

Palacios v Ford Found.

2025 NY Slip Op 31239(U)

April 8, 2025

Supreme Court, New York County

Docket Number: Index No. 154644/2020

Judge: Sabrina Kraus

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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. SABRINA KRAUS

PART 57M

Justice

-----X

INDEX NO. 154644/2020

MILTON PALACIOS,

MOTION DATE 02/25/2025

Plaintiff,

MOTION SEQ. NO. 004

- v -

THE FORD FOUNDATION, HENEGAN CONSTRUCTION
CO., INC.,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

HENEGAN CONSTRUCTION CO., INC.

Third-Party
Index No. 595844/2020

Plaintiff,

-against-

STIRANO ELECTRIC CO., INC.

Defendant.

-----X

THE FORD FOUNDATION

Second Third-Party
Index No. 595999/2023

Plaintiff,

-against-

STIRANO ELECTRIC CO., INC.,

Defendant.

-----X

THE FORD FOUNDATION

Third Third-Party
Index No. 595151/2024

Plaintiff,

-against-

PREFERRED SPRINKLER AND MECHANICAL CORP.,

Defendant.

-----X

HENEGAN CONSTRUCTION CO., INC.

Fourth Third-Party

Index No. 595152/2024

Plaintiff,

-against-

PREFERRED SPRINKLER AND MECHANICAL CORP

Defendant.

-----X

HENEGAN CONSTRUCTION CO., INC.

Fifth Third-Party
Index No. 595153/2024

Plaintiff,

-against-

HARBOUR MECHANICAL CORPORATION

Defendant.

-----X

HENEGAN CONSTRUCTION CO., INC.

Sixth Third-Party
Index No. 595154/2024

Plaintiff,

-against-

PREFERRED MECHANICAL INC

Defendant.

-----X

HENEGAN CONSTRUCTION CO., INC.

Seventh Third-Party
Index No. 595827/2024

Plaintiff,

-against-

HARBOUR MECHANICAL CORPORATION

Defendant.

-----X

HENEGAN CONSTRUCTION CO., INC.

Eighth Third-Party
Index No. 595193/2025

Plaintiff,

-against-

THE PACE COMPANIES NEW YORK, INC.,

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 004) 129, 130, 131, 132, 133, 134, 135, 136, 137, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149

were read on this motion to/for

SEVER

Plaintiff commenced this action seeking damages for personal injuries sustained when plaintiff tripped and fell on construction debris at construction site while working as an electrician installing a light fixture, on July 18, 2018.

Initially, Defendants Henegan (Henegan) and The Ford Foundation (Ford) impleaded the plaintiff's employer, Striano Electric Co., Inc.(Striano), on October 14, 2020, based on contractual indemnity claims.

In January 2024 counsel for Henegan/Ford filed an additional five Third-Party Actions in an attempt to identify which of its clients' sub-contractors may have left the debris on which the plaintiff tripped and was injured.

Most recently, in February 2025, Henegan commenced an eighth Third Party Action as against The PACE Companies New York, Inc (PACE). PACE has yet to appear and answer.

On March 27, 2025, plaintiff moved pursuant to CPLR §603 to sever the action as against the new third party PACE. Ford filed opposition and the motion was submitted.

Plaintiff asserts that the addition of the newest third party will cause inordinate delay and severely prejudice plaintiff in moving forward. Plaintiff points out that discovery in this action is nearly complete as plaintiff has been deposed, appearing for deposition testimony three (3) times, the deposition of Henegan was held and the parties have reserved their rights to depose Ford. The deposition of Preferred is scheduled to continue on May 8, 2025 and the depositions of Striano and Harbour Mechanical are scheduled for April 9, 2025. Plaintiff argues that the addition of another third party will undoubtable require all completed depositions and discovery

to be redone. Plaintiff further points out that there have been at least six prior court orders after discovery conferences in order to get these depositions scheduled and held.

In opposition, Henegan argues that PACE is a proper and necessary party and states that they were not previously brought into the action because their role as a subcontractor was only discovered during the deposition of Paulinus Bryce an employee of Henegan. Henegan argues that discovery is not close to completion and that only 2 witnesses have been deposed and that new depositions may not even be necessary.

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. The court may order the trial of any claim or issue prior to the trial of the others.”

The determination as to whether to order severance is a matter of judicial discretion (*see Global Imports Outlet, Inc. v Signature Group, LLC*, 85 AD3d 662, 662 [1st Dept 2011]; *Miller v Howard*, 137 AD3d 1698, 1699 [4th Dept 2016]; *Finning v Niagara Mohawk Power Corp.*, 281 AD2d 844, 844 [3d Dept 2001]). Discretion to order a severance should be exercised "sparingly" (*Shanley v. Callanan Indus.*, 54 NY2d 52, 57 [1981]).

The court agrees with plaintiff that the addition of a new party at this point will cause a further delay it what has already been a prolonged period of discovery. This litigation is nearly five years old, and it was only at the deposition of its own employee that Henegan identified yet another sub-contractor. This information was within Henegan's control since the inception of the action and plaintiff should not be prejudiced for Henegan's failure to identify this party sooner.

WHEREFORE, it is hereby

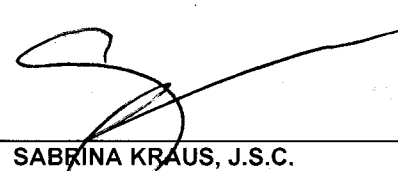
ORDERED plaintiff's motion to sever the eighth third party action as against The PACE Companies of New York, Inc, is granted; and it is further

ORDERED that the action is severed as to defendant The PACE Companies of New York, Inc, and is continued as to the remaining defendants; and it is further

ORDERED that movant is directed to serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office within ten days from entry and the Clerk shall mark the action severed as to defendant The PACE Companies of New York, Inc.; and it is further

ORDERED that such service upon 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)].

This constitutes the decision and order of the court.

<u>4/8/2025</u> DATE	 SABRINA KRAUS, 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	<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE