

Rivera v Archdiocese of N.Y.
2022 NY Slip Op 34013(U)
November 28, 2022
Supreme Court, New York County
Docket Number: Index No. 157599/2018
Judge: Judy H. Kim
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JUDY H. KIM **PART** **05RCP**

Justice

-----X

MIGDALIA RIVERA,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, ST. LUCY'S CHURCH,
and THE CITY OF NEW YORK,

Defendants.

-----X

ARCHDIOCESE OF NEW YORK, and ST. LUCY'S CHURCH,

Third-Party Plaintiffs,

-against-

CONSOLIDATED EDISON OF NEW YORK, INC.,

Third-Party Defendants.

-----X

INDEX NO. 157599/2018

MOTION DATE 07/19/2022

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595027/2022

The following e-filed documents, listed by NYSCEF document number (Motion 004) 104, 105, 106, 107, 108, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121

were read on this motion to SEVER THIRD-PARTY ACTION.

On August 15, 2018, plaintiff commenced this action to recover for personal injuries allegedly sustained on June 9, 2017, when she tripped and fell on the sidewalk on the west side of First Avenue, south of East 104th Street, New York, New York (NYSCEF Doc. No. 1 [Complaint at ¶54]). On December 29, 2021, plaintiff filed a Note of Issue (NYSCEF Doc. No. 49 [Note of Issue]). On January 11, 2022, defendants/third-party plaintiffs Archdiocese of New York and St. Lucy's Church (collectively, the "Archdiocese") commenced a third-party action against third-party defendant Consolidated Edison of New York, Inc. ("ConEd"), asserting claims for

indemnification and contribution (NYSCEF Doc. No. 50 [Third-Party Complaint at ¶¶8-14]). On June 9, 2022, ConEd interposed an answer asserting a counterclaim against the Archdiocese for indemnification (NYSCEF Doc. No. 100 [ConEd Answer at ¶11]).

ConEd now moves for an order, pursuant to CPLR §§603 and 1010, to sever the third-party action, on the grounds that the Archdiocese's delay in commencing the third-party action has prejudiced ConEd. ConEd emphasizes that the main action has been pending for almost four years while Con Edison was only recently impleaded and has received very little discovery. Alternatively, ConEd moves for an order, pursuant to 22 NYCRR §202.21(e), vacating plaintiff's Note of Issue and directing a discovery schedule in the third-party action.

Plaintiff opposes ConEd's motion to the extent that it seeks to vacate the note of issue, arguing that vacatur would prejudice plaintiff by unduly delaying the determination of her claims. The Archdiocese, in turn, opposes that branch of ConEd's motion seeking severance of the third-party action, arguing that ConEd has not been prejudiced as the third-party action was timely commenced pursuant to the Case Scheduling Order in this action.

ConEd's motion is granted to the limited extent that the Court orders an expedited discovery schedule in the third-party action, as set forth more fully below, and is otherwise denied.

DISCUSSION

CPLR §603 provides that, “[i]n 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” (CPLR §603). CPLR §1010, which applies specifically to third-party actions, provides that “[t]he court may...order a separate trial of the third-party claims...[and] in exercising its discretion, the court shall consider whether the controversy between the third-party plaintiff and

the third-party defendants will unduly delay the determination of the main action or prejudice the rights of any party” (CPLR §1010).

The Court declines to vacate the note of issue, given the age of this case and the fact that the Court discerns no prejudice in permitting discovery in the third-party action to proceed during this case’s pendency on the trial calendar (See e.g., WVH Hous. Dev. Fund Corp. v Brooklyn Insulation & Soundproofing, Inc., 193 AD3d 523 [1st Dept 2021]; Valencia v City of New York, 188 AD3d 549, 550 [1st Dept 2020]; Hickey v City of New York, 159 AD3d 511, 511 [1st Dept 2018]). Neither is severance warranted at this juncture. The third-party action shares central questions of law and fact with the main action—specifically, whether the Archdiocese or ConEd negligently maintained the sidewalk where plaintiff fell—and thus a joint trial is strongly preferred (Marbilla, LLC v 143/145 Lexington LLC, 116 AD3d 544 [1st Dept 2014] citing Rothstein v Milleridge Inn, 251 AD2d 154 [1st Dept 1998]; see also Range v Trustees of Columbia Univ. in the City of NY, 150 AD3d 515, 516 [1st Dept 2017]). The Archdiocese has also provided a reasonable justification for commencing the third-party action more than three years after the initial action was filed, i.e. that it was unaware of ConEd’s potential liability until the deposition of the City’s witness, Stacey Williams, on December 9, 2021 (See Marbilla, LLC v 143/145 Lexington LLC, 116 AD3d 544 [1st Dept 2014]). Finally, ConEd has not shown that it will be prejudiced by its “claimed lack of opportunity for meaningful discovery in view of its ability to review existing discovery and obtain any required additional discovery while this case makes its way up the trial calendar” (Range v Trustees of Columbia Univ. in the City of NY, 150 AD3d 515, 516 [1st Dept 2017] [internal citations and quotations omitted]).

In light of the foregoing, it is

ORDERED that the branch of ConEd’s motion to vacate the Note of Issue is denied; and it is further

ORDERED that the branch of ConEd’s motion seeking severance is denied, without prejudice; and it is further

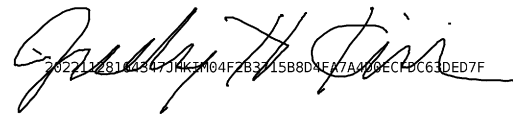
ORDERED that plaintiff, the Archdiocese of New York, St. Lucy’s Church, and the City of New York shall provide all previously-exchanged paper discovery to ConEd within thirty days of the date of this order; and it is further

ORDERED that all additional depositions shall be held on the dates set forth in the parties’ so-ordered stipulation dated October 25, 2022 (NYSCEF Doc. No. 122); and it is further

ORDERED that the deadline to file summary judgment motions is extended until sixty days after the completion of all discovery; and it is further

ORDERED that parties are to appear for their February 28, 2023 status conference in the Differentiated Case Management Part prepared to discuss any remaining discovery issues to be resolved.

This constitutes the Decision and Order of the Court.



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11/28/2022
DATE

HON. JUDY H. KIM, 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