

Nemeth v Prestige Constr. NY LLC
2022 NY Slip Op 31444(U)
April 26, 2022
Supreme Court, Kings County
Docket Number: Index No. 519284/2017
Judge: Richard J. Montelione
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

At IAS Part 99, at the Kings County Courthouse, 360 Adams St., Brooklyn, NY 11201, on the 26 day of April 2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
GABOR NEMETH,

Plaintiff,

-against-

PRESTIGE CONSTRUCTION NY LLC, 1241 FIFTH
THIRD-PARTY 42 DEVELOPMENT LLC, MR.
DEMOLITION INC. ACTIONS and ABC CORP., a fictitious
name intending to be that of an unknown contractor,

Defendants.

-----X
PRESTIGE CONSTRUCTION NY LLC,

Third-Party Plaintiff,

-against-

OHR CHODOSH ELECTRICAL CONTRACTING, INC.,

Third-Party Defendant.

-----X
1241 42 DEVELOPMENT LLC,

Second Third-Party Plaintiff,

-against-

OHR CHODOSH ELECTRICAL CONTRACTING, INC.
and MR. DEMOLITION INC.,

Second Third-Party Defendants.

-----X
PRESTIGE CONSTRUCTION NY LLC,

Third Third-Party Plaintiff,

-against-

PARK LUMBAR YARD CORP., CASANOVA
CONSTRUCTION GROUP, INC., CASANOVA NY, LLC
and ABC CORP., a fictitious name intending to be that of an
unknown contractor,

DECISION/ORDER

Index No.: 519284/2017
Motion Date: 4/6/2022
Motion Cal. No.: 14, 15
Mot. Seq. 12, 16

Motion Date: 5/5/2021
Motion Seq. 10

GABOR NEMETH v. PRESTIGE CONSTRUCTION NY LLC, et al, Index No. 519284/2017

Third Third-Party Defendants.

-----X
 PRESTIGE CONSTRUCTION NY LLC,

Fourth Third-Party Plaintiff,

-against-

PBS DRYWALL PECO STOJANOVSKI, TA.,

Fourth Third-Party Defendant.

-----X
 241 42 DEVELOPMENT LLC,

Fifth Third-Party Plaintiff,

-against-

OHR-HUN INC.,

Fifth Third-Party Defendant.

-----X

After oral argument, the following papers were read on this motion pursuant to CPLR 2219(a):

<u>Papers</u>	<u>Numbered</u>
Motion Sequence # 10	
Plaintiff's Notice of Motion to Sever the Third-Third Party Action, dated 3/11/2021 (NYSCEF #264), Attorney Affirmation of Holly Ostrov Ronai, Affirmed on 3/11/2021 (NYSCEF #265), Exhibits (NYSCEF #266-274).....	264-74
Defendant/Third Third-Party Plaintiff/Fourth Third-Party Plaintiff Prestige Construction NY LLC's Attorney Affirmation of Stephanie R. Carrington in Opposition, Affirmed on 3/17/2021 (NYSCEF #277), Exhibits (278-279).....	277-79
Defendant/Second Third-Party Plaintiff/Fifth Third-Party Plaintiff 1241 42 Development LLC's Attorney Affirmation of Jarett L. Warner in Opposition, Affirmed on 3/17/2021 (NYSCEF #281), Exhibit (NYSCEF #283).....	281-83
Plaintiff's Attorney Reply Affirmations of Holly Ostrov Ronai, Affirmed on 3/18/2021 (NYSCEF #286, 288).....	286, 288
Third Third-Party Defendant Park Lumber Yard Corp.'s Attorney Affirmation of Amy O'Donohue, Esq. in Good Faith and Affidavit in support of Severance, Affirmed on 4/26/2021 (NYSCEF #289-290), Exhibits (NYSCEF #291-292).....	289-92
Motion Sequence # 12	
Plaintiff's Notice of Motion to Sever the Fourth-Third Party Action and the Fifth-Third Party Action, dated 8/16/2021 (NYSCEF #327), Attorney Affirmations of Kyle C. Bruno, Affirmed on 8/16/2021 (NYSCEF #328), Exhibits (NYSCEF #330-341).....	327, 330-41
Defendant/Second Third-Party Plaintiff/Fifth Third-Party Plaintiff 1241 42 Development LLC's Attorney Affirmation of Jarett L. Warner in Opposition, Affirmed on 11/8/2021 (NYSCEF #446), Exhibit (NYSCEF #447).....	446-47

GABOR NEMETH v. PRESTIGE CONSTRUCTION NY LLC, et al, Index No. 519284/2017

Plaintiff's Attorney's Reply Affirmation of Kyle C. Bruno, Affirmed on 11/16/2021 (NYSCEF #531).....	531
Defendant Prestige Construction LLC's Attorney Affirmation in Opposition (Affirmed on 11/16/2021) (NYSCEF #579).....	579
Plaintiff's Attorney's Reply Affirmation of Kyle C. Bruno, Affirmed on 11/17/2021 (NYSCEF #531).....	531
Motion Sequence # 16	
Plaintiff's Notice of Cross-Motion in opposition to Defendants' motions to Vacate the Note of Issue and for a Trial Preference, dated 10/21/2021 (NYSCEF #410), Attorney Affirmation of Kyle C. Bruno, Affirmed on 10/21/2021 (NYSCEF #411), Exhibits (NYSCEF #412-429).	410-29
Defendant/Second Third-Party Defendant, Ohr Chodosh Electrical Contracting, INC.'s Attorney Affirmation of Kevin Clinton in Opposition, Affirmed on 10/24/2021 (NYSCEF #431).....	431
Defendant/Second Third-Party Plaintiff/Fifth Third-Party Plaintiff 1241 42 Development LLC's Attorney Affirmation of Jarett L. Warner in Opposition, Affirmed on 11/25/2021 (NYSCEF #432), Exhibit (NYSCEF #434).....	432, 434
Defendant/Second Third-Party Defendant, Mr. Demolition INC.s's Attorney Affirmation of MICHAEL A. BAYRON in Opposition, Affirmed on 11/27/2021 (NYSCEF #441).....	441
Plaintiff's Attorney's Reply Affirmation of Kyle C. Bruno, Affirmed on 11/28/2021 (NYSCEF #444).....	444

Plaintiff commenced this action by filing a summons and complaint on October 4, 2017 alleging a work site injury that occurred on May 27, 2016 as a result of negligence and violations of the Labor Law and the Industrial Code. An amended complaint was filed on September 30, 2019. Plaintiff alleges he was struck by falling sheetrock while working as a laborer on a construction project.

With respect to Motion Sequences #10 and 12, Defendants did not bring an action against the Third-Third party Defendants until February 9, 2021, against the Fourth Third-party Defendant until May 14, 2021, and against the Fifth Third-party Defendant until August 4, 2021. These actions, which involve contribution and indemnification, can be handled in a severed action as the issues do not involve the plaintiff directly. Therefore, severance of the Third, Fourth, and Fifth Third-party Actions is appropriate here. *See Santos v. Sure Iron Works*, 166 A.D.2d 571, 573, 560 N.Y.S.2d 857, 859 (2d Dep't 1990) ("A court may properly sever cross claims and third-party actions from the main action in negligence cases, particularly in view of the early trial preference granted to the injured parties in such cases and in the interest of simplifying the issues for the jury"); *see also Zili v. City of New York*, 105 A.D.3d 949, 950, 963 N.Y.S.2d 684, 685 (2d Dep't 2013) ("The grant or denial of a request for severance is a matter of judicial discretion, which should not be disturbed on appeal absent a showing of prejudice to a substantial right of the party seeking severance").

With respect to Motion Sequence #16, Plaintiff moves the Court for a trial preference pursuant to CPLR 3403(a)(4) based on the interests of justice on the basis that one of the defendant's excess insurance policy could be exhausted by the time of trial. Plaintiff did not cite one case where a trial preference was based on this ground. For Plaintiff to obtain a trial preference, it must "allege sufficient facts, such as imminent financial destitution, or a probably of death before trial, which would justify the granting of this extraordinary privilege." *Rago v. Nationwide Ins. Co.*, 120 A.D.2d 579, 579, 502 N.Y.S.2d 66 (2d Dep't 1986). Plaintiff failed to meet this burden. *See Id.*

GABOR NEMETH v. PRESTIGE CONSTRUCTION NY LLC, et al, Index No. 519284/2017

With respect to Motion Sequence #16, the branch of Plaintiff's Cross-Motion in opposition to Defendants' motions to vacate the note of issue is rendered moot as Defendants' motions to vacate the note of issue (Motion Sequences #13, #14, and #15) were denied by Central Compliance Part on January 25, 2022. Based on the foregoing, it is

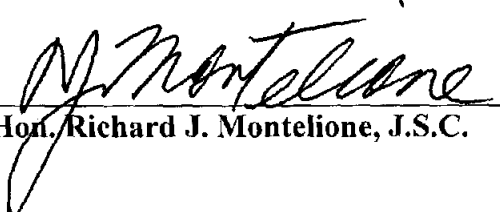
ORDERED that the Plaintiff's Motion to Sever the Third-Third Party Action (Motion Sequence #10) and Plaintiff's Motion to Sever the Fourth-Third Party Action and the Fifth-Third Party Action (Motion Sequence #12) are GRANTED; and it is further,

ORDERED that Plaintiff's request for a trial preference is DENIED (Motion Sequence # 16); and it is further

ORDERED that all other requests for relief are denied.

This constitutes the decision and order of the Court.

ENTER


Hon. Richard J. Montelione, J.S.C.

KINGS COUNTY CLERK
FILED
2022 MAY -2 AM 9:13