

**Rubio v Ezra Cohen Corp.**

2021 NY Slip Op 31088(U)

March 31, 2021

Supreme Court, New York County

Docket Number: 158029/2015

Judge: Verna Saunders

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. VERNA L. SAUNDERS PART IAS MOTION 36

Justice

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INDEX NO. 158029/2015

ARNALDO RUBIO,
Plaintiff,

MOTION SEQ. NO. 002

- v -

EZRA COHEN CORP., HSBC NORTH AMERICA
HOLDINGS, INC., and THE CITY OF NEW YORK,
Defendants.

DECISION + ORDER ON
MOTION

-----X

EZRA COHEN CORP., HSBC NORTH AMERICA
HOLDINGS, INC.,
Third-Party Plaintiffs,

Third-Party
Index No. 595209/2017

-against-

JONES LANG LASALLE and JONES LANG
LASALLE OF NEW YORK, LLC,
Third-Party Defendants.

-----X

JONES LANG LASALLE AMERICAS, INC.,
Second Third-Party Plaintiff,

Second Third-Party
Index No. 595562/2019

-against-

CGNY RENOVATIONS, INC.,
Second Third-Party Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 188, 189

VACATE/STRIKE - NOTE OF ISSUE/FROM TRIAL
CALENDAR

were read on this motion to/for

On June 13, 2014, plaintiff Arnaldo Rubio injured his ankle on the sidewalk in front of and/or adjacent to the premises located at 305-307 Grand Street, New York (also known as 65 Allen Street). (NYSCEF Doc. Nos. 1, summons and complaint; 116, bill of particulars). Thereafter, in August 2015, plaintiff commenced this action against Ezra Cohen Corp. ("Ezra"); HSBC North America Holdings, Inc. ("HSBC"); and The City of New York ("the City"), for their alleged failure to maintain the sidewalk. (NYSCEF Doc. No. 1, summons and complaint).<sup>1</sup> Ezra and HSBC interposed a joint answer on August 31, 2015 (NYSCEF Doc. No. 14, answer)

<sup>1</sup> As reflected in this Court's decision and order on Motion Sequence 004, relating to plaintiff's motion to amend the caption, this Court directed the County Clerk to amend the caption to reflect that the City of New York is no longer a party to this action.

and, on March 16, 2017, commenced a third-party action against third-party defendant/second third-party plaintiff Jones Lang LaSalle Americas, Inc. s/h/a Jones Lang LaSalle and Jones Lang LaSalle of New York, LLC (“JLL”), asserting several causes of action, including, contractual indemnification; common-law indemnification; and failure to procure insurance. (NYSCEF Doc. No. 24, *third-party complaint*). On May 19, 2017, JLL filed an answer to the third-party complaint, asserting affirmative defenses and a counterclaim. (NYSCEF Doc. No. 47, *answer to third-party complaint*).

On April 11, 2019, this Court (Ling-Cohan, J.) directed that all discovery in this action be completed by June 28, 2019 and that the note of issue be filed by July 15, 2019. (NYSCEF Doc. No. 77, *April 2019 discovery order*). On June 28, 2019, JLL filed a second third-party action against CGNY Renovations, Inc. (NYSCEF Doc. No. 78). Plaintiff filed a note of issue in this matter on July 1, 2019, representing that all discovery in this action was complete. (NYSCEF Doc. No. 79). Issue was joined by CGNY on August 26, 2019, after the filing of this motion. (NYSCEF Doc. No. 106, *CGNY’s answer*).

JLL now moves, pursuant to 22 NYCRR 202.21(e), for an order striking this case from the trial calendar and vacating the note of issue; directing that discovery in the second-third party action be completed before the case proceeds to trial; compelling plaintiff to comply with the court order, dated April 11, 2019, directing plaintiff to provide JLL with a Medicaid authorization on Medicaid’s form; and extending its time to move for summary judgment to within sixty (60) days after all discovery is complete. (NYSCEF Doc. Nos. 81-82, *affirmation in good faith and affirmation in support*).

Ezra and HSBC cross-move, pursuant to CPLR 2004 and 3212, for an extension of time to file its motion for summary judgment, pending the completion of discovery in the second third-party action. (NYSCEF Doc. Nos. 101-104).

In opposition to the instant motion and the cross-motion, plaintiff contends, *inter alia*, that the paper discovery exchanged by JLL in this case reveals that it knew about CGNY for over two years prior to the filing of the second third-party action and that its dilatory conduct in commencing the second third-party action against CGNY amounts to a litigation strategy to delay this matter. Moreover, he asserts that “should there be any true concern that this case proceed to trial before JLL is able to complete discovery on its second third-party claims,” severance of the second third-party action is a more appropriate remedy under the circumstances. Plaintiff also argues that the Medicaid authorization has already been provided. Furthermore, plaintiff argues that the cross-motion is moot insofar as Ezra and HSBC have already filed their motion for summary judgment. (NYSCEF Doc. No. 148, *affirmation in opposition*).

The Uniform Rules for Trial Courts state, in pertinent part, that “[w]ithin 20 days after service of a note of issue and certificate of readiness, any party to the action . . . may move to vacate the note of issue, upon . . . showing in what respects the case is not ready for trial, and the court may vacate the note of issue if it appears that a material fact in the certificate of readiness is incorrect.” (22 NYCRR 202.21 [e]). Here, while the April 11, 2019 order did provide firm dates for completion of discovery, noting that the case was beyond the court system’s standards and goals, at that time, there was no second third-party action filed. Notably, pursuant to the

case scheduling order, dated March 24, 2016, the Court directed the parties to file any third-party actions/impleaders “within 45 days of the last Examination before Trial.” (NYSCEF Doc. No. 86, *March 2016 order*). Property manager Maureen Borger, on behalf of JLL, appeared for a deposition on June 28, 2019 and, following her testimony that CGNY had performed work on the sidewalk prior to subject accident, a second-third party action was filed against CGNY that same day. Thus, JLL’s second third-party action, while arguably delayed, was not untimely. Since discovery relating to work done by CGNY at the premises prior to plaintiff’s accident appears to be material and relevant to this action, the note of issue is hereby vacated to allow discovery in the second third-party action.

However, given the protracted history of this case, the parties are directed to complete all discovery, to the extent that same remains outstanding, within an expedited discovery schedule and all further discovery is to be completed within ninety (90) days. After discovery is complete, plaintiff may re-file his note of issue without cost, and the matter shall be placed back on the trial calendar at the place it was when stricken, if possible. (*see Espinoza v Minus5 HH NYC, Inc.*, 2020 NY Slip Op 31060[U], \*4-5 [Sup Ct, NY County 2020]). Furthermore, JLL may file a motion for summary judgment within sixty (60) days after all discovery is complete.

Inasmuch as Ezra and HSBC have already filed their motion for summary judgment (Motion Sequence 003), the cross-motion seeking an extension of time to file the same is denied as moot. Therefore, in accordance with the foregoing, it is hereby

**ORDERED** that the motion by third-party defendant/second third-party plaintiff Jones Lang LaSalle Americas, Inc. s/h/a Jones Lang LaSalle and Jones Lang LaSalle of New York, LLC is granted, the note of issue is vacated, and the case is stricken from the trial calendar; and it is further

**ORDERED** that that branch of the motion by third-party defendant/second third-party plaintiff Jones Lang LaSalle and Jones Lang LaSalle of New York, LLC seeking an extension of time to file its motion for summary judgment to sixty (60) days after discovery is complete is hereby granted; and it is further

**ORDERED** that any and all outstanding discovery shall be completed/exchanged within ninety (90) days from service of a copy of this order with notice of entry; and it is further

**ORDERED** that, within fifteen (15) days after this decision and order is uploaded to NYSCEF, third-party defendant/second third-party plaintiff Jones Lang LaSalle Americas, Inc. s/h/a Jones Lang LaSalle and Jones Lang LaSalle of New York, LLC shall serve a copy of this order, with notice of entry, on all parties and upon the Clerk of the General Clerk’s Office and the Trial Support Office 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 fifteen (15) days from completion of discovery as hereinabove directed, the plaintiff shall cause the action to be placed upon the trial calendar, at the place it was when stricken, if possible, 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; and it is further

**ORDERED** the parties shall appear remotely for a compliance conference on April 14, 2021 and will be contacted by Chambers as to further details with regard to scheduling of same; and it is further

**ORDERED** that the cross-motion by Ezra Cohen Corp. and HSBC North America Holdings, Inc., is denied as moot.

This constitutes the decision and order of this Court.

March 31, 2021

  
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HON. VERNA L. SAUNDERS, JSC

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE