

Santiago v BP 399 Park Ave. LLC

2025 NY Slip Op 31853(U)

May 22, 2025

Supreme Court, New York County

Docket Number: Index No. 159684/2021

Judge: Mary V. Rosado

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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. MARY V. ROSADO

PART 33M

Justice

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JUSTO SANTIAGO,

Plaintiff,

- v -

BP 399 PARK AVENUE LLC, INTEGRATED HOLDING
GROUP LP, STRUCTURE TONE LLC, ARI PRODUCTS
INC., AND ARI PRODUCTS, INC.

Defendant.

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BP 399 PARK AVENUE LLC, INTEGRATED HOLDING
GROUP LP, STRUCTURE TONE LLC, and
ARI PRODUCTS, INC.

Third-Party Plaintiffs

-against-

DONALDSON INTERIORS, INC.

Third-Party Defendant.

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DONALDSON INTERIORS, INC.

Second Third-Party Plaintiff

-against-

CERTIFIED MOVING & STORAGE CO., LLC,
ATLANTIC EXTERIOR WALL SYSTEMS, LLC
INTERIOR DESIGN FLOORING CORPORATION,
CONSOLIDATED FLOORING, LLC, ATLAS-ACON ELECTRIC
SERVICE CORP. AND UNI-TEL GROUP LIMITED LIABILITY
COMPANY

Second Third-Party Defendants

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INDEX NO. 159684/2021
MOTION DATE 12/23/2024
MOTION SEQ. NO. 012

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595091/2023

Second Third-Party
Index No. 596038/2024

The following e-filed documents, listed by NYSCEF document number (Motion 012) 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 537, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 567, 568, 573, 574, 575, 578, 579, 581

were read on this motion to/for SEVER ACTION.

Upon the foregoing documents, and after a final submission date of April 22, 2025, Plaintiff's motion seeking to sever the first and second third-party complaints against Third-Party Defendant/Second Third-Party Plaintiff Donaldson Interiors, Inc., ("Donaldson") and Second Third-Party Defendants Certified Moving & Storage Co., LLC, Atlantic Exterior Wall Systems, LLC, Interior Design Flooring Corporation, Consolidated Flooring, LLC, Atlas-Acon Electric Service Corp. and Uni-Tel Group Limited Liability Company (collectively "Second Third-Party Defendants") is granted in part and denied in part. Donaldson's cross motion to vacate the note of issue, seeking a stay, seeking sanctions against Plaintiff and Defendants/Third-Party Plaintiff, dismissing Plaintiff and Defendants/Third-Party Plaintiff's Complaints for alleged failure to provide discovery, and seeking renewal of this Court's prior orders denying Donaldson's discovery motions is denied.

I. Background

This is a labor law case which has been pending since October of 2021. The note of issue was filed on October 27, 2023, after Donaldson, who claimed they needed more discovery, was directed to submit an affirmation outlining the reasons for a discovery extension but failed to do so. Donaldson's motion to vacate the note of issue was denied, and limited post note of issue discovery was ordered. Donaldson's subsequent motions to compel and to reargue were all denied or resolved via conference. One year after the note of issue was filed, and after multiple orders which denied motions to vacate the note of issue and ordered limited post note of issue discovery, Donaldson filed a second third-party complaint naming six new corporate defendants. Plaintiff now seeks to sever the first and second third-party complaints. He argues he is prepared to go to trial but will be significantly prejudiced by six new parties appearing over a year after the note of issue was filed. Donaldson opposes and files a cross motion seeking a litany of other relief. Second

third-party defendants Atlas-Acon Electric Service Corp., Interior Design Flooring Corporation and Atlantic Exterior Wall Systems LLC join in Donaldson's opposition. Defendants/Third-Party Plaintiffs oppose Donaldson's cross motion to the extent Donaldson seeks to impose costs and sanctions against them.

II. Discussion

A. Plaintiff's Motion to Sever

The Court grants in part and denies in part Plaintiff's motion to sever. The Court finds there is no need to sever the first Third-Party Complaint naming Donaldson as a Third-Party Defendant, as Donaldson was impleaded prior to the note of issue being filed and has been a party present at multiple discovery conferences and subject to multiple case management orders. However, the Court finds there is good cause to sever the second Third-Party Complaint.

The record reflects that Donaldson was dilatory in pursuing discovery, submitting the requested affirmation to obtain a note of issue extension, and was very late in commencing its second third-party action (*see, e.g. Maron v Magnetic Const. Group Corp.*, 128 AD3d 426, 427 [1st Dept 2015]). The note of issue was filed in October of 2023, yet Donaldson waited until October 16, 2024, to file the Second Third-Party Complaint (NYSCEF Doc. 464). Donaldson fails to provide any compelling excuse as to why it waited so long, and although Donaldson claims the six new parties are intertwined with the facts of this case, this argument is made in only the most conclusory fashion. While Donaldson states it learned of the existence of these six newly impleaded parties after a deposition from a representative of Defendants/Third-Party Plaintiffs, this is severely undercut by the fact that Donaldson is suing the Second-Third Party Plaintiffs for contractual indemnification and breach of contract for failure to procure insurance. These claims require the existence of contracts between Donaldson and the Second-Third Party Defendants

indicating Donaldson is in possession of contracts which should have given Donaldson knowledge these parties exist and were present at the worksite (*see* NYSCEF Doc. 529). The Court finds it would be unjust to delay this case by another year or two based on the circumstances presented (*see also Admiral Indem. Co. v Popular Plumbing & Heating Corp.*, 127 AD3d 419 [1st Dept 2015]).

Moreover, besides prejudice faced by Plaintiff and Defendants/Third-Party Plaintiffs, absent severance the newly impleaded parties are prejudiced because the note of issue has been filed and the parties were granted to conduct very limited post note of issue discovery. According to multiple case management orders, the post note of issue discovery is supposed to be complete (*WVH Hous. Dev. Fund Corp. v Brooklyn Insulation & Soundproofing, Inc.*, 193 AD3d 523, 523-34 [1st Dept 2021]). And even assuming, *arguendo*, that the newly impleaded second third-party defendants are connected to Plaintiff's accident, the second third-party complaint is related to contribution, indemnification, and additional insurance causes of action, and thus involve disparate issues of law – “there is no possibility of inconsistent verdicts since the [Second Third-Party Defendants] liability is contingent upon a finding that [Donaldson] is liable in the main action (*Admiral Indem. Co. v Popular Plumbing & Heating Corp.*, 127 AD3d 419 [1st Dept 2015] citing *Torres v Visto Realty Corp.*, 106 AD3d 645 [1st Dept 2013]). Therefore, Plaintiff's motion is granted as to the Second Third-Party Complaint (*see also Lopez v Halletts Astoria LLC*, 205 AD3d 573, 575 [1st Dept 2022]).

B. Donaldson's Cross Motion

Donaldson's cross motion is denied in its entirety. As explained in the previous section, it would be unduly prejudicial to all parties to allow Donaldson's Second Third-Party Complaint to remain consolidated with this action, therefore this branch of the motion is denied. Moreover, as

explained in this Decision and Order, and at multiple discovery conferences, in multiple discovery conference orders, and in multiple decisions denying Donaldson's numerous discovery motions, there is no basis to vacate the note of issue. This is especially so because the reason the note of issue date was not extended was due to Donaldson's failure to file an affirmation explaining the need for an extension, even though they were directed specifically by the Court to do so (*see* NYSCEF Doc. 88). Moreover, Donaldson has been given numerous opportunities, both pre-note of issue and now post-note of issue, to obtain the discovery it seeks. At this point, Donaldson's actions to date seem to seek only to delay and to derail Plaintiff's case from proceeding to trial. Therefore, the branch of the motion seeking to vacate the note of issue is denied. The branch of Donaldson's motion which seeks to dismiss Plaintiff's Complaint and Defendants/Third-Party Plaintiff's Third-Party Complaint for failure to provide discovery is denied for multiple reasons – including failing to attach an affirmation of good faith in compliance with 22 NYCRR § 202.20-f and 22 NYCRR § 202.7(c).

The branch of Donaldson's motion which seeks to renew and to reargue the denial of its multiple prior discovery motions is denied as there is no basis to grant leave to renew or to reargue. The branch of Donaldson's motion which seeks a stay of all proceedings pending the completion of discovery in the Second Third-Party action is denied – Donaldson cannot hijack the resolution of this action due to its own delay in commencing its second Third-Party Action, especially where Donaldson has provided no excuse for its delay, and the record reflects that Donaldson relies on speculation to tie in the six newly impleaded second third-party defendants to Plaintiff's accident. Finally, the branches of Donaldson's motion which seeks sanctions against Plaintiff's and Defendants/Third-Party Plaintiffs' law firms is denied – there is no basis for the imposition of

sanctions against these parties. The Court cautions Donaldson from engaging in motion practice in the way it has in this motion and in prior motions or it may be subject to sanctions in the future.

Accordingly, it is hereby,

ORDERED that Plaintiff's motion to sever the Third-Party Complaint is denied; and it is further

ORDERED that Plaintiff's motion to sever the Second Third-Party Complaint is granted, and the Second Third-Party Action bearing Index No. 596038/2024 is severed from the main action bearing Index No. 159684/2021 and the Third-Party Action bearing index No. 595091/2023; and it is further

ORDERED that within ten days of entry, Plaintiff shall serve a copy of this order with notice of entry on the Clerk of this Court (60 Centre Street, Room 141B); and it is further

ORDERED that Plaintiff shall serve a copy of this Decision and Order with notice of entry on all parties in this action via NYSCEF, and shall serve notice of entry on the office of the General Clerk 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/supctmanh), and it is further

ORDERED that the Clerk of this Court, upon service of a copy of this order with notice of entry, shall sever the Second Third-Party Action bearing Index No. 596038/2024 from the main action bearing Index No. 159684/2021 and the Third-Party Action bearing index No. 595091/2023, and the Clerk of the Court shall record such action in the Clerk's records; and it is further

ORDERED that the Clerk of this Court shall amend the caption to remove the Second Third-Party Action; and it is further

ORDERED that Third-Party Defendant/Second Third-Party Plaintiff Interiors, Inc.'s cross motion is denied in its entirety; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF; and it is further

ORDERED that the remaining parties shall appear for a status conference in 60 Centre Street, Room 442, on July 16, 2025 at 9:30 a.m.

This constitutes the Decision and Order of the Court.

5/22/2025
DATE

Mary V Rosado, JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<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