUTHORITY
and LONG ISLAND RAIL ROAD,

Motion Seq.: 2

Defendants.

----- X

METROPOLITAN TRANSPORTATION AUTHORITY
and LONG ISLAND RAIL ROAD COMPANY,

Third-Party Plaintiffs,

- against -

GATEKEEPER SYSTEMS, INC.,

Third-Party Defendant.

----- X

METROPOLITAN TRANSPORTATION AUTHORITY
and LONG ISLAND RAIL ROAD COMPANY,

Second Third-Party Plaintiffs,

- against -

GENERAL SIGNALS, INC.,

Second Third-Party Defendant.

----- X

The following papers numbered 1 to 11 read on this Order to Show Cause by second third-party defendant, GENERAL SIGNALS, INC., for an Order pursuant to CPLR 603 and 1010 dismissing the second third-party action or, in the alternative, severing the second third-party action; or, in the alternative, staying the entire action until such time that discovery in the second third-party action is completed:

FILED
OCT 10 2017
QUEENS COUNTY
COUNTY CLERK

	Papers
	<u>Numbered</u>
Order to Show Cause-Affidavits-Exhibits-Aff. of Service..	1 - 7
Affirmation in Partial Support.....	8 - 9
Affirmation in Opposition.....	10 - 11

This is a negligence action to recover damages for serious injuries allegedly sustained by plaintiff in a Long Island Railroad train accident that occurred on February 12, 2009. Plaintiff alleges that she was injured when a crossing gate turned into the path of and struck a moving train she was a passenger on.

Plaintiff commenced this action on March 4, 2010 by filing a summons and complaint. Defendants/second third-Party plaintiffs Metropolitan Transportation Authority and Long Island Rail Road (MTA/LIRR) served an answer on May 26, 2010. An initial Preliminary Conference was held on August 25, 2010. A Compliance Conference was held on December 2, 2010. The Note of Issue and Certificate of Readiness were filed in the main action on April 6, 2011. On May 10, 2012, the Note of Issue and Certificate of Readiness were vacated. Thereafter, plaintiff's counsel moved to restore the action to the trial calendar. MTA/LIRR did not oppose the motion and made no argument that discovery was not complete or that the action was not ready to be restored to the trial calendar. By Short Form Order dated June 21, 2016, the case was restored to the calendar. Nearly one year after the matter was restored, MTA/LIRR commenced a third-party action against Gatekeeper Systems, Inc. The third-party action was then voluntarily discontinued on April 24, 2017. Defendants waited another three months to implead second third-party defendant General Signals, Inc. (General Signals). General Signals was impleaded into this action by service of a second third-party summons and complaint dated June 25, 2017. General Signals' time to respond to the second third-party complaint was extended to September 25, 2017 by Stipulation. This matter appeared on the Trial Scheduling Part's Calendar on November 14, 2016, March 8, 2017, and June 5, 2017. The fourth appearance on September 25, 2017 was stayed pending the determination of this application.

General Signals now seeks to dismiss the second third-party action on the grounds that MTA/LIRR failed to commence the action within thirty days following the completion of depositions as required by the Compliance Conference Order dated December 2, 2010 and as MTA/LIRR failed to seek leave of Court upon good cause shown before doing so. In the alternative, counsel contends that the second third-party action should be severed based on MTA/LIRR's inexcusable and unjustified delay in commencing the second third-party action and resulting prejudice to plaintiff and second third-party defendant.

In support of the motion, General Signals' counsel affirms that it has not been provided with any documents other than the underlying pleadings attached to the second third-party complaint. As a result, counsel has not been provided with any document discovery or any transcripts of the depositions of the parties conducted prior to General Signals impleader. Additionally, no medical, employment or collateral source records have been exchanged.

Plaintiff submits an affirmation in partial support contending that severance is appropriate as it is unfair to make plaintiff wait longer for her day in court.

In opposition, MTA/LIRR contends that the first-party claims and third-party claims share common legal and factual issues, which could be resolved in a single trial. MTA/LIRR further contends that there was no intent on part of MTA/LIRR in bringing the instant action at this time as opposed to much earlier.

Upon a review of the motion papers, support, and opposition thereto, this Court finds that severance is appropriate to avoid prejudice to both plaintiff and General Signals (see CPLR 603).

Here, the third-party action was commenced over seven years after service of the complaint in the main action, approximately one year after this matter was restored to the Trial Scheduling Part's Calendar, and less than sixty days before the matter was to appear on the Trial Scheduling Part's Calendar for the fourth time. Under the circumstances, it would be unfair to require the second third-party defendant, General Solutions, to proceed to trial without an opportunity to conduct and complete any pre-trial discovery (see Zuckerman v La Guardia Hosp., 125 AD2d 304 [2d Dept. 1986]). Although the main action and second third-party action share common questions of fact and law, in light of the prejudice to General Solutions' discovery rights and the prejudice to plaintiff if a trial of the main action is further delayed, a severance of the second third-party action is warranted (see Singh v City of New York, 294 AD2d 422 [2d Dept. 2002]; Ambriano v Bowman, 245 AD2d 404 [2d Dept. 1997]; Singh v Piccolo, 161 AD2d 698 [2d Dept. 1990]; .

Accordingly, for the above stated reasons, it is hereby,

ORDERED, that the motion by second third-party defendant, GENERAL SIGNALS, INC., is granted to the extent that the second third-party action is hereby severed; and it is further

ORDERED, that the title of this action shall be amended as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

----- x Index No. 5826/2010
YVONNE JOHNSON,

Plaintiff,

- against -

METROPOLITAN TRANSPORTATION AUTHORITY
and LONG ISLAND RAIL ROAD,

Defendants.

----- x
METROPOLITAN TRANSPORTATION AUTHORITY
and LONG ISLAND RAIL ROAD COMPANY,

Third-Party Plaintiffs,

- against -

GATEKEEPER SYSTEMS, INC.,

Third-Party Defendant.

----- x

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COUNTY CLERK
QUEENS COUNTY

; and it is further

ORDERED, that the Clerk of the Supreme Court, Queens County, upon being served with a copy of this order with notice of entry and payment of any required fees is directed to sever the second third-party action and transfer all papers filed in this action as they pertain to the second third-party action, and upon the purchasing of a new Index Number by second third-party plaintiffs, METROPOLITAN TRANSPORTATION AUTHORITY and LONG ISLAND RAIL ROAD COMPANY, assign a Queens County Index Number to the file transferred pursuant to this order.

Dated: Long Island City, NY
October 2, 2017

ROBERT J. McDONALD
J.S.C.