SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

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CLAUDIA EVART,

Plaintiff,

- v -

200 MADISON OWNER, LLC,GEORGE COMFORT & SONS, INC, TOWN SPORTS INTERNATIONAL, LLC,CONSOLIDATED EDISON COMPANY OF NEW YORK, INC,

Defendant.

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INDEX NO. 152436/2015

MOTION DATE N/A

MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

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CONSOLIDATED EDISON COMPANY OF NEW YORK, INC

Plaintiff,

-against-

TRIUMPH CONSTRUCTION CORP.

Defendant.

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Third-Party
Index No. 595669/2016

The following e-filed documents, listed by NYSCEF document number (Motion 006) 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180

were read on this motion to/for SEVER.

Plaintiff's motion to sever the cause of action against defendant Town Sports International LLC ("Town Sports") is denied.

Background

Plaintiff brings this action arising out of a trip and fall that allegedly occurred back in 2012. In September 2016, the judge previously assigned to the case marked the case off the

calendar and directed plaintiff to make a motion to restore the case only after discovery was completed (NYSCEF Doc. No. 38). The judge warned that sanctions might be imposed if the motion was made before discovery was completed (*id.*).

Defendants then purported to serve 90-day notices on plaintiff. However, the Court denied their subsequent motions (filed in November 2018) to dismiss because defendants did not meet the service requirements of that provision (NYSCEF Doc. Nos. 111 and 112). Plaintiff then made two motions to restore—the first was withdrawn (NYSCEF Doc. No. 142) in 2019. The second was denied in 2020 solely on the ground that Town Sports had, by then, declared bankruptcy (NYSCEF Doc. No. 168). Town Sports is still in bankruptcy.

Now, nearly three years after that last motion was made in 2020, plaintiff moves to sever her claims against Town Sports, set a date for a discovery conference and a note of issue date. She claims that the automatic stay provisions under bankruptcy law do not extend to the other defendants in this action.

In opposition, third-party defendant Triumph Construction Corp. ("Triumph") contends that 11 USC § 362 applies an automatic stay and Town Sports' bankruptcy action remains pending. It argues that this stay may be lifted by the Bankruptcy Court and that plaintiff has not made the requisite motion.

In reply, plaintiff claims she will suffer undue hardship if this matter is not severed and points out that the trip and fall occurred over 11 years ago. Plaintiff admits that no depositions have occurred and that she has no other choice but to ask the Court to sever her claims against Town Sports and to restore this action.

Discussion

There is no dispute that 11 USC § 362 imposes an automatic stay. There is also no dispute that plaintiff has not made the appropriate motion before the bankruptcy court to lift the stay in connection with this case. And the Court observes that plaintiff alleges that she tripped and fell on the sidewalk in front of a New York Sports Club operated by Town Sports. There is no reason to sever such a critical and necessary party from this action. Therefore, the Court denies the instant motion.

To the extent that plaintiff complains about the delays in this case, the Court observes that plaintiff shares some of the blame. While the undersigned was not assigned to this matter in 2016, clearly the judge previously assigned to this case was unhappy with the progress in completing discovery and marked the case disposed pending completion of discovery. And plaintiff admits that no depositions have yet occurred in this 2015 case.

Moreover, the defendants attempted to serve a 90-day notice to dismiss for want of prosecution. Although the subsequent motions to dismiss based on that notice were denied on procedural grounds, they render plaintiff's complaints about delays as hollow.

Finally, the Court observes that plaintiff did not do anything to address the fact that the judge previously assigned to this case ordered that a motion to restore should only be made when discovery was finished. Plaintiff never moved to modify that order—instead, this case has been marked disposed since September 2016. And, clearly, discovery is still outstanding.

Assuming the Bankruptcy Court issues an order allowing this case to go forward, then plaintiff may move here to vacate the prior order and restore this case upon proper papers.

Accordingly, it is hereby

ORDERED that plaintiff's motion to sever and restore is denied.

4/21/2023
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED	X	DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE