

Souffrant v M&K Real Estate Assoc. LLC
2020 NY Slip Op 34393(U)
December 18, 2020
Supreme Court, Kings County
Docket Number: 515108/2016
Judge: Wayne P. Saitta
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At an IAS Term, Part 29 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 18th day of December, 2020.

P R E S E N T:
HON. WAYNE SAITTA, Justice.

-----X
PIERRE SOUFFRANT

Plaintiff,

- against -

Index No.: 515108/2016

MS 6, 7, 8

M&K REAL ESTATE ASSOCIATES LLC.,
GOODRICH MANAGEMENT, LLC.,
1525 K FOOD CORP., FACILITY TO SOURCE
NORTHEAST SERVICES LLC., AIRSIDE PAVEMENT
MARKING, INC. d/b/a ABLE PAVEMENT MARKING, INC.,

CORRECTED
DECISION AND ORDER

Defendants.

-----X
AIRSIDE PAVEMENT MARKING INC. d/b/a ABLE
PAVEMENT MARKING,

Third-Party Plaintiff

- against -

FIRST HERITAGE INSURANCE AGENCY INC., FIRST
MERCURY INSURANCE COMPANY, NATIONAL
CASUALTY COMPANY, ARCH SPECIALTY INSURANCE
COMPANY,

Third-Party Defendants.

-----X
The following papers numbered on these motions:

NYSCEF DOC NO

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	_____	137-140, 144-146
Answering Affidavit (Affirmation)	_____	158-166, 169-174
Reply Affidavit (Affirmation)	_____	175-181
Supplemental Affidavit (Affirmation)	_____	
Pleadings – Exhibits	_____	
Stipulations – Minutes	_____	
Filed Papers	_____	

Third-Party Defendants FIRST HERITAGE INSURANCE AGENCY INC., FIRST MERCURY INSURANCE COMPANY, and NATIONAL CASUALTY COMPANY, all move for severance of the third-party action from the first-party action or in the alternative dismissal of the third-party complaint against them and.

Third-Party Plaintiff AIRSIDE PAVEMENT MARKING INC. d/b/a ABLE PAVEMENT MARKING, has not opposed these motions. First-Party Plaintiff SOUFFRANT and First-Party Defendant FACILITY TO SOURCE NORTHEAST SERVICES LLC, neither of whom have asserted claims against the movants, oppose the motions.

The first party action involves a slip and fall on snow and ice alleged to have taken place at 1525 Albany Avenue Brooklyn New York. The Defendants in the first-party action are owners, lessees of the property, contractors and subcontractors alleged to be responsible for snow removal at the property.

The third-party action involves claims by AIRSIDE PAVEMENT against its insurers and insurance broker over the denial of coverage for the First-Party Plaintiff's accident.

The motion to dismiss pursuant to CPLR 1010 by NATIONAL CASUALTY COMPANY, is granted because the policy it issued was an automobile policy which has no applicability to this slip and fall accident.

The part of the motions of Defendants FIRST HERITAGE INSURANCE AGENCY INC., and FIRST MERCURY INSURANCE COMPANY seeking to sever the third-party action should be granted as there are no common questions of law and fact involved in the two cases, nor is there any danger of inconsistent verdicts.

First-Party Plaintiff SOUFFRANT and First-Party defendant FACILITY TO SOURCE NORTHEAST SERVICES LLC, assert that there is a question as to the location of the accident that is common to both cases. However, whatever questions may exist as to the exact location of the accident, there is no question that the accident occurred in Kings County and the denial of insurance coverage was based on an alleged policy exclusion for accidents occurring in Kings County. As there are no common issues between the personal injury action and the third-party insurance coverage action, there is no danger of inconsistent verdicts.

Third Party Defendants will be prejudiced if severance is not granted as discovery is complete in the first-party action, but they have not had an opportunity to complete discovery in the third-party action.

SOUFFRANT and FACILITY TO SOURCE NORTHEAST SERVICES LLC, argue they would be prejudiced if they were forced to try the underlying personal injury case before the insurance issues in the third-party case were resolved. This prejudice can be ameliorated by staying the first party action until the third-party action is resolved.

The part of the motions of FIRST HERITAGE INSURANCE AGENCY INC., and FIRST MERCURY INSURANCE COMPANY, to dismiss pursuant to CPLR 1010 is denied because the third-party action be tried separately on its merits. The insurance policy issued by FIRST MERCURY, which is at issue, was not submitted with the moving papers thus there is no basis to determine whether or not AIRSIDE PAVEMENT's coverage and procurement claims are meritorious.

WHEREFORE, it is hereby ORDERED that the Third-Party Defendant NATIONAL CASUALTY COMPANY's motion to dismiss is granted, and that judgment be entered

herein dismissing the third-party complaint as against Defendant NATIONAL CASUALTY COMPANY, with costs disbursement and fees; and it is further

ORDERED, those that parts of the motions of FIRST HERITAGE INSURANCE AGENCY INC., and FIRST MERCURY INSURANCE COMPANY seeking dismissal of the third-party action are denied; and it is further,

ORDERED, those that parts of the motions of FIRST HERITAGE INSURANCE AGENCY INC., and FIRST MERCURY INSURANCE COMPANY seeking severance is granted, and the County Clerk is directed to issue a new index number for the third party action upon the payment of the requisite fees; and it is further

ORDERED that the first party action SOUFFRANT v M&K REAL ESTATE ASSOCIATES LLC., et ano, is stayed pending determination of the third-party action AIRSIDE PAVEMENT MARKING INC. d/b/a ABLE PAVEMENT MARKING, v FIRST HERITAGE INSURANCE AGENCY INC., et ano.

This constitutes the Decision and Order of the Court.

ENTER:



JSC