

Mulvaney v County of Westchester
2019 NY Slip Op 34770(U)
April 18, 2019
Supreme Court, Westchester County
Docket Number: Index No. 67063/2016
Judge: Sam D. Walker
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY
PRESENT: HON. SAM D. WALKER, J.S.C.**

-----X
DEVAN MULVANEY, as Executor of the Estate of
DONALD MULVANEY, deceased, as Executor of
the Estate of LEDELL MULVANEY, deceased,
and as Administrator of the Estate of
KATHERINE MULVANEY, deceased,

DECISION AND ORDER
Index No: 67063/2016
Seq# 5

Plaintiff,

-against-

COUNTY OF WESTCHESTER and
TOWN OF YORKTOWN,

Defendants

-----X
Town of Yorktown,

Third-Party Plaintiff,

-against-

Empress Ambulance Service, Inc.,

Third-Party Defendant
-----X

The following papers were reviewed on the third-party defendant's motion seeking an order pursuant to CPLR 1010, CPLR603, CPLR 3101 and CPLR 3042; dismissing the third-party complaint; or severing the third-party action from the main action; and for additional time to conduct discovery:

Notice of Motion/Affirmation/Exhibit A-L
Affirmation in Opposition/Exhibits A-D

1-14
15-19

Based on the foregoing papers the motion is denied.

Factual and Procedural Background

The plaintiff commenced this action on November 14, 2016, to recover for personal injuries and the wrongful deaths of his father, mother and sister, Donald, Ledell and Katherine Mulvaney, as a result of a vehicular accident which occurred on August 15, 2015.

The Town of Yorktown (the "Town") filed a third-party summons and complaint on November 17, 2017, against the third-party defendant, Empress Ambulance Service, Inc. ("Empress").

Empress now files the instant motion seeking to dismiss the third-party complaint or severing the third-party action from the main action and for additional time to conduct discovery. Empress argues that it appeared in July 2018 for the first time at a compliance conference and was burdened with the task of conducting extensive discovery in an abbreviated period of time. Empress states that it appeared at several more compliance conferences and at the November 14, 2018 compliance conference, the Court Attorney Referee directed a final conference on December 6, 2018, to certify the case ready for trial. Empress contends that all requests for additional discovery were rejected and denied including further depositions and the court would not direct the third-party plaintiff to respond to its demand for a verified bill of particulars from the third-party plaintiff.

The Town opposes the motion, arguing that any severance of the third-party action would prejudice the rights of the Town, since it would be required to litigate two separate actions and would risk facing inconsistent verdicts. The Town further argues that contrary to Empress' contentions, any delay in the case was caused by Empress.

DISCUSSION

CPLR 1010 states, in pertinent part, that “the court 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” (CPLR 1010). Further, CPLR 603 states that “[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 603).

“The determination to grant or deny a request for a severance pursuant to CPLR 603 is a matter of judicial discretion” (*Herskovitz v Klein*, 91 AD3d 598 [2d Dept 2012]). However, this discretion should be exercised sparingly (*New York Schools Ins. Reciprocal v Milburn Sales Co., Inc.*, 138 AD3d 940 [2d Dept 2016]). “Severance is generally “inappropriate where the claims against the defendants involve common factual and legal issues, and the interests of judicial economy and consistency of verdicts will be served by having a single trial” (*Id.*).

Here, the third-party action raises factual and legal issues in common with the main action and it serves the interests of judicial economy and the consistency of verdicts to have a single trial. Additionally, the Town commenced the third-party action against Empress on November 17, 2017 and served Empress on November 28, 2017. Empress in fact did not file an answer to the third-party complaint until June 12, 2018 and was immediately incorporated into the discovery schedule. Therefore, it was Empress’ actions and not the Town that caused any delay in discovery in the third-party action. Furthermore, discovery in the case was already extended to accommodate Empress’ delay in joining the

case. Any issues with regard to discovery are to be addressed with the Court Attorney Referee assigned to the case.

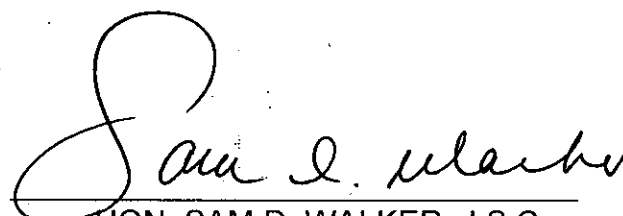
Accordingly, based on the foregoing, it is

ORDERED that the motion denied; and it is further

The foregoing shall constitute the decision and order of the Court.

Dated: White Plains, New York

April 18, 2019



HON. SAM D. WALKER, J.S.C.