

Singh v 222 W. 83rd St. LLC
2022 NY Slip Op 32590(U)
August 1, 2022
Supreme Court, New York County
Docket Number: Index No. 159795/2018
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

GAGAN SINGH,

Plaintiff,

- v -

222 WEST 83RD STREET LLC, SAMSON MANAGEMENT
LLC,

Defendant.

-----X

SAMSON MANAGEMENT LLC, 222 WEST 83RD STREET
LLC

Plaintiff,

-against-

CORNER BEEF EXPRESS, INC.

Defendant.

-----X

INDEX NO. 159795/2018MOTION DATE N/A, N/A, N/A,
06/21/2021MOTION SEQ. NO. 003 004 005
006

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595433/2019

The following e-filed documents, listed by NYSCEF document number (Motion 003) 57, 58, 59, 60, 61, 62, 63

were read on this motion to/for

DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 004) 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 88

were read on this motion to/for

DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 005) 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182

were read on this motion to/for

VACATE/STRIKE - NOTE OF ISSUE/JURY

The following e-filed documents, listed by NYSCEF document number (Motion 006) 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150

were read on this motion to/for

SUMMARY JUDGMENT(AFTER JOINDER)

Plaintiff Gagan Singh commenced this action on October 23, 2018 against Defendants 222 West 83rd Street LLC and Samson Management LLC, seeking to recover for personal injuries allegedly sustained on March 8, 2017, when he slipped and fell on a wet basement staircase located at 2290 Broadway, New York, NY (the “premises”).

Defendants impleaded Third-Party Defendant Corned Beef Express Inc. (“Corned Beef”) on May 23, 2019, setting forth causes of action for contractual indemnification, common-law indemnification, reimbursement of fees expended, and breach of contract for failure to procure insurance. (NYSCEF Doc No. 16, TPC.) At the time of his alleged accident, Plaintiff was working at the premises as the manager of Artie’s Deli, which is owned by Corned Beef.

In motion sequence 003, Corned Beef seeks a protective order striking Defendants’ July 29, 2020 Notice to Admit, on the grounds that it improperly calls for conclusions and information at the core of the dispute. (NYSCEF Doc No. 58, Ms003 Memo.) In opposition, Defendants argue that the information sought in the Notice to Admit seeks factual information concerning the Lease between the parties which is not in dispute. (NYSCEF Doc No. 76, Ms003 Opp.) Corned Beef has not filed a reply.

Relatedly, in motion sequence 004, Defendants move to compel Corned Beef to produce a witness for a deposition with knowledge of the Lease, on the grounds that Corned Beef’s witness Arun Kumar, who was deposed on July 20, 2020, had no such knowledge. (NYSCEF Doc No. 67, Ms004 Memo.) No further briefing was filed regarding motion sequence 004.

In motion sequence 005, Defendants move to vacate the Note of Issue (NYSCEF Doc No. 91, Ms005 Memo), which Plaintiff filed on October 22, 2020, on the grounds that discovery remains outstanding. In opposition, Plaintiff argues that he owes Defendants no further discovery and that Defendants will have ample time to complete discovery on their third-party claims due to

the court system's trial backlog. (NYSCEF Doc No. 109, Ms005 Opp.) Plaintiff then cross-moved to sever the third-party action on July 23, 2021 (NYSCEF Doc No. 152), which was opposed by Defendants. (NYSCEF Doc No. 164.)

In motion sequence 006, Defendants move for summary judgment against Corned Beef on their causes of action for contractual indemnification and breach of contract for failure to procure insurance. (NYSCEF Doc No. 114, Ms006 Memo.) In opposition, Corned Beef argues that Defendants fail to meet their burden for summary judgment on their contractual indemnification claim, as the issue of which party is responsible to maintain the plumbing and staircase of the premises remains outstanding. (NYSCEF Doc No. 141, Ms006 Opp.)

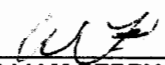
Motion sequences 005 and 006 were denied on the record during oral argument held on September 9, 2021.

Corned Beef's motion sequence 003 for a protective order is denied, as the information sought by Defendants in the July 29, 2020 Notice to Admit was not improper because the existence of the Lease and the indemnification provision contained therein is not in dispute. (NYSCEF Doc No. 74, Notice to Admit; NYSCEF Doc No. 72, Lease; *see also Ramcharran v New York Airport Servs., LLC*, 108 AD3d 610, 610 [2d Dept 2013] ["The purpose of a notice to admit is only to eliminate from the issues in litigation matters which will not be in dispute at trial"].)

Likewise, Defendants' unopposed motion sequence 004 to compel Corned Beef to produce a witness with knowledge of the Lease is denied, as Defendants fail to state what "knowledge of the Lease and its terms" is necessary in order for Defendants to prove their case. (NYSCEF Doc No. 67 at ¶ 28.) The Lease has been in the record since the filing of the third-party complaint in May 2019. (NYSCEF Doc No. 15.) Thus, it is hereby

ORDERED that motion sequences 003 and 004 are denied as stated above; and it is further

ORDERED that motion sequences 005 and 006 are denied in their entirety for the reasons stated on the record on September 9, 2021.

<u>8/1/22</u> DATE		 WILLIAM PERRY, J.S.C.	
CHECK ONE:	☐ CASE DISPOSED	☒ NON-FINAL DISPOSITION	
	☐ GRANTED ☒ DENIED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE