

**Board of Mgrs. of the 443 Greenwich St.
Condominium v SGN 443 Greenwich St. Owner LLC**

2024 NY Slip Op 32717(U)

June 28, 2024

Supreme Court, New York County

Docket Number: Index No. 656934/2021

Judge: Joel M. Cohen

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

-----X

BOARD OF MANAGERS OF THE 443 GREENWICH STREET CONDOMINIUM,

Plaintiff,

- v -

SGN 443 GREENWICH STREET OWNER LLC, SGN 443 GREENWICH STREET FEE OWNER LLC, SGN 443 GREENWICH STREET ASSOCIATES LLC, JS GREENWICH LLC, NB 443 GREENWICH STREET LLC, NATHAN BERMAN, JACK BERMAN, MARC L. FRIED, CETRA/CRI ARCHITECTURE PLLC, CETRARUDDY ARCHITECTURE D.P.C., JOHN A. CETRA, GREENWICH 2D LLC, GREENWICH 4D LLC, GREENWICH 4H LLC, GREENWICH 3F LLC, GREENWICH 4E LLC, GREENWICH 2F LLC, GREENWICH PHD LLC, AVERY TRUST,

Defendants.

INDEX NO.	<u>656934/2021</u>
	04/26/2024, 04/25/2024, 04/26/2024, 04/26/2024, 04/26/2024, 04/26/2024, 05/01/2024, 05/07/2024, 05/14/2024,
MOTION DATE	<u>05/14/2024</u>
	009 010 011 012 013 014 015 016 017
MOTION SEQ. NO.	<u>018</u>

DECISION + ORDER ON MOTION

-----X

SGN 443 GREENWICH STREET OWNER LLC, SGN 443 GREENWICH STREET FEE OWNER LLC, SGN 443 GREENWICH STREET ASSOCIATES LLC, JS GREENWICH LLC, NB 443 GREENWICH STREET LLC, NATHAN BERMAN, JACK BERMAN, MARC FRIED

Plaintiffs,

-against-

Third-Party
Index No. 595834/2023

UNIQUE ROOFING OF NEW YORK, INC., HORSEPOWER ELECTRIC AND MAINTENANCE CORP., PRESERV BUILDING RESTORATION MANAGEMENT INCORPORATED, CADCO SALES CORP. D/B/A CHRISTIE OVERHEAD DOORS, LLC & DIAMOND DOOR, COSENTINI ASSOCIATES 2 LLC D/B/A TETRA TECH ENGINEERS, ARCHITECTS & LANDSCAPE ARCHITECTS, P.C., CTS GROUP ARCHITECTURE, PLANNING, P.A., DEMAR PLUMBING CORP., WATERMARK DESIGNS, LLC, DIRECT FLOORING, INC., DER SPECIALTY PRODUCTS, LLC D/B/A VIRTUWOOD FLOORING, HERITAGE MECHANICAL SERVICES, INC., KSW MECHANICAL SERVICES, INC., LIF INDUSTRIES INC. D/B/A LONG ISLAND FIREPROOF DOOR, INC., FM NY, INC., ROCKAWAY CONTRACTING CORP., SD STAIRS & RAILING CORP., SPRAY-RITE LLC D/B/A A-RITE

FIRE PROTECTION SERVICES LLC, URBAN-SUBURBAN RECREATION, INC. D/B/A U.S. RECREATION, INC.

Defendants.

-----X

PRESERV BUILDING RESTORATION MANAGEMENT INCORPORATED

Second Third-Party Index No. 596006/2023

Plaintiff,

-against-

EMPIRE RESTORATION GROUP INC.

Defendant.

-----X

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 009) 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 626, 857, 858, 859, 860, 861, 862, 863, 864, 865

were read on this motion to SEVER ACTION

The following e-filed documents, listed by NYSCEF document number (Motion 010) 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 689, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 845, 846, 847, 867, 868, 869, 874, 875, 876, 877

were read on this motion to SEVER ACTION

The following e-filed documents, listed by NYSCEF document number (Motion 011) 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 848

were read on this motion to SEVER ACTION

The following e-filed documents, listed by NYSCEF document number (Motion 012) 558, 559, 560, 561, 562, 563, 564, 565, 566, 690, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 849

were read on this motion to SEVER ACTION

The following e-filed documents, listed by NYSCEF document number (Motion 013) 567, 568, 569, 570, 571, 572, 573, 574, 575, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 850, 873

were read on this motion to SEVER ACTION

The following e-filed documents, listed by NYSCEF document number (Motion 014) 576, 577, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 851, 853, 872

were read on this motion to SEVER ACTION

The following e-filed documents, listed by NYSCEF document number (Motion 015) 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 852

were read on this motion to

SEVER

The following e-filed documents, listed by NYSCEF document number (Motion 016) 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 854

were read on this motion to

SEVER ACTION

The following e-filed documents, listed by NYSCEF document number (Motion 017) 627, 628, 629, 630, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 855, 880

were read on this motion to

SEVER ACTION

The following e-filed documents, listed by NYSCEF document number (Motion 018) 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 856, 889

were read on this motion to

SEVER ACTION

Third-Party Defendants, Horsepower Electric and Maintenance Corp. (“Horsepower”), Urban-Suburban Recreation, Inc. d/b/a U.S. Recreation, Inc. (“Urban-Suburban”), Cadco Sales Corp., d/b/a Christie Overhead Doors, LLC & Diamond Door (“Cadco”), KSW Mechanical Services, Inc. (“KSW”), Cosentini Associates 2 LLC D/B/A Tech Engineers, Architects & Landscape Architects, P.C. (“Cosentini”), Rockaway Contracting Corp. (“Rockaway”), Unique Roofing Of New York, Inc. (“Unique Roofing”), Direct Flooring, Inc. (“Direct Flooring”), and Demar Plumbing Corp. (“Demar Plumbing”) (collectively, the “Movants”), move, under Motion Sequence Numbers 10 to 18, respectively, for severance of the Third-Party Action for contribution and indemnification. Third-Party Defendant Heritage Mechanical Services, Inc, (“Heritage”) moves to sever conditional on the Court’s ruling herein (Mot. Seq. 009),¹ and

¹ Heritage submits that “[i]f any parties that were involved with the heating, ventilation and air conditioning system are severed from this case, either directly, indirectly or tangentially, then the claims against Heritage should also be severed” (NYSCEF 556 at 1).

partially opposes the Movants' motions (NYSCEF 708). For the following reasons, these motions are denied.

As relevant here, Plaintiff Board of Managers of The 443 Greenwich Street Condominium ("Plaintiff"), on behalf of itself and each individual unit owner, brought an action against defendants SGN 443 Greenwich Street Owner LLC, SGN 443 Greenwich Street Fee Owner LLC, SGN 43 Greenwich Street Associates LLC, JS Greenwich LLC, NB 443 Greenwich Street LLC, Nathan Berman, Jack Berman, and Marc L. Fried (collectively, the "Sponsor Defendants"), in connection with alleged defects in the construction and renovation of the building located at 443 Greenwich Street in Manhattan (the "Premises") on December 10, 2021 (the "Main Action"). On July 20, 2023, Plaintiff filed an Amended Summons and Complaint against the Sponsor Defendants which includes additional claims of fraudulent conveyance and added allegations to its existing specific performance claim against the Sponsor Defendants (NYSCEF 73, 75).

The Third-Party Action was filed on September 12, 2023, and all third-party defendants were served in September and October 2023 (*see* NYSCEF 161 to 171, and 173 to 194). Answers were filed by the Movants between October 2023 and January 2024.

On October 31, 2023, the parties to the main action and the third-party defendants appeared for oral argument in connection with Sponsor Defendants' motion to dismiss and strike, and Plaintiff's motion to compel further discovery. Following oral argument, a conference was held during which the Court directed all parties, including the third-party defendants, to submit a discovery scheduling order and notified the third-party defendants that they would need to "catch up" (*see* NYSCEF 249).

On November 14, 2023, the Court signed a proposed discovery scheduling order which, among other things, directed Sponsor Defendants to provide additional ESI by December 15, 2023, and to respond to all third-party defendants' discovery demands and the Avery Defendants' discovery demands by January 26, 2024 (*see* NYSCEF 230).

On April 8, 2024, following a telephonic conference on April 4, 2024, the parties submitted a revised proposed scheduling order (*see* NYSCEF 498). As set forth therein, most parties stipulated and agreed that all discovery demands would be responded to by May 15, 2024, and that depositions would commence on or after May 29, 2024. Third-party defendant Horsepower submitted a letter to the Court advising of its objections to the proposed discovery scheduling order and notifying the Court and all parties of its intention to move for severance of the Third-Party Action (*see* NYSCEF 500).

On April 12, 2024, the Court entered an Order granting the parties' proposed discovery scheduling order submitted on April 8, 2024, and ordering any and all third-party defendants who may seek to sever the Third-Party Action to file such motion(s) on or before April 26, 2024 (*see* NYSCEF 506). The Movants are 8 out of the 18 third-party defendants.

DISCUSSION

“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” (CPLR 603). CPLR 1010 provides, in relevant part, “[t]he court may ... order a separate trial of the third-party claim or of any separate issue thereof, or make such other order as may be just. In exercising its discretion, the court shall consider whether the controversy between the third-party plaintiff and the third-party defendant will unduly delay the determination of the main action or prejudice the substantial rights of any party” (CPLR 1010). “Although it is within a trial court's discretion to

grant a severance, this discretion should be exercised sparingly” (*Shanley v Callanan Indus., Inc.*, 54 NY2d 52, 57 [1981]). Generally, “[s]everance is inappropriate where ... there are common factual and legal issues involved in the action and the third-party action, and the interests of judicial economy and consistency of verdicts will be served by having a single trial” (*Sumi Chuang Yeh v Leonardo*, 134 AD3d 695, 696 [2d Dept 2015], though exceptions may be made if proceeding as a single action would be prejudicial (*Admiral Indemn. Co. v Popular Plumbing & Heating Corp.*, 127 AD3d 419 [1st Dept 2015] [finding severance of the third-party action proper because while the main action was trial-ready, there was still outstanding discovery in the third-party action, and the third-party defendant would be precluded from conducting meaningful discovery or from making dispositive motions]).

Here, the Movants do not dispute that the main action and Third-Party Action arise out of the same factual and legal issues, and the Court does not believe severance is necessary to avoid prejudicing the Movants’ rights with respect to discovery. To the extent the Movants need more time to review the discovery previously exchanged, exchange their own requests, or prepare for depositions, the Court will consider reasonable proposals to adjust the discovery schedule if needed. The Court expects that all parties will work together in good faith to avoid inefficiency.

The parties are directed to submit a revised discovery schedule consistent with the above within seven (7) days of the date of this Order.

Accordingly, it is

ORDERED that third-party defendant Heritage Mechanical Services, Inc.’s motion to sever (Mot. Seq. 009) is **DENIED**; it is further

ORDERED that third-party defendant Horsepower Electric and Maintenance Corp.’s motion to sever (Mot. Seq. 010) is **DENIED**; it is further

ORDERED that third-party defendant Urban-Suburban Recreation, Inc. d/b/a U.S. Recreation, Inc.'s motion to sever (Mot. Seq. 011) is **DENIED**; it is further

ORDERED that third-party defendant Cadco Sales Corp., d/b/a Christie Overhead Doors, LLC & Diamond Door's motion to sever (Mot. Seq. 012) is **DENIED**; it is further

ORDERED that third-party defendant KSW Mechanical Services, Inc.'s motion to sever (Mot. Seq. 013) is **DENIED**; it is further

ORDERED that third-party defendant Cosentini Associates 2 LLC D/B/A Tech Engineers, Architects & Landscape Architects, P.C.'s motion to sever (Mot. Seq. 014) is **DENIED**; it is further

ORDERED that third-party defendant Rockaway Contracting Corp.'s motion to sever (Mot. Seq. 015) is **DENIED**; it is further

ORDERED that third-party defendant Unique Roofing Of New York, Inc.'s motion to sever (Mot. Seq. 016) is **DENIED**; it is further

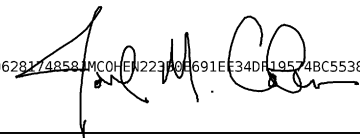
ORDERED that third-party defendant Direct Flooring, Inc.'s motion to sever (Mot. Seq. 017) is **DENIED**; it is further

ORDERED that third-party defendant Demar Plumbing Corp.'s motion to sever (Mot. Seq. 018) is **DENIED**; it is further

ORDERED that the parties are directed to submit a revised discovery schedule consistent with the above within seven (7) days of the date of this Order.

This constitutes the Decision and Order of the Court.

20240628174858 JMC0HEN22380E691EE34DF19574BC5538DA02AD



JOEL M. COHEN, J.S.C.

6/28/2024

DATE

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