

Ordonez v 118 Equities, LLC

2024 NY Slip Op 34797(U)

July 24, 2024

Supreme Court, Queens County

Docket Number: Index No. 715773/2019

Judge: Phillip Hom

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. PHILLIP HOM PART 14
Justice

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CRISTHIAN ORDONEZ,
Plaintiff,

- v -

118 EQUITIES, LLC, ROSA 118 MANAGER LLC, KYROUS
REALTY GROUP INC., K&R REALTY MANAGEMENT INC.,
MAXWELL-KATES, INC., ROSA PARKS CONDOMINIUM,
Defendants.

-----X

MAXWELL-KATES, INC., ROSA PARKS CONDOMINIUM,
Third-Party Plaintiffs,

-against-

CANIDO BASONAS CONSTRUCTION SERVICES, LLC, AND
CANIDO BASONAS CONSTRUCTION CORP.,
Third-Party Defendants.

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CANIDO BASONAS CONSTRUCTION SERVICES, LLC, AND
CANIDO BASONAS CONSTRUCTION CORP.,
Second Third-Party Plaintiffs,

-against-

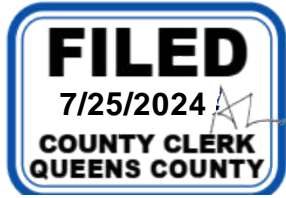
DVG RESTORATION CORP.,
Second Third-Party Defendant.

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INDEX NO. 715773/2019
MOTION DATE 03/14/2024
MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

Third-Party
Index No.



Second Third-Party
Index No.

-----X
MAXWELL-KATES, INC., AND ROSA PARKS
CONDOMINIUM.,

Third Third-Party Plaintiffs,

Third Third-Party

-against-

Index No.

DVG RESTORATION CORP.,

Third Third-Party Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 138, 139, 140, 141, 142, 143, 144, 145

were read on this motion to/for

SEVER/DISCOVERY

Upon the foregoing papers, it is ordered that the motions are determined as follows:

Plaintiff Cristhian Ordonez (“Plaintiff”) commenced this action against defendants 118 Equities, LLC, Rosa 118 Manager LLC, Kyrous Realty Group, Inc., K&R Realty Management Inc., Maxwell-Kates, Inc. (“Maxwell-Kates”), and Rosa Parks Condominium (“Rosa Parks”), to recover for work-related injuries he allegedly sustained on July 11, 2019. Plaintiff’s complaint asserts causes of action predicated on alleged violations of Labor Law §§ 200, 240 (1), 241 (6), and common-law negligence. Defendants/third third-party plaintiffs Maxwell-Kates and Rosa Parks (collectively “defendants/third third-party plaintiffs”) served an answer (EF 4).

Defendants/third third-party plaintiffs commenced a third-party action against third-party defendants Canido Basonas Construction Services, LLC, and Canido Basonas Construction Corp. (“Canido”) (EF 7). Thereafter, defendants/third third-party plaintiffs filed a supplemental summons and amended third-party complaint (EF 12). Canido served an answer to the third-party action (EF 19). This third-party action was ultimately discontinued (EF 63).

Canido commenced a second third-party action against second/third third-party defendant DVG Restoration Corp. (“DVG”), asserting claims for contractual indemnification, common-law indemnification, contribution, and breach of contract (EF 23). DVG failed to answer and/or otherwise appear in the second third-party action. Canido moved (Seq. No. 1) for a default judgment against DVG in the second third-party action. DVG was served with the notice of motion; however, DVG did not oppose the motion. In an order, dated January 13, 2023, and entered January 17, 2023, this Court denied same without prejudice, as Canido failed to submit the agreement it seeks to enforce against DVG (EF 65).

Defendants/third third-party plaintiffs commenced a third third-party action against DVG, asserting claims for contractual indemnification, common-law indemnification, contribution, and breach of contract.

Now, DVG moves for an order, pursuant to CPLR 603, severing the third third-party action. Alternatively, DVG seeks an order vacating the note of issue and compelling the parties to respond to their November 2023 discovery demands. Plaintiff supports DVG's motion to sever the third third-party action; however, Plaintiff opposes DVG's alternate branch seeking to vacate the note of issue and to compel discovery. To the extent that defendants/third third-party plaintiffs oppose DVG's motion, their opposition papers are untimely (*see* CPLR 2214 [b]) and have therefore not been considered.

“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” (CPLR 603).

“The court may dismiss a third-party complaint without prejudice, 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” (*New York Schs. Ins. Reciprocal v Milburn Sales Co., Inc.*, 138 AD3d 940, 941 [2d Dept 2016], quoting *Shanley v Callanan Indus.*, 54 NY2d 52, 57 [1981]). “Severance is generally ‘inappropriate where the claims against the defendants involve common factual and legal issues, and the interests of judicial economy and consistency of verdicts will be served by having a single trial’” (*Barrett v New York City Health & Hosps. Corp.*, 150 AD3d 949, 951 [2d Dept 2017], quoting *New York Cent. Mut. Ins. Co. v McGee*, 87 AD3d 622, 624 [2d Dept 2011]).

Here, discovery is complete in the main action, and DVG failed to answer or otherwise appear in the second third-party action. The note of issue was filed on April 24, 2023 (EF 75). On November 20, 2023, after defendants/third third-party plaintiffs moved for a default judgment against DVG, DVG filed an answer to the third third-party action (EF 137). Discovery is still outstanding for the third third-party action.

The Court finds that further delay in the main action, commenced nearly five years ago, is not appropriate. However, to avoid prejudice to DVG on the third third-party claims asserted against it, DVG must be afforded a reasonable opportunity to conduct discovery (*see People's United Bank, N.A. v Hampton Mgt. Group, Inc.*, 221 AD3d 1030, 1031-32 [2d Dept 2023]; *Tank v Westchester County Health Care Corp.*, 189 AD3d 1640, 1641 [2d Dept 2020]). Given the circumstances, severing the third third-party action is appropriate.

In accordance with the foregoing, it is hereby **ORDERED** that the branch of DVG's motion to sever the third third-party action is granted; and it is further

ORDERED that the alternate branch of DVG's motion seeking to vacate the note of issue and to compel discovery, is denied; and it is further

ORDERED that the third third-party action commenced by defendants/third third-party plaintiffs Maxwell-Kates, Inc., and Rosa Parks Condominium against third third-party defendant

DVG Restoration Corp., is hereby severed and that the main action and the second third-party action are continued; and it is further

ORDERED that, upon service of a copy of this Order with Notice of Entry, the Queens County Clerk, is hereby directed to assign a new index number with respect to the severed third party action; and it is further

ORDERED that DVG shall serve a copy of this Order with Notice of Entry upon all parties and the Queens County Clerk, within twenty (20) days from the date of entry.

This constitutes the Decision and Order of this Court.

Dated: July 24, 2024



PHILLIP HOM, J.S.C.

