

<b>Jackson v BDG Gotham Residential, LLC</b>
2019 NY Slip Op 33474(U)
November 22, 2019
Supreme Court, New York County
Docket Number: 153549/2019
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 46  
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JUANITA JACKSON as Guardian of  
CHRISTOPHER JACKSON, an incapacitated  
person,

Index No. 153549/2019

Plaintiff

- against -

DECISION AND ORDER

BDG GOTHAM RESIDENTIAL, LLC, and ZDG,  
LLC,

Defendants

-----X  
-----X

BDG GOTHAM RESIDENTIAL, LLC, and ZDG,  
LLC,

Third Party Plaintiffs

- against -

WESTERN WATERPROOFING COMPANY, INC.  
d/b/a WESTERN SPECIALTY CONTRACTORS,

Third Party Defendants

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LUCY BILLINGS, J.S.C.:

The New York County District Attorney (DA) and his Assistant  
DA assigned to prosecute a related criminal action move to  
intervene and stay disclosure in this action pending resolution  
of the criminal action. C.P.L.R. §§ 1013, 2201. Both actions  
arise from an overloaded, unsecured mini-crane that fell from the  
fourth floor of a residential construction site at 149 East 125th

Street, New York County; grabbed ironworker Christopher Jackson, on whose behalf plaintiff sues, on the third floor; and flung him to the ground, incapacitating him. The DA has obtained an indictment charging Timothy Braico and Terrence Edwards, two employees of third party defendant, a subcontractor at the construction site hired by one of defendants to install glass and metal panels, with assault in the second degree and reckless endangerment in the second degree. N.Y. Penal Law §§ 120.05(4), 120.20.

In determining whether to stay this action pending resolution of the related criminal action, the court weighs the potential effect of the presentation of evidence in this action on the presentation of evidence in the criminal action, the risk of inconsistent adjudications, and the potential waste of judicial resources. OneBeacon Am. Ins. Co. v. Colgate-Palmolive Co., 96 A.D.3d 541, 541 (1st Dep't 2012); Access Capital v. DeCicco, 302 A.D.2d 48, 51 (1st Dep't 2002); Britt v. International Bus Servs., 255 A.D.2d 143, 144 (1st Dep't 1998). To be sure, disclosure in this action may reveal information that the DA is not obligated to disclose to the defendants in the criminal action under New York Criminal Procedure Law Article 240. People v. Colavito, 87 N.Y.2d 423, 427 (1996). The DA fails to show, however, why those defendants would not obtain that information through their own investigation or how that

information would interfere with or jeopardize the criminal prosecution in any event. The DA does not cite a single example of how disclosure of evidence in this action might compromise evidence to be presented in the criminal action or might allow the defendants in that action to obtain evidence they are prohibited from obtaining. The DA merely speculates that a potential witness in both actions required to testify in this action then will refuse to cooperate in the criminal prosecution.

In fact, in the criminal complaint attesting that the crane was unsecured and fell from the fourth floor to the third floor, the DA himself already has publicly released the key evidence in this action for purposes of plaintiff's claim under New York Labor Law § 240(1) against defendants here. The reasons why the crane was unsecured and fell, whether due to the conduct of Braico or Edwards, for example, are irrelevant in this action. The DA focuses on the failure of Braico and Edwards to hire a licensed engineer, to ensure that the crane operator was certified and adequately trained, to heed warnings not to use the mini-crane, and to obtain a permit for the mini-crane and on the false statements by Braico and Edwards that a permit was obtained. None of this evidence nor any testimony by Braico or Edwards is relevant to this action. See Galper v. Burkes, 44 A.D.3d 451, 452 (1st Dep't 2007); Britt v. International Bus Servs., 255 A.D.2d at 144. In sum, the evidence relevant to

plaintiff's claims against defendants under Labor Law § 240(1) and to defendants' claims against third party defendant under their contract is not evidence relevant to the elements of assault or reckless endangerment that the DA seeks to prove in the criminal prosecution.

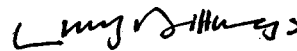
Nor does the DA show a risk of inconsistent adjudications. The two defendants in the criminal action are not parties here. No party in either action claims that the defendants in the criminal action are liable under Labor Law § 240(1). Galper v. Burkes, 44 A.D.3d at 452. See Doronin v. Amarat, 133 A.D.3d 524, 524 (1st Dep't 2015); OneBeacon Am. Ins. Co. v. Colgate-Palmolive Co., 96 A.D.3d at 541. The standards by which their employer's contractual liability to defendants here will be determined bear little similarity to the standards for guilt under New York Penal Law §§ 120.05(4) and 120.20.

Consequently, the DA's intervention to stay disclosure in this action will only delay it and thus prejudice plaintiff's right to prosecute this action expeditiously, to seek compensation for her incapacitated son and provide for his physical and mental treatment and other needs. For all the above reasons, the court denies the motion by the New York County District Attorney and his Assistant District Attorney Meredith McGowan to intervene and stay disclosure in this action. C.P.L.R. §§ 1013, 2201. This denial is without prejudice to a

future motion based on a specific concern shown to threaten the criminal action and seeking relief that is limited to that concern and that will not unduly interfere with this action.

The court also denies third party defendant's cross-motion to sever the third party action and to stay disclosure in the third party action, because the cross-motion seeks no relief against either moving party, the District Attorney or his Assistant. C.P.L.R. § 2215(b); Kershaw v. Hospital for Special Surgery, 114 A.D.3d 75, 87-88 (1st Dep't 2013). This denial is without prejudice to a future separate motion that adequately supports the relief on behalf of third party defendant. C.P.L.R. §§ 603, 1010, 2201.

DATED: November 22, 2019



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LUCY BILLINGS, J.S.C.

**LUCY BILLINGS**  
J.S.C.