

Wynne v JPMorgan Chase & Co.
2021 NY Slip Op 32675(U)
December 15, 2021
Supreme Court, New York County
Docket Number: Index No. 161266/2018
Judge: William Perry
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. WILLIAM PERRY PART 23

Justice

-----X

KEVIN WYNNE,

Plaintiff,

INDEX NO. 161266/2018

MOTION DATE 07/15/2021

MOTION SEQ. NO. 001

- v -

JPMORGAN CHASE & CO., JONES LANG LASALLE
AMERICAS, INC.,

Defendant.

**DECISION + ORDER ON
MOTION**

-----X

JPMORGAN CHASE & CO.

Plaintiff,

Third-Party
Index No. 596035/2019

-against-

SCHINDLER ELEVATOR CORPORATION

Defendant.

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JONES LANG LASALLE AMERICAS, INC.

Plaintiff,

Second Third-Party
Index No. 595517/2021

-against-

SCHINDLER ELEVATOR CORPORATION, LERCH BATES
INC., JOESPH NETO & ASSOCIATES, INC., A LERCH
BATES COMPANY

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 100, 101, 102, 103, 104, 105

were read on this motion to/for

SEVER ACTION

In this action, Plaintiff Kevin Wynne alleges that he was caused to fall from a ladder and break his back due to the Defendants JPMorgan Chase & Co. (“JPMorgan”) and Jones Lang Lasalle Americas’ (“Jones Lang”) failure to provide him with proper safety equipment.

In motion sequence 001, Plaintiff moves to sever the second third-party action commenced by Jones Lang against Schindler Elevator Corp. (“Schindler”), Lerch Bates Inc., and Joseph Neto & Associates, Inc. (collectively, “Lerch Bates”), arguing that Jones Lang commenced the second third-party action in flagrant violation of this court’s discovery orders and would significantly delay the case going to trial, resulting in prejudice. The motion has been fully submitted.

Background

Plaintiff is an elevator mechanic who was working in an elevator control room on August 3, 2018, when he alleges that he fell off a ladder and broke his back due to the Defendants’ violations of the Labor Law. A preliminary conference was held on April 30, 2019, setting initial dates for discovery and providing that impleader must be completed within 45 days of the completion of party depositions. (NYSCEF Doc No. 11.) JPMorgan impleaded Schindler on November 25, 2019. (NYSCEF Doc No. 16.) After a March 16, 2021 compliance conference, the note of issue date was extended to June 25, 2021 (NYSCEF Doc No. 42), although it was filed by Plaintiff on May 25, 2021. (NYSCEF Doc No. 48.)

As relevant here, depositions were completed on November 19, 2020, and thus impleader was to have been completed by January 4, 2021. Jones Lang, however, commenced the second third-party action on June 3, 2021, 150 days after the date set by the court, setting forth causes of action against Schindler for contractual indemnification, common law contribution and indemnification, and breach of contract. (NYSCEF Doc No. 59, Second Third-Party Complaint, at 14-17.) Jones Lang also impleaded Lerch Bates, setting forth similar causes of action for

contractual indemnification, common law contribution and indemnification, and failure to procure insurance. (*Id.* at 18-23.) Jones Lang alleged that Lerch Bates was its elevator consultant, pursuant to a contract dated September 1, 2016. (NYSCEF Doc No. 67, Agreement.) Both Schindler and Lerch Bates have answered. (NYSCEF Doc Nos. 69 and 85.)

Plaintiff moves to sever the second third-party action pursuant to CPLR 603 and CPLR 1010, arguing that Jones Lang's impleader was egregiously late, that discovery has been completed and the note of issue filed, and that a failure to sever will result in significant delay and prejudice to the Plaintiff, who has thus far diligently complied with all discovery demands. (NYSCEF Doc No. 72, Pl.'s Memo.) Newly-added Lerch Bates "cross-moves" for identical relief, arguing that, although the transcripts of the already-completed depositions have been provided, there is much discovery that it needs to conduct and that a failure to sever will result in its prejudice. (NYSCEF Doc No. 88 at ¶¶ 29-37)

In opposition, Jones Lang states that it discussed the possibility of impleading Lerch Bates at a March 18, 2021 status conference after JPMorgan produced a copy of the Agreement in response to a notice to produce. (NYSCEF Doc No. 90, Opposition, at ¶ 4.) Jones Lang also argues that Plaintiff would not suffer prejudice and that it has provided Lerch Bates with copies of discovery materials, thus it maintains that judicial economy favors denial of the severance motion. (*Id.* at ¶¶ 10, 13, 18.)

Schindler filed an affirmation in partial opposition, stating that although it "recognizes that it is fully within the Court's discretion to either grant the motion to sever, or not," Schindler requests that any order granting severance include a provision that specifically directs Lerch Bates' witness to appear for a deposition within thirty days of the order. (NYSCEF Doc No. 100 at ¶ 6.)

Alternatively, if the motion is not granted, Schindler requests that the order directs that dispositive motions must be filed within 90 days of said deposition. (*Id.* at ¶ 7.)

Discussion

CPLR 603 provides that “[i]n furtherance of convenience or to avoid prejudice the court may order a severance of claims, or may order a separate trial of any claim, or of any separate issue.” The determination of whether to grant or deny a request for a severance pursuant to CPLR 603 is a matter of judicial discretion, which should not be disturbed absent a showing of prejudice to a substantial right of the party seeking the severance. (*See Miller v Howard*, 137 AD3d 1698, 1699 [4th Dept 2016]; *Global Imports Outlet, Inc. v Signature Group, LLC*, 85 AD3d 662, 662 [1st Dept 2011]; *Finning v Niagara Mohawk Power Corp.*, 281 AD2d 844, 844 [3d Dept 2001].) The factors to be weighed when severing a cause of action are efficiency of the discovery process, delay of trial, possible jury confusion, and prejudice to one of the parties. (*Reid v Haher*, 88 AD2d 873 [1st Dept 1982].)

Additionally, “[t]he court may ... order a separate trial of the third-party claim ... or make such other order as may be just. In exercising its discretion, the court shall consider whether the controversy between the third-party plaintiff and the third-party defendant will unduly delay the determination of the main action or prejudice the substantial rights of any party.” (CPLR 1010.) In a tort case where the issue is the respective liability of the defendant and the third-party defendant for the plaintiff’s injury, it is preferable for related actions to be tried together to avoid the waste of judicial resources and the risk of inconsistent verdicts. (*Sichel v Community Synagogue*, 256 AD2d 276, 276–77 [1st Dept 1998].)

Here, Jones Lang’s second third-party complaint sets forth causes of action for indemnification and contribution, and thus, “any potential judgment against [Jones Lang] in the

main action will not prevent it from potentially obtaining judgment against [Lerch Bates] in the severed action.” (*Samaroo v T-Mobile USA, Inc.*, 2010 WL 2797904 [Sup Ct, NY County 2010], citing *Garcia v Gesher Realty Corp.*, 280 AD2d 440, 440-41 [1st Dept 2001].) However, while the court notes that Jones Lang fails to set forth a reasonable excuse for its lengthy delay in impleading Lerch Bates, a party with which Jones Lang itself had contracted for consulting services via the 2016 Agreement, the court finds, in its discretion, that judicial economy would not be served by granting the motion, and it is preferable for these related actions to be tried together to avoid the waste of judicial resources and the risk of inconsistent verdicts. In addition, Schindler has noted outstanding discovery from Lerch Bates as either a non-party or as a third-party defendant, and Lerch Bates has noted outstanding discovery regarding current parties to this action. (NYSCEF Doc Nos. 88; 100.) As such, it is hereby

ORDERED that motion sequence 001 is denied; and it is further

ORDERED that all outstanding discovery shall be completed by February 25, 2022; and it is further

ORDERED that all dispositive motions must be filed by May 27, 2022.

12/15/2021
DATE



WILLIAM PERRY, J.S.C.

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