

Ohadi v Magnetic Constr. Group Corp.
2022 NY Slip Op 33824(U)
November 4, 2022
Supreme Court, New York County
Docket Number: Index No. 161586/2014
Judge: Adam Silvera
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ADAM SILVERA PART 40

Justice

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ALA OHADI,

Plaintiff,

INDEX NO. 161586/2014

MOTION DATE N/A

MOTION SEQ. NO. 010

- v -

MAGNETIC CONSTRUCTION GROUP CORP., SYDELL
GROUP LLC, 1170 BROADWAY ASSOCIATES,
LLC, NOMAD HOTELS, LLC, STONEHILL & TAYLOR
ARCHITECTS, P.C., 1170 BROADWAY TENANT LLC, 1170
BROADWAY MANAGER LLC, HAREN & KELLER
PAINTING CORP., CASSWAY CONTRACTING CORP., A.
& G.V. STUCCO CONSTRUCTION CORP.,

Defendant.

**DECISION + ORDER ON
MOTION**

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MAGNETIC CONSTRUCTION GROUP CORP.

Plaintiff,

Third-Party
Index No. 595203/2016

-against-

HAREN & KELLER PAINTING CORP., CASSWAY
CONTRACTING CORP., A & G.V. STUCCO CONSTRUCTION
CORP.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 010) 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 615

were read on this motion to/for SEVER ACTION

Upon the foregoing documents, and after conference with the Court, the instant motion to sever, by plaintiff, is decided below.

Here, plaintiff moves to sever this action against defendant/third-party defendant Cassway Contracting Corp. (hereinafter referred to as "defendant Cassway"). In March 2022, defendant Cassway filed for a Chapter 11 bankruptcy in the Bankruptcy Court in the Southern

District of New York. At a court conference, defendant Cassway argued in favor of severance. Defendant 1170 Broadway Associates, LLC, defendant/third-party plaintiff Magnetic Construction Group Corp., and third-party defendant A & G.V. Stucco Construction Corp. oppose.

Preliminarily, “[a]ppellate courts in this State have repeatedly held that a bankruptcy stay does not prevent a plaintiff from proceeding on causes of action against nonbankrupt defendants, which do not involve the bankrupt’s property”. *Golden v Moscovitz*, 194 AD2d 385, 385 (1st Dep’t 1993). Thus, defendant Cassway’s bankruptcy stay does not automatically stay the instant action as to plaintiff’s case against the nonbankrupt defendants.

Pursuant to CPLR § 603, the Court may order a severance of claims in order to avoid confusion, delay, or prejudice. The Appellate Division, First Department, held that “plaintiff’s motion to sever [the bankrupt] defendant...from the proceedings [was properly granted], as discovery has been completed and the case was ready to go to trial at the time...[the] bankruptcy petition was filed and severance does not prejudice the codefendants.” *Weber v Baccarat, Inc.*, 70 AD3d 487, 488 (1st Dep’t 2010).

Here, the Court notes that the instant action was commenced in November 2014, nearly eight years ago. Discovery was completed and the note of issue was filed in January 2019, marking this action trial ready over three and a half years ago. Further delay in this action would be severely prejudicial to plaintiff. Although defendants argue that defendant Cassway is a necessary party to the action, notably, defendant Cassway is a sub-contractor and not a statutory defendant herein. Moreover, it is undisputed that defendants’ cross-claims against defendant Cassway are preserved for future litigation should plaintiff be successful in the instant action.

Thus, defendants would not be prejudiced by severance. As such, plaintiff's motion to sever the action pursuant to CPLR §603 is granted as to defendant Cassway.

Accordingly, it is

ORDERED that plaintiff's motion to sever the action pursuant to CPLR §603 is granted; and it is further

ORDERED that any and all causes of action listed in the Complaint against defendant/third-party defendant Cassway Contracting Corp. shall be severed; and it is further

ORDERED that any and all cross-claims against defendant/third-party defendant Cassway Contracting Corp. shall be severed; and it is further

ORDERED that the caption shall be amended to read as follows:

ALA OHADI and FARANEH DOEAI,

Plaintiffs,

-against-

Index No. 161586/14

MAGNETIC CONSTRUCTION GROUP
CORP., 1170 BROADWAY ASSOCIATES,
LLC, HAREN & KELLER PAINTING
CORP., and A & G.V. STUCCO
CONSTRUCTION CORP.,

Defendants.

MAGNETIC CONSTRUCTION GROUP
CORP.,

Third-Party Plaintiffs,

-against-

HAREN & KELLER PAINTING CORP. and
A & G.V. STUCCO CONSTRUCTION CORP.,

Third-Party Defendants.

And it is further;

ORDERED that the remainder of the instant action shall proceed against the remaining defendants to trial scheduled on January 4, 2023; and it is further

ORDERED that plaintiff serve a copy of this order with notice of entry on the Clerk of this Court (60 Centre Street, Room 141B); and it is further

ORDERED that the Clerk of this Court, upon service of a copy of this order with notice of entry, shall sever the causes of action and cross-claims against defendant Cassway Contracting Corp. and assign a separate New York County Index Number such new action against defendant Cassway Contracting Corp., upon the payment of the appropriate fees, and record such action in the Clerk's records; and it is further

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.



HON. ADAM SILVERA, J.S.C.

11/4/2022
DATE

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