

Braswell v Mall 1-Bay Plaza, LLC
2020 NY Slip Op 32186(U)
July 2, 2020
Supreme Court, New York County
Docket Number: 160650/2013
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DEBRA A. JAMES

PART IAS MOTION 59EFM

Justice

-----X

INDEX NO. 160650/2013

BILLY BRASWELL,

MOTION DATE 01/08/2020

Plaintiff,

MOTION SEQ. NO. 002 003 004

- v -

MALL 1-BAY PLAZA, LLC, PRESTIGE PROPERTIES &
DEVELOPMENT CO. INC. and AURORA CONTRACTORS,
INC.,

DECISION + ORDER ON
MOTION

Defendants.

-----X

PRESTIGE PROPERTIES & DEVELOPMENT CO. INC., and
AURORA CONTRACTORS, INC.

Third-Party
Index No. 595318/2014

Third-Party Plaintiffs,

-against-

JC STEEL CORP.

Third-Party Defendant.

-----X

MALL 1-BAY PLAZA, LLC, PRESTIGE PROPERTIES &
DEVELOPMENT CO. INC., and AURORA CONTRACTORS,
INC.

Second Third-Party
Index No. 595566/2016

Third-Party Plaintiffs,

-against-

CIVES CORPORATION d/b/a CIVES STEEL COMPANY
NORTHERN DIVISION,

Third-Party Defendant.

-----X

-----X

Third Third-Party
Index No. 595201/2020

AURORA CONTRACTORS, INC.,

Plaintiff,

-against-

CONSTRUCTION REALTY SAFETY GROUP, INC.

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 108, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 132, 133

were read on this motion to/for

VACATE/STRIKE - NOTE OF ISSUE/JURY

The following e-filed documents, listed by NYSCEF document number (Motion 003) 97, 98, 99, 100, 101, 102, 103, 104, 111, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 134, 135

were read on this motion to/for

VACATE/STRIKE - NOTE OF ISSUE/JURY

The following e-filed documents, listed by NYSCEF document number (Motion 004) 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172

were read on this motion to/for

SEVER ACTION

ORDER

Upon the foregoing documents, it is

ORDERED that the motion of defendant Aurora Contractors, Inc. (motion sequence number 002) and the motion of third-party defendant JS Steel Corp. (motion sequence number 003) to vacate the note of issue are granted and the note of issue is vacated and the case is stricken from the trial calendar; and it is further

ORDERED that all further discovery in this matter, including the submission of plaintiff to examination by a vocational rehabilitation expert retained by defendants, shall

be completed within 90 days from service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear on September 15, 2020, 2:30 PM for a conference via Skype for Business by filing (sfc-conferencerequest@nycourts.gov) the standard request for conference form, at least two days in advance of such date; and it is further

ORDERED that, within 15 days from the entry of this order, any movant shall serve a copy of this order with notice of entry on all parties and upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is hereby directed to strike the case from the trial calendar and make all required notations thereof in the records of the court; and it is further

ORDERED that, within 15 days from completion of discovery as hereinabove directed, the plaintiff shall cause the action to be placed upon the trial calendar by the filing of a new note of issue and certificate of readiness (for which no fee shall be imposed), to which shall be attached a copy of this order by moving to reinstate the note of issue as provided in Uniform Rule 202.21 (f)]; and it is further

ORDERED that such filing upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-

Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that the motion of plaintiff and the cross motion of third third-party defendant Construction Realty Safety Group to sever the third third-party action (motion sequence number 004) are denied.

DECISION

Plaintiff concedes that defendants noticed him for an examination by a vocational rehabilitation expert and that he has not yet appeared. Therefore, as his counsel made a material misstatement in the certificate of readiness, the note of issue shall be vacated. See Matos v City of New York, 154 AD3d 532 (1st Dept 2017). Moreover, as argued by the defendant Aurora Contractors, Inc., as this action was improperly placed on the trial calendar and discovery is not complete, neither moving party can demonstrate any prejudice with the third third-party action continuing to proceed with the primary, as well as first, second and third third-party actions. See DeLeon v 650 West 172nd Street Assoc., 44 AD3d 305 (1st Dept 2007).

7/2/2020
DATE

Debra A. James
DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: