

Lardiere v Site 6 DSA Owner LLC

2024 NY Slip Op 30417(U)

February 7, 2024

Supreme Court, New York County

Docket Number: Index No. 153260/2018

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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ROSARIO LARDIERE,

Plaintiff,

- v -

SITE 6 DSA OWNER LLC, SITE 6 COMMERCIAL LLC, TACONIC INVESTMENT PARTNERS, L&M DEVELOPMENT PARTNERS, BFC PARTNERS, L.P, DELANCEY STREET ASSOCIATES LLC, NYU LANGONE HEALTH SYSTEM, HUNTER-ROBERTS CONSTRUCTION GROUP, LLC, BFC PHASE 1 DSA LLC, THE PACE COMPANIES NEW YORK, INC., PEEPELS MECHANICAL CORP.,

Defendant.

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SITE 6 DSA OWNER LLC, TACONIC INVESTMENT PARTNERS, L&M DEVELOPMENT PARTNERS, DELANCEY STREET ASSOCIATES LLC, NYU LANGONE HEALTH SYSTEM, HUNTER-ROBERTS CONSTRUCTION GROUP, LLC

Plaintiff,

-against-

GIL-BAR INDUSTRIES, THE PACE COMPANIES NEW YORK INC., PEEPELS MECHANICAL CORP

Defendant.

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SITE 6 DSA OWNER LLC, SITE 6 COMMERCIAL LLC, TACONIC INVESTMENT PARTNERS, L&M DEVELOPMENT PARTNERS, DELANCEY STREET ASSOCIATES LLC, NYU LANGONE HEALTH SYSTEM, HUNTER-ROBERTS CONSTRUCTION GROUP, LLC, BFC PHASE 1 DSA LLC

Plaintiff,

-against-

SITE SAFETY, LLC, MECHANICAL PIPING SOLUTIONS

INDEX NO. 153260/2018
MOTION DATE 02/02/2024
MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

Third-Party
Index No. 595818/2018

Second Third-Party
Index No. 595217/2020

Defendant.

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SITE 6 DSA OWNER LLC, SITE 6 COMMERCIAL LLC,
TACONIC INVESTMENT PARTNERS, L&M DEVELOPMENT
PARTNERS, DELANCEY STREET ASSOCIATES LLC, NYU
LANGONE HEALTH SYSTEM, HUNTER-ROBERTS
CONSTRUCTION GROUP, LLC, BFC PHASE 1 DSA LLC

Third Third-Party
Index No. 596072/2021

Plaintiff,

-against-

COMMODORE CONSTRUCTION CORP.

Defendant.

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PEEPELS MECHANICAL CORP

Fourth Third-Party
Index No. 595014/2024

Plaintiff,

-against-

COMMODORE CONSTRUCTION CORP., MECHANICAL
PIPING SOLUTIONS INC.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 564, 565, 566, 577, 578, 579, 580, 581, 582, 583, 584, 592

were read on this motion to/for SEVER ACTION.

Third-party defendant Commodore Construction Corp. (“Commodore”)’s motion to sever the fourth third-party action is granted.

Background

In this Labor Law case, plaintiff contends he was hit in the head by a large pipe while working at a construction site and suffered a traumatic brain injury. Commodore observes that there were numerous third-party actions commenced by various defendants since this case was commenced, including a previous third-party action against Commodore. A stipulation of

discontinuance was uploaded letting Commodore out of the case (NYSCEF Doc. No. 497) and, following a procedural dispute about that stipulation, a motion followed.

This Court then issued a decision in November 2023 in which it so-ordered the stipulation of discontinuance against Commodore and found that defendant Peepels Mechanical Corp.'s ("Peepels")'s effort to file crossclaims against Commodore was improper because Peepels and Commodore were not co-defendants (meaning that filing crossclaims was not permissible) and Peepels did not properly commence a third-party action against Commodore (NYSCEF Doc. No. 521). Peepels had simply uploaded a document entitled "complaint" but did not purchase a third-party index number in order to pursue direct claims against Commodore.

The parties then engaged in additional discovery over the next few months. The Court, in an order dated December 4, 2023, directed plaintiff to file a note of issue after observing that there were very few outstanding discovery items (NYSCEF Doc. No. 532). About two hours later, Peepels filed a fourth third-party complaint that named Commodore (and therefore brought this entity back into the case) as well as another entity. Peepels brings claims for common law indemnification and contribution against Commodore.

Commodore seeks to sever this recent fourth third-party action. It observes that all defendants, third-party defendants, and even non-party witnesses have been deposed.

Commodore stresses the age of this case and argues that severance is appropriate.

In opposition, Peepels argues that it was entitled to implead Commodore and it did so promptly after the Court granted Commodore's motion to be let out of the case. Peepels insists that Commodore participated in much discovery while it was a third third-party defendant. It observes that at the time the note of issue was filed, the only parties that had not yet been deposed were Commodore and fellow fourth-third-party defendant Mechanical Piping Solutions,

Inc. (although Peepels acknowledges that this defendant sought an extension of time to answer the fourth third-party complaint).

In reply, Commodore admits it participated in discovery while it was in the case but stresses that the other fourth third-party defendant was not a party at all and is “new” in this case.

Discussion

CPLR 603 provides that “In 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. The court may order the trial of any claim or issue prior to the trial of the others.”

The Court grants the motion. The circumstances of this case compel the Court to sever the recent fourth third-party action. There is no dispute that this case is nearly six years old and involves purportedly serious injuries suffered by plaintiff. And plaintiff recently filed a note of issue as directed by this Court. As Commodore points out, its co-fourth third-party defendant is brand new to this case and will be entitled to all manner of discovery, including depositions of all the parties.

And while Commodore participated in this action for some amount of time, the fact is that it was let out of this case and it will also be entitled to substantial discovery. Commodore persuasively argued that this case involves a 33-year-old plaintiff who allegedly earned \$275,000 a year and claims he suffered a traumatic brain injury. Plaintiff’s expert allegedly claims lost earnings of \$31 million. These new parties will likely want updated medical records, depositions and medical evaluations given the serious injuries alleged. That means that this new fourth third-party action will significantly delay resolution of this case for some time in a case that is already quite old.

The Court observes that Peepels did not act “promptly” to assert a new third-party complaint. After the Court issued its decision letting Commodore out of the case on November 16, 2023, letters were subsequently uploaded about discovery from certain defendants (NYSCEF Doc. No. 528) and from plaintiff (NYSCEF Doc. No. 531). Nothing was uploaded from Peepels about discovery or that it intended to file a brand new fourth third-party action. These letters indicated that while there were a few minor outstanding discovery items, plaintiff wanted to file the note of issue. So the Court set a note of issue date in an order dated December 4, 2023 and then, and only then, did Peepels commence the fourth third-party action.

The Court also finds that there is no reason why Commodore is a necessary party for the trial. In this Labor Law action, Commodore is neither the general contractor nor the owner. Its only connection to this case is alleged theories of indemnification and contribution, both of which can be handled after the case in chief. And nothing prevents any party from attempting to blame Commodore at trial or from calling witnesses from Commodore. “While the main and third-party actions do involve common issues, any prejudice thereby caused to [Movant] is less than the prejudice caused to plaintiff by further delay (*Garcia v Gesher Realty Corp.*, 280 AD2d 440, 440-41, 721 NYS2d 343 [1st Dept 2001] [granting a motion to sever third-party actions]).


Simply put, the fourth third-party action should be severed so that this case can finally start towards a resolution. Denying the instant motion would ensure that this case would linger on for many more years. Plaintiff should not keep having his day in court delayed by defendants’ multiple third-party actions.

Accordingly, it is hereby

ORDERED that fourth third-party defendant Commodore Construction Corp.’s motion to sever is granted and the fourth third-party action is hereby severed and the remaining actions (including the remaining third-party actions) shall go forward; and it is further

ORDERED that movant shall within 7 days serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk’s Office (60 Centre Street, Room 119), who are directed to issue a no-fee RJI for the severed action; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address (www.nycourts.gov/suptmanh)].

<u>2/7/2024</u> DATE	 ARLENE P. BLUTH, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE