

Huber v 85 Broad St. LLC
2018 NY Slip Op 30832(U)
May 3, 2018
Supreme Court, New York County
Docket Number: 151138/14
Judge: Erika M. Edwards
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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ROBERT HUBER,

Plaintiff,

-against

Index No. 151138/14

DECISION/ORDER

85 BROAD STREET LLC, JONES LANG LASALLE
OF NEW YORK, LLC, L & K CONSTRUCTION INC.,
PENGUIN AIR CONDITIONING CORP., EMCOR
GROUP, INC., HENEGAN CONSTRUCTION CO., INC.,

Motion Seq. 010

Defendants.

-----X

L & K CONSTRUCTION INC.,

Third-Party Plaintiff,

-against

ADCO ELECTRICAL CORP.,

Third-Party
Index No. 595624/14

Third-Party Defendant.

-----X

ADCO ELECTRICAL CORP.,

Second Third-Party Plaintiff,

-against

MICHIGAN LADDER COMPANY, LLC d/b/a
MICHIGAN LADDERCOMPANY, MICHIGAN LADDER
ACQUISITION, LLC d/b/a MICHIGAN LADDER
COMPANY, and MLC LIQUIDATION, INC. d/b/a
MICHIGAN LADDER COMPANY,

Second Third-Party
Index No. 595905/15

Second Third-Party Defendants.

-----X

85 BROAD STREET LLC, JONES LANG LASALLE
OF NEW YORK, LLC, PENGUIN AIR CONDITIONING
CORP. and HENEGAN CONSTRUCTION CO. INC.

Third Third-Party
Index No.:

Third Third-Party Plaintiffs

-against

MICHIGAN LADDER COMPANY LLC d/b/a MICHIGAN
LADDER COMPANY, MICHIGAN LADDER ACQUISITION
LLC and MLC LIQUIDATION INC.,

Third Third-Party Defendants

-----X

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

Papers	Numbered
Notice of Motion and Affidavits/Affirmations/ Memos of Law annexed	1
Notice of Cross-Motion and Affidavits/Affirmations/ Memos of Law annexed	2
Opposition to Cross-Motion Affidavits/ Affirmations and Memo of Law annexed	3, 4
Reply Affidavits/Affirmations/Memos of Law annexed	5

ERIKA M. EDWARDS, J.:

Defendants/Third Third-Party Plaintiffs 85 Broad Street LLC (“Broad Street”), Jones Lang LaSalle of New York, LLC (“Jones”), Penguin Air Conditioning Corp. (“Penguin”) and Henegan Construction Co., Inc. (“Henegan”) (collectively “Third Third-Party Plaintiffs”) move for an order pursuant to CPLR 2221 to modify that part of the court’s Decision and Order, dated December 19, 2017, under motion sequence 005, which directed an inquest for an assessment of damages against Broad Street, Jones, and Penguin. Third Third-Party Plaintiffs also seek a jury trial for damages and ask that it take place after the liability trial on the third-party actions. Plaintiff Robert Huber (“Plaintiff”) cross-moves to sever the claims in this matter so that Plaintiff can immediately proceed with a jury trial on the issue of damages against Broad Street, Jones, and Penguin.

For the reasons set forth herein, the court partially grants Third Third-Party Plaintiffs’ motion to the extent that the court vacates that part of the court’s December 19, 2017, Decision and Order that ordered an inquest on damages in favor of Plaintiff as against Broad Street, Jones and Penguin. The court directs that a jury trial be held to determine damages for these parties, rather than by inquest. Additionally, the court denies the portion of Third Third-Party Plaintiffs’ motion seeking a jury trial for damages to take place after the liability trial on the third-party action and grants Plaintiff’s cross-motion for an immediate jury trial on damages as to his Labor Law §240(1) claim in the main action that was previously decided in Plaintiff’s favor.

Plaintiff brought the main action against Third Third-Party Plaintiffs and others alleging in substance that he was injured while performing electrical work for Third-Party Defendant/Second Third-Party Plaintiff Adco Electrical Corp. (“Adco”) when a defective ladder upon which he was standing broke and caused him to fall. In a decision, dated December 19, 2017, under motion sequence 005, this court granted partial summary judgment in Plaintiff’s favor as to liability on his Labor Law §240(1) claim against Broad Street, Jones, and Penguin. The court also ordered that an inquest for an assessment of damages against Broad, Jones, and Penguin shall proceed. In a separate decision, dated December 19, 2017, under motion sequence 007, this court denied Third Third-Party Plaintiffs’ motion for summary judgment in their favor as against Third Third-Party Defendants Michigan Ladder Company, LLC, d/b/a Michigan Ladder Company, Michigan Ladder Acquisition, LLC d/b/a Michigan Ladder Company and MLC Liquidation, Inc. d/b/a Michigan Ladder Company (collectively “Michigan Defendants”).

Third Third-Party Plaintiffs now argue that a jury should assess damages after a trial on the remaining liability issues in the third-party actions. Plaintiff agrees that damages should be assessed by a jury rather than by inquest, however cross-moves to sever the claims in this matter so that Plaintiff can immediately proceed with a jury trial on the issue of damages against Broad Street, Jones, and Penguin. Michigan Defendants support Third Third-Party Plaintiffs' motion and oppose Plaintiff's cross-motion. Third Third-Party Plaintiffs also oppose Plaintiff's cross-motion.

Plaintiff demanded a jury trial and never withdrew or waived his right to a jury trial. As such, the court erred in directing an inquest to assess damages in the main action after the court partially granted summary judgment in Plaintiff's favor as to his Labor Law §240(1) claim against Broad Street, Jones, and Penguin. Therefore, the court grants that part of Third Third-Party Plaintiffs' motion to modify and vacates that part of the court's Decision and Order, dated December 19, 2017, under motion sequence 005, which directed an inquest for an assessment of damages against Broad Street, Jones, and Penguin.

Pursuant to CPLR 603, in 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. The court may also order the trial of any claim or issue prior to the trial of the others. Here, the court has already found Broad Street, Jones, and Penguin to be liable in the main action on Plaintiff's Labor Law §240(1) claim. However, there are Third-Party, Second Third-Party, and Third Third-Party actions still pending in this matter. Plaintiff has demonstrated that a joint trial regarding liability on the remaining Third-Party actions and the damages trial for his Labor Law §240(1) claim in the main action would prejudice Plaintiff's right to a fair jury trial on damages. Third Third-Party Plaintiffs and Michigan Defendants have failed to demonstrate that they would endure any prejudice if the court severed Plaintiff's damages trial and allowed the damages trial to proceed before the liability trial on the Third-Party actions. As such, the court grants Plaintiff's cross-motion and denies that part of Third Third-Party Plaintiffs' motion seeking a trial on damages after a trial on the remaining Third-Party liability issues.

Accordingly, it is hereby

ORDERED that the court grants that part of Defendants/Third Third-Party Plaintiffs 85 Broad Street LLC's, Jones Lang LaSalle of New York, LLC's and Penguin Air Conditioning Corp.'s motion seeking to modify the court's Decision and Order, dated December 19, 2017, under motion sequence 005, and denies that part of Defendants/Third Third-Party Plaintiffs 85 Broad Street LLC's, Jones Lang LaSalle of New York, LLC's and Penguin Air Conditioning Corp.'s motion seeking a trial on damages after a trial on the remaining third-party liability issues; and it is further

ORDERED that the court vacates that part of the court's Decision and Order, dated December 19, 2017, under motion sequence 005, which directed an inquest for an assessment of damages against 85 Broad Street LLC, Jones Lang LaSalle of New York, LLC, and Penguin Air Conditioning Corp.; and it is further

ORDERED that the court grants Plaintiff Robert Huber's cross-motion seeking severance and a separate jury trial on the issue of damages in the main action; and it is further

ORDERED that main action is severed and the Third-Party actions are continued; and it is further

ORDERED that Plaintiff Robert Huber is directed to serve a copy of this order with notice of entry on the Clerk of Trial Support (Room 148) who shall place the main action on the trial calendar for a jury trial on damages.

Date: May 3, 2018



HON. ERIKA M. EDWARDS