

Cavaseno v Fifty Seven Ave. Invs., LLC
2020 NY Slip Op 33633(U)
September 14, 2020
Supreme Court, Queens County
Docket Number: 704708/2018
Judge: Denis J. Butler
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

FILED

9/16/2020

2:42 PM

Present: HONORABLE DENIS J. BUTLER
Justice

IAS Part 12

**COUNTY CLERK
QUEENS COUNTY**

-----x

JONATHAN PETER CAVASENO,

Index No.:
704708/2018

Plaintiff,

Motion Date:
September 8, 2020

-against-

Motion Seq.
No.: 003&004

FIFTY SEVEN AVENUE INVESTMENTS, LLC,
PARKWILL MANAGEMENT CORP., AURORA
CONTRACTORS, INC., AURORA CONTRACTORS OF
NY, INC. and EASTERN EXCAVATION, INC.,

Defendants.

-----x

AURORA CONTRACTORS, INC. and
AURORA CONTRACTORS OF NY, INC.

Third-Party Plaintiffs,

-against-

CONSTRUCTION REALTY SAFETY GROUP, INC.,

Third-Party Defendant.

-----x

The following papers were read on this motion by third-party defendant Construction Realty Safety Group, Inc. (CR Safety) for an order, pursuant to CPLR 603 and 1010, severing the third-party complaint; on this motion by defendant Eastern Excavation, Inc. (Eastern) for an order, pursuant to CPLR 2221, granting leave to renew a prior motion and, upon renewal, vacatur of the note of issue, and, pursuant to CPLR 602, consolidating the above-captioned action (Action 1) with the action bearing Index Number 703051/2020 (Action 2), and extending the time to move for summary judgment until 90 days from completion of outstanding discovery.

	Papers
	<u>Numbered</u>
Notice of Motion, Affirmation, Exhibits.....	E59-68
Notice of Motion, Affirmation, Exhibits.....	E69-
Notice of Cross-Motion, Affirmation, Exhibits.....	E101-130

Upon the foregoing papers, it is ordered that the motions and cross-motion are determined as follows:

It is well-settled that the decision to grant or deny a motion for severance rests soundly in the discretion of the trial court, and the trial court's determination will be affirmed on appeal, absent a showing of abuse of discretion or prejudice to a substantial right (see CPLR 603; *Fay v Chii Chung Wang*, 134 AD2d 563, 563 [2d Dept 1980]). "[T]his discretion should be exercised sparingly" (*Shanley v Callanan Indus.*, 54 NY2d 52, 57 [1981]). Indeed, severance is inappropriate where there are common factual and legal issues and the interests of judicial economy and consistency of verdicts will be served by having a single trial (see *Naylor v Knoll Farms of Suffolk County, Inc.*, 31 AD3d 727, 727 [2d Dept 2006]).

Under the circumstances presented, it would be an abuse of discretion to sever the third-party action (see *Zili v City of New York*, 105 AD3d 949, 950 [2d Dept 2013]; *Klein v City of Long Beach*, 154 AD2d 346, 347 [2d Dept 1989]). Nor has CR Safety established that a single trial would result in prejudice to a substantial right of any party (see *McCrimmon v County of Nassau*, 302 AD2d 372, 372 [2d Dept 2003]).

Accordingly, the motions and cross-motion are granted solely to the extent that Actions land 2 are consolidated for all purposes under Index Number 704708/2018.

The Clerk of Queens County, upon being served with a copy of this order with notice of entry, shall transfer all papers filed under Index Number 703051/2020 to the file of Index Number 704708/2018.

The caption of the consolidated action shall appear as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
JONATHAN PETER CAVASENO,

Index No.:
704708/2018

Plaintiff,

-against-

FIFTY SEVEN AVENUE INVESTMENTS, LLC,
PARKWILL MANAGEMENT CORP., AURORA
CONTRACTORS, INC., AURORA CONTRACTORS
OF NY, INC., EASTERN EXCAVATION, INC.,
CONSTRUCTION REALTY SAFETY GROUP, INC.,
and J&A CONCRETE CORP.

Defendants.

-----X
AURORA CONTRACTORS, INC. and
AURORA CONTRACTORS OF NY, INC.

Third-Party Plaintiffs,

-against-

CONSTRUCTION REALTY SAFETY GROUP, INC.,
Third-Party Defendant.

-----X
AURORA CONTRACTORS, INC. and AURORA
CONTRACTORS OF NY, INC., and FIFTY SEVEN
AVENUE INVESTMENTS, LLC,

Second Third-Party Plaintiffs,

-against-

J&A CONCRETE CORP.,

Second Third-Party Defendant.
-----X

The note of issue is vacated and the case is stricken from the trial calendar, as significant discovery is outstanding.

The parties are directed to appear for a compliance conference in the Compliance, Settlement and Conference Part on November 4, 2020, at 9:30 a.m.

Upon completion of discovery in the Compliance, Settlement and Conference Part as by a so-ordered stipulation acknowledging that all discovery is complete, plaintiff may file a new note of issue with certificate of readiness and pay any appropriate fees.

A copy of this order with notice of entry shall be served upon all parties to the actions consolidated and the Clerk of Queens County.

All other requested relief not specifically addressed herein is denied.

This constitutes the decision and order of the court.

Dated: September 14, 2020



Denis J. Butler, J.S.C.

FILED

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**COUNTY CLERK
QUEENS COUNTY**