

Garcia v One Hudson Yards Owner LLC

2022 NY Slip Op 31337(U)

April 26, 2022

Supreme Court, New York County

Docket Number: 158265/2018

Judge: Arlene Bluth

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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. ARLENE BLUTH PART 14

Justice

-----X

SILVINO GARCIA, JUANA GARCIA,
Plaintiffs,

- v -

ONE HUDSON YARDS OWNER LLC, GILBANE BUILDING
COMPANY,

Defendants.

-----X

ONE HUDSON YARDS OWNER LLC, GILBANE BUILDING
COMPANY

Plaintiffs,

-against-

TOP SHELF ELECTRIC, CORP.

Defendant.

-----X

INDEX NO. 158265/2018
MOTION DATE 04/25/2022
MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595054/2022

The following e-filed documents, listed by NYSCEF document number (Motion 003) 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96

were read on this motion to/for SEVER.

The motion by third-party defendant Top Shelf Electric Corp. (“Top Shelf”) to dismiss or, in the alternative, to sever the third-party action is granted in part.

Background

In this Labor Law case, plaintiff Silvino Garcia claims his right ankle was struck by a piece of scaffold while he was working at a construction site. Top Shelf was Mr. Garcia’s employer. Top Shelf moves to sever the third-party action on the ground that it was commenced three years and five months after the main action was commenced. It argues it will suffer

prejudice due to the fact that it has been added at this late stage of the litigation. Top Shelf even asks the Court to dismiss the case on the ground that participating in the third-party action will be prejudicial. It emphasizes that it will have to pursue discovery, including taking depositions, that will result in extensive delays in the main action.

Plaintiffs make a cross-motion¹ for the same relief sought by Top Shelf. They claim the third-party action involves insurance coverage and liability issues that have nothing to do with plaintiffs' claims.

In opposition, defendants blame Great American, Top Shelf's excess insurance carrier, for the delay in commencing the third-party action. They claim that they tendered to Great American and waited for a response from Great American before starting the third-party action. Defendants insist they have an obligation to refrain from bringing frivolous lawsuits and so they were justified in waiting until Great American made a coverage decision. Defendants argue that neither dismissal nor severance is justified. They argue that severance will only prolong this litigation.

In reply, Top Shelf argues that the note of issue was filed on August 6, 2021 and that discovery took over three years to complete. It maintains that to reopen discovery at this stage would be highly prejudicial.

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." CPLR 1010 states that "The court may dismiss a third-party complaint without prejudice, order a

¹ The Court does not view the "cross-motion" as a cross-motion because it seeks the exact same relief sought by defendants and it was made after the opposition filed by defendants.

separate trial of the third-party claim or of any separate issue thereof, 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.”

“Severance of a third-party action is within the discretion of the trial court. However, severance is inappropriate absent a showing that a party's substantial rights would otherwise be prejudiced. To avoid the waste of judicial resources and the risk of inconsistent verdicts, it is preferable for related actions to be tried together” (*Rothstein v Milleridge Inn, Inc.*, 251 AD2d 154, 155, 674 NYS2d 346 [1st Dept 1998] [citations omitted]).

As an initial matter, the Court declines to dismiss the case. There is no reason to dismiss this action and make defendants commence another action. However, the Court grants the branch of the motion that seeks to sever the third-party action because of the stage of this litigation. A note of issue was filed on August 6, 2021 and the third-party complaint was not filed until January 21, 2022. Simply put, the Court finds it highly prejudicial to plaintiffs and Top Shelf to make them do discovery over again in a matter that has been pending for three years and where the note of issue was filed months ago.

Moreover, the Court observes that defendants filed a motion for summary judgment on December 6, 2021.² The fact that there is a dispositive motion pending is another basis to grant the motion to sever the third-party action. Top Shelf has not had the chance to do any discovery yet and might want to offer its own view on the issues raised in the motion. And, presumably, the summary judgment motion will have implications for the claims between defendants and Top

² For reasons that are entirely unclear, this motion has been adjourned for many months. It is baffling that plaintiffs complain about potential delay from the third-party complaint when they have yet to file anything in response to a dispositive motion filed in *December 2021*.

Shelf. Although the Court understands that defendants were waiting for Great American to make a decision, that does not justify delaying this case and, essentially, making the parties do discovery over again long after the note of issue was filed. It may not be defendants' fault, but plaintiffs and Top Shelf should not suffer because an insurance company decided to dither about for years and years.

Accordingly, it is hereby

ORDERED that the motion by third-party Top Shelf Electric Corp. is granted only to the extent that the third-party action is severed; and it is further

ORDERED that movant shall within 7 days serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk's Office (60 Centre Street, Room 119), who are directed to issue a no-fee RJJ for the severed action; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address (www.nycourts.gov/suptmanh)].

ARLENE BLUTH, J.S.C.

4/26/2022
DATE

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: