

Navarro v Harlem Community Dev. Corp.

2025 NY Slip Op 32837(U)

July 25, 2025

Supreme Court, New York County

Docket Number: Index No. 160986/2019

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

ANTONIO HAIDE PELAEZ NAVARRO,

Plaintiff,

- v -

HARLEM COMMUNITY DEVELOPMENT CORPORATION,
233 WEST 125TH STREET DANFORTH, LLC, VICTORIA
THEATER HOUSING DEVELOPMENT FUND CORP., AS
NOMINEE FOR AND ON BEHALF OF 233 WEST 125TH
STREET DANFORTH, LLC., FLINTLOCK CONSTRUCTION
SERVICES, LLC.,

Defendants.

-----X

HARLEM COMMUNITY DEVELOPMENT CORPORATION,
233 WEST 125TH STREET DANFORTH, LLC, VICTORIA
THEATER HOUSING DEVELOPMENT FUND CORP., AS
NOMINEE FOR AND ON BEHALF OF 233 WEST 125TH
STREET DANFORTH, LLC., FLINTLOCK CONSTRUCTION
SERVICES, LLC,

Third-Party Plaintiffs,

-against-

MENOTTI ENTERPRISE LLC,

Third-Party Defendant.

-----X

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595769/2021

The following e-filed documents, listed by NYSCEF document number (Motion 004) 91, 92, 93, 94, 95, 96, 97, 99, 100, 101, 102, 103, 104, 105, 106

were read on this motion to/for SEVER ACTION.

On November 12, 2019, plaintiff commenced this personal injury action to recover for injuries allegedly sustained on February 22, 2019, when he fell while working at the premises located at 233-235 West 125th Street, New York, NY (NYSCEF Doc No. 14, complaint at 7). On

December 12, 2020, plaintiff amended his complaint to add Menotti Enterprise LLC (“Menotti”) as a defendant (NYSCEF Doc No. 14, amended complaint).

On August 19, 2021, Harlem Community Development Corporation, 233 West 125th Street Danforth, LLC, Victoria Theater Housing Development Fund Corp, and Flintlock Construction Services, LLC (collectively, “Defendants/Third-Party Plaintiffs”) commenced a third-party action against Menotti, asserting claims for indemnification and contribution (NYSCEF Doc No. 31, third-party complaint). On November 16, 2022, Menotti interposed an answer to the third-party complaint and then, on June 5, 2023, filed a second answer to the third-party complaint asserting counterclaims for indemnification (NYSCEF Doc No. 77).

On April 19, 2024, Menotti filed for Chapter 11 Bankruptcy with the United States Bankruptcy Court for the Southern District of New York (NYSCEF Doc Nos. 88 and 118, Notice of Bankruptcy) and this matter was stayed, pursuant to 11 USC §362(a). On June 16, 2025, plaintiff discontinued his claim as against Menotti (NYSCEF Doc No. 119, notice of partial discontinuance).

Plaintiff now moves, pursuant to CPLR 603 and 1010, to sever the third-party action,¹ arguing that severance is warranted “so as to not delay litigation against the remaining, non-bankrupt defendants” (NYSCEF Doc No. 97, affirmation in support at 5-6). Defendants/Third-Party Plaintiffs oppose the motion, arguing that plaintiff has failed to establish that severance is appropriate, and that severance would prejudice them by requiring them to defend plaintiff’s claims in the absence of Menotti, the party they allege to be the party responsible for plaintiff’s injury, and waste judicial resources by requiring two trials with virtually identical factual issues and risking inconsistent verdicts (NYSCEF Doc No. 99, affirmation in opp at 3, 5-6). Finally,

¹ While plaintiff initially moved to sever his direct claims against Menotti, he subsequently discontinued these claims.

Defendants/Third-Party Plaintiffs argue that the case is not ready for trial, as discovery is incomplete.

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 “[t]he court may...order a separate trial of the third-party claims...[and] in exercising its discretion, the court shall consider whether the controversy between the third-party plaintiff and the third-party defendants will unduly delay the determination of the main action or prejudice the rights of any party” (CPLR 1010).

Here, as plaintiff has been delayed for more than one year in litigating its action and has now discontinued his direct claim against Menotti, severance of the third-party action is appropriate (*see Weyrauch v City of NY*, 2018 NY Slip Op 30279[U] [Sup Ct, NY County 2018]). To the extent defendants are found to be liable in this action, they retain their indemnification and contribution claims against Menotti, which they may pursue in the now-severed action after the conclusion of Menotti’s bankruptcy proceeding.

Accordingly, it is

ORDERED that plaintiff’s motion to sever is granted; and it is further

ORDERED that the third-party complaint of Harlem Community Development Corporation, 233 West 125th Street Danforth, LLC, Victoria Theater Housing Development Fund Corp., as nominee for and on behalf of 233 West 125th Street Danforth, LLC, and Flintlock Construction Services, LLC (Third-Party Index No. 595769/2021) is severed from this action (Index No. 160986/2019); and it is further

ORDERED that upon receipt of a copy of this decision with written notice of its entry, the Clerk of the Court shall mark his records to reflect the severance and shall assign a new index number to and create a separate file for the following caption, and that all papers filed in said action shall bear the following caption and the index number as assigned in accordance with the foregoing:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
-----X
HARLEM COMMUNITY DEVELOPMENT CORPORATION,
233 WEST 125TH STREET DANFORTH, LLC,
VICTORIA THEATER HOUSING DEVELOPMENT FUND CORP.,
AS NOMINEE FOR AND ON BEHALF OF
233 WEST 125TH STREET DANFORTH, LLC., and
FLINTLOCK CONSTRUCTION SERVICES, LLC,

Plaintiffs,

-against-

MENOTTI ENTERPRISE LLC,

Defendant.
-----X

and it is further

ORDERED that further proceedings in the now-severed action are stayed except for an application to vacate or modify said stay issued by the Bankruptcy Court in the proceeding known as *In re Menotti Enterprise LLC*, pending before the United States Bankruptcy Court for the Southern District of New York, Action No. 24-22242-SHL; and it is further

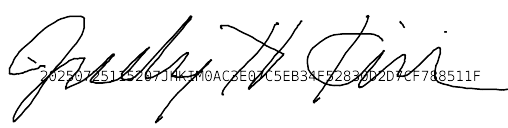
ORDERED that within ten days of entry, plaintiff shall serve a copy of this order with notice of entry on the Clerk of this Court (60 Centre Street, Room 141B) and the Trial Support Office (60 Centre Street, Room 158); and it is further

ORDERED that plaintiff such service shall be 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), and it is further

ORDERED that the Clerk of this Court shall amend the caption of this action to reflect the severance of the third-party action; and it is further

ORDERED that parties are to appear for a status conference in Part 4 (80 Centre Street, room 308) on October 9, 2025, at 9:30 a.m., as previously scheduled.

This constitutes the decision and order of the Court.



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7/25/2025
DATE

HON. JUDY H. KIM, 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"/>	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