

Lardiere v Site 6 DSA Owner LLC
2022 NY Slip Op 31093(U)
April 5, 2022
Supreme Court, New York County
Docket Number: Index No. 153260/2018
Judge: Arlene Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE BLUTH PART 14

Justice

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ROSARIO LARDIERE,

Plaintiff,

INDEX NO. 153260/2018

MOTION DATE 04/04/2022

MOTION SEQ. NO. 003

- v -

SITE 6 DSA OWNER LLC, SITE 6 COMMERCIAL
LLC, TACONIC INVESTMENT PARTNERS, L&M
DEVELOPMENT PARTNERS, BFC PARTNERS, L.P,
DELANCEY STREET ASSOCIATES LLC, NYU LANGONE
HEALTH SYSTEM, HUNTER-ROBERTS CONSTRUCTION
GROUP, LLC, BFC PHASE 1 DSA LLC, THE PACE
COMPANIES NEW YORK, INC., PEEPELS MECHANICAL
CORP.,

**DECISION + ORDER ON
MOTION**

Defendant.

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SITE 6 DSA OWNER LLC, TACONIC INVESTMENT
PARTNERS, L&M DEVELOPMENT PARTNERS, DELANCEY
STREET ASSOCIATES LLC, NYU LANGONE HEALTH
SYSTEM, HUNTER-ROBERTS CONSTRUCTION GROUP,
LLC

Third-Party
Index No. 595818/2018

Plaintiff,

-against-

GIL-BAR INDUSTRIES, THE PACE COMPANIES NEW YORK
INC., PEEPELS MECHANICAL CORP

Defendant.

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SITE 6 DSA OWNER LLC, SITE 6 COMMERCIAL LLC,
TACONIC INVESTMENT PARTNERS, L&M DEVELOPMENT
PARTNERS, DELANCEY STREET ASSOCIATES LLC, NYU
LANGONE HEALTH SYSTEM, HUNTER-ROBERTS
CONSTRUCTION GROUP, LLC, BFC PHASE 1 DSA LLC

Second Third-Party
Index No. 595217/2020

Plaintiff,

-against-

SITE SAFETY, LLC, MECHANICAL PIPING SOLUTIONS

Defendant.

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SITE 6 DSA OWNER LLC, SITE 6 COMMERCIAL LLC,
TACONIC INVESTMENT PARTNERS, L&M DEVELOPMENT
PARTNERS, DELANCEY STREET ASSOCIATES LLC, NYU
LANGONE HEALTH SYSTEM, HUNTER-ROBERTS
CONSTRUCTION GROUP, LLC, BFC PHASE 1 DSA LLC

Third Third-Party
Index No. 596072/2021

Plaintiff,

-against-

COMMODORE CONSTRUCTION CORP., JACOBSON &
COMPANY INC.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 311, 312, 313, 314

were read on this motion to/for

SEVER

The motion by third third-party defendant Jacobson & Company, Inc. (“Jacobson”) to sever the third third-party action is denied.

Background

In this Labor law case, plaintiff contends he was hit in the head by a large pipe while working at a construction site and suffered a traumatic brain injury. In this motion, Jacobson seeks to sever the third third-party action so as to avoid prejudice to the third third-party defendants and the plaintiff. It claims it was not mentioned during the first four years of this litigation and was only recently impleaded due to the delay of third third-party plaintiff Hunter Roberts Construction Group LLC (“Hunter Roberts”). Jacobson argues that Hunter Roberts knew about Jacobson’s involvement in the project and should have brought a third-party action sooner. Jacobson insists it would be prejudicial to force it to try and “catch up” with a case that has already had substantial discovery.

In opposition, third third-party plaintiffs claim that Jacobson failed to meet its initial burden to show prejudice to a substantial right in the absence of severance. They insist that the main action is not ready for trial as there is an outstanding deposition and authorizations. Third third-party plaintiffs contend that they impleaded Jacobson immediately after learning of this party's alleged involvement in the accident. They also point out that due the ongoing pandemic, a jury trial is not immediately forthcoming. Third third-party plaintiffs also contend they would be prejudiced if the severance motion was granted because Jacobson was purportedly directly involved in plaintiff's accident. They also point out that because the depositions of all parties have not been completed (there is a second deposition scheduled for third-party defendant Peepels), impleading Jacobson did not violate the Court's order requiring impleading with 60 days of EBTs.

Plaintiff offers support for the motion and insists that third third-party plaintiffs had possession of construction contracts identifying Jacobson as a potential third-party defendant for years before bringing the third third-party complaint. He insists that the deposition testimony (the testimony of John Lancelloti from Pace Companies) that allegedly served as the basis for impleading Jacobson and the other third third-party defendant (Commodore) never actually mentioned either Jacobson or Commodore by name. Plaintiff emphasizes that discovery is nearly complete.

Discussion

CPLR 603 provides that "In 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 court may order the trial of any claim or issue prior to the trial of the others." Severance is not appropriate where "[t]he main and third-party actions involve common factual

and legal issues which should be tried together” (*Neckles v VW Credit, Inc.*, 23 AD3d 191, 192, 803 NYS2d 531 [1st Dept 2005]).

Here, there is no dispute that the third third-party defendants’ alleged involvement in the accident involves common factual and legal questions. The fact is that the subject accident took place at a large construction project involving dozens of contractors and, unfortunately, there is a lack of clarity as to which contractor is responsible (assuming plaintiff has a meritorious case). Although that is not convenient to plaintiff, the Court sees no reason to sever a third third-party action where discovery is not complete (a deposition is outstanding) and liability is still unresolved. The Court observes that despite the case being four years old, no dispositive motions have been brought with respect to liability. In other words, this is not a case where some issues have already been narrowed and it might make more sense to sever the case. The Court also finds that because a deposition is still outstanding, the third third-party complaint did not violate this Court’s order directing impleader actions to be filed with 60 days of party EBTs.

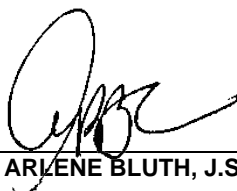
And severing this action will have, at most, a limited effect on Jacobson (the movant). Jacobson will presumably still try to seek depositions of various witnesses and review the prior depositions held in this case as well as the paper discovery exchanged regardless of whether the third third-party action is severed. Certainly, plaintiff will have to wait a bit longer to file the note of issue. But that alone does not justify granting the instant motion.

That third third-party plaintiffs may have waited a long time to commence the third third-party action is not a basis to grant the motion either (*Stark v Greenberg, Dauber & Epstein*, 219 AD2d 571, 571, 631 NYS2d 349 [1st Dept 1995] [observing that “dilatatory conduct should not outweigh the consideration that the main action and the third-party action involve common issues of law and fact and should proceed together”]).

The Court is well aware that plaintiff contends he suffered serious injuries from the accident and that he does not want to wait any longer to proceed to trial. That desire, although understandable, does not justify severing a third third-party action involving contractors on a job site in a Labor Law case. The Court observes, however, that although it is denying the instant motion, that does not prohibit a motion to renew if discovery does not proceed quickly (*see e.g., Maron v Magnetic Const. Group Corp.*, 128 AD3d 426, 8 NYS3d 316[1st Dept 2015] [affirming decision by trial court that granted renewal of a motion to sever a third-party complaint]).

Remote Conference : June 8, 2022 (NYSCEF Doc. No. 315 [directing parties to upload discovery update by June 1, 2022]).

4/5/2022
DATE


ARLENE BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: