

Board of Mgrs. of the 44-15 Purves St. Condominium v 44-15 Purves St., LLC
2021 NY Slip Op 32048(U)
March 30, 2021
Supreme Court, Queens County
Docket Number: 701225/2017
Judge: Marguerite A. Grays
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: **HONORABLE MARGUERITE A. GRAYS**
Justice

IAS PART 4

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BOARD OF MANAGERS OF THE 44-15 PURVES
STREET CONDOMINIUM ON BEHALF OF ALL
OF ITS OWNERS,
Plaintiff(s),

Index
No.: 701225/2017

Motion
Dated: November 24, 2020

-against-

44-15 PURVES STREET, LLC, EDWARD FLAX,
ROBERT GORDON, GARY AXELROD, CRAIG
AXELROD, ALBERT SHIRIAN, RAMIN SHIRIAN
and ROMINA SHIRIAN,

Motion
Cal. No.:

Motion
Seq. No.: 7

Defendant(s).

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44-15 PURVES STREET, LLC, EDWARD FLAX,
ROBERT GORDON, GARY AXELROD, CRAIG
AXELROD, ALBERT SHIRIAN, RAMIN SHIRIAN
and ROMINA SHIRIAN,

Third-Party Plaintiffs,

- against -

MANDARIN ENTERPRISES II, INC.,

Third-Party Defendant.

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MANDARIN ENTERPRISES II, INC.,

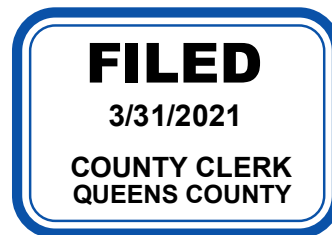
Fourth-Party Plaintiff,

- against -

UNITED STATES FIRE INSURANCE COMPANY,

Fourth-Party Defendant.

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 MANDARIN ENTERPRISES II, INC.,

Fifth-Party Plaintiff,

- against -

CATLIN SPECIALTY INSURANCE COMPANY,

Fifth-Party Defendant.

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 44-15 PURVES STREET, LLC, EDWARD FLAX,
 ROBERT GORDON, GARY AXELROD, CRAIG
 AXELROD, ALBERT SHIRIAN, RAMIN SHIRIAN
 and ROMINA SHIRIAN,

Sixth-Party Plaintiff,

- against -

N.B. PLUMBING & HEATING, INC. and MEI
 SHENG INC.,

Sixth-Party Defendant.

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 The following papers numbered E172-E173, E179, E174, E175-E177, E180, E178,
 E181, on this motion by Fourth-Party Defendant United States Fire Insurance Company ("US
 Fire") for an Order: (1) pursuant to CPLR §603, severing the third-party action against it; or
 (2) pursuant to CPLR §1010, dismissing the third-party action without prejudice.

	PAPERS NUMBERED
Notice of Motion Affid.-Exhibits.....	E172-E173, E179
Answering Affid.-Exhibits.....	E174, E175-E177, E180
Reply Affid.-Exhibits.....	E178, E181

Upon the foregoing papers, it is Ordered that this motion is granted to the extent set forth herein.

United States Fire Insurance Company (US Fire) is the fourth-party defendant in the action brought by defendant/third-party defendant/fourth-party plaintiff Mandarin Enterprises II, Inc. (Mandarin). The main action arises from allegedly negligent construction of a condominium building and Mandarin, as the third-party defendant, is sued insofar as it was

the general contractor for the project. Mandarin then sought insurance coverage from US Fire, which was denied. The fourth-party action ensued as a result. US Fire moves herein seeking severance pursuant to CPLR §603, or dismissal pursuant to CPLR §1010, insofar as it claims that there are no common questions of law or fact between the fourth-party insurance action and the main action, which sounds in negligence.

The motion is opposed by Mandarin as well as by defendants/third-party plaintiffs/sixth-party plaintiffs, 44-15 Purves Street LLC, Edward Flax, Robert Gordon, Gary Axelrod, Craig Axelrod, Albert Shirian, Ramin Shirian and Romina Shiria, and by Sixth-Party Defendant N B Plumbing & Heating, Inc. However, the opposition papers filed by Defendants/Third-Party Plaintiffs/Sixth-Party Plaintiffs and the Sixth-Party Defendant are inapposite insofar as the aforementioned parties are not parties to the fourth-party action and have no involvement in the insurance coverage dispute between US Fire and Mandarin (*See, Neuhaus v Staten Island Bd. of Realtors*, 44 AD3d 1054 [2007]).

It is well established that it is ‘inherently prejudicial’ to third-party insurers to have the issue of insurance coverage tried before the jury that considered the underlying liability claims (*Schorr Bros. Dev Corp v Continental Ins. Co.*, 174 AD2d 722 [1991]). To ensure that there is no prejudice to the third-party defendant insurance company, the main negligence action and the third-party insurance coverage action should be tried separately (*Emmetsberger v Mitchell*, 7 AD3d 483 [2004]). It is also well recognized that insurance coverage issues and negligence or liability actions do not involve common questions of law or fact (*Emmetsberger v Mitchell, supra*; *Haber v Cohen*, 74 AD3d 1281 [2010]; *Hershfeld v JM Woolworth Risk Retention Group*, 164 AD3d 1423 [2018]). None of the other parties in the related actions have interposed claims against US Fire. As to the issue of discovery, it is uncontradicted that no other party than Mandarin has served discovery demands on US Fire. Severance is appropriate here so as to avoid involving parties in discovery, or a trial, in which they have no interest (*Weiss v Meiselman*, 155 AD2d 531 [1989]).

Accordingly, the motion is granted to the extent that the fourth-party action is hereby severed pursuant to CPLR §603, and continued as against the fourth-party defendant, and it is,

ORDERED, that the caption of the severed action shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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MANDARIN ENTERPRISES II, INC.

Plaintiff,

Index No. : To be assigned

-vs.-

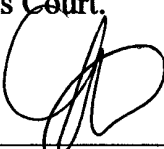
UNITED STATES FIRE INSURANCE COMPANY
Defendant(s)

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and it is further,

ORDERED, that the Movant is directed to serve a copy of this Order with Notice of Entry upon all parties, and upon the Clerk of the Court and Clerk of Commercial Division Part B, with proof of service thereof, within 30 days of entry of this Order. Furthermore, upon such service, the Clerk of the Court is directed to assign a new Index Number to the severed Fourth-Party action after payment of any appropriate fees. The parties to the severed action may file a Request for Judicial Intervention and a Request for a Preliminary Conference thereafter.

This constitutes the Decision and Order of this Court.

Dated: March 30, 2021



MARGUERITE A. GRAYS
J.S.C.

FILED

3/31/2021

COUNTY CLERK
QUEENS COUNTY