

**Bassan v Pelas Realty Corp.**

2025 NY Slip Op 32678(U)

July 31, 2025

Supreme Court, New York County

Docket Number: Index No. 150311/2017

Judge: Judy H. Kim

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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. JUDY H. KIM PART 04**

*Justice*

-----X

BETHY BASSAN,

Plaintiff,

- v -

PELAS REALTY CORP.,

Defendant.

-----X

PELAS REALTY CORP.,

Third-Party Plaintiff,

-against-

ANDRESITO PACIS, M.D., ADVANTAGE CARE PHYSICIANS,  
LENOX HILL RADIOLOGY,

Third-Party Defendants.

-----X

INDEX NO. 150311/2017  
MOTION DATE 06/13/2025  
MOTION SEQ. NO. 004

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595474/2025

The following e-filed documents, listed by NYSCEF document number (Motion 004) 87, 88, 89, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 116, 117, 118, 119, 120, 121 were read on this motion to SEVER ACTION.

Upon the foregoing documents, plaintiff’s motion to sever the third-party action from this action is granted.

Plaintiff commenced this negligence action on January 10, 2017, alleging that she was injured on January 23, 2015, after falling on the sidewalk located at 141 East 96th Street, New York, New York (the “Premises”), due to the negligence of the defendant Pelas Realty Corp. (NYSCEF Doc No. 1, complaint). Plaintiff filed the note of issue on February 7, 2020 (NYSCEF Doc No. 44).

On May 9, 2025, defendant initiated a third-party action for contribution against Andresito Pacis, M.D., Advantage Care and Physicians P.C. and Lenox Hill Radiology, based on allegations that the third-party defendants did not provide plaintiff with proper medical diagnosis and treatment of any injuries sustained after her fall on January 23, 2015, exacerbating same (NYSCEF Doc No. 81).

Plaintiff now moves to sever the third-party action, on the grounds that the third-party action was commenced five years after the note of issue was filed and discovery in the third-party action will unduly delay the trial of this eight-year-old action, prejudicing plaintiff. Third-party defendant Advantage Care Physicians P.C. “cross-moves” in support of plaintiff’s motion to sever but requests, in the alternative, that should severance be denied the Court vacate the note of issue.

Defendant opposes the motion, asserting that they commenced the third-party action as soon as they received relevant medical records, in April 2025, and arguing that the legal issues in the main action and third-party action are so intertwined—as the claims presented in the third-party action are critical to their damages defenses in the first-party action—as to make separate trials impractical and prejudicial to both defendant and the third-party defendants.

### DISCUSSION

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...” (CPLR 603). CPLR 1010, which applies specifically to third-party actions, provides that

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).

Plaintiff’s motion is granted. Severance is appropriate where, as here a third-party action (filed well after the note of issue) involving claims that the injuries alleged by plaintiff in the first-party action were aggravated by the third-party defendant’s medical malpractice, since further delay of the first-party action for discovery in the third-party action would “inevitably” prejudice plaintiff (*see Cortez v New York City Hous. Auth.*, 163 AD2d 13 [1st Dept 1990]; *see also Gardner v City of New York*, 102 AD2d 800, 800 [1st Dept 1984]).

Accordingly, it is

**ORDERED** that plaintiff’s motion is granted and the third-party action is severed from this action; and it is further

**ORDERED** that the Clerk of the Court is directed to sever the third-party action from the main action, and the third-party action shall proceed as a separate action and the Clerk of the Court shall issue an index number to the severed third-party action upon the payment of the appropriate fees by Pelas Realty Corp.; and it is further

**ORDERED** that the caption of this severed action shall read

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY  
-----x  
PELAS REALTY CORP,

Plaintiff,

-against-

ANDRESITO PACIS, M.D.,  
ADVANTAGE CARE PHYSICIANS, and  
LENOX HILL RADIOLOGY,  
Defendants.  
-----x

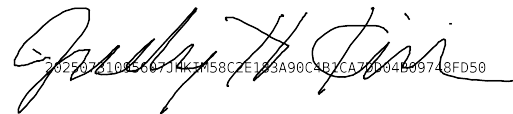
and it is further

**ORDERED** that plaintiff shall, within ten days of the date of this decision and order, serve a copy of same with notice of entry upon defendants and third-party defendant as well as the Clerk

of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119) who shall mark their records to reflect the severance; and it is further

**ORDERED** that such service upon the Clerk of the Court 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 “efiling” page on this court’s website).

This constitutes the decision and order of this Court.



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7/31/2025

DATE

HON. JUDY H. KIM, J.S.C.

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