

**Smith v APF 286 MAD LLC**

2025 NY Slip Op 34336(U)

November 14, 2025

Supreme Court, New York County

Docket Number: Index No. 151160/2022

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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ROBERT SMITH,

Plaintiff,

- v -

APF 286 MAD LLC, 286 MADISON ASSOCIATES LLC, GAN  
286 MADISON LLC, APF PROPERTIES LLC, CUSHMAN &  
WAKEFIELD, INC, S3 CAPITAL LLC,

Defendant.

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APF 286 MAD LLC, 286 MADISON ASSOCIATES LLC, GAN  
286 MADISON LLC, APF PROPERTIES LLC

Plaintiff,

-against-

FC BAYERN MUENCHEN LLC,

Defendant.

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INDEX NO. 151160/2022

MOTION DATE 09/11/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595631/2025

The following e-filed documents, listed by NYSCEF document number (Motion 001) 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84

were read on this motion to/for SEVER.

Upon the foregoing documents, and after a final submission date of September 29, 2025, Plaintiff Robert Smith’s (“Plaintiff”) motion to sever Defendants/third-Party Plaintiffs APF 286 MAD LLC, 286 Madison Associates LLC, GAN 286 Madison LLC, and APF Properties LLC’s (collectively “Third-Party Plaintiffs”) Third-Party Complaint asserted against Third-Party Defendant FC Bayern Muenchen LLC is granted.

This personal injury action was commenced on February 8, 2022. A preliminary conference was held on May 15, 2023 (NYSCEF Doc. 23), followed by compliance and status

conferences on August 9, 2023 (NYSCEF Doc. 24), November 8, 2023 (NYSCEF Doc. 28), February 14, 2024 (NYSCEF Doc. 29), April 17, 2024 (NYSCEF Doc. 31), July 24, 2024 (NYSCEF Doc. 35), October 9, 2024 (NYSCEF Doc. 36), December 11, 2024 (NYSCEF Doc. 39), February 5, 2025 (NYSCEF Doc. 42), and June 10, 2025 (NYSCEF Doc. 50). The Third-Party Complaint was not filed until July 1, 2025, after nearly three years of litigation (NYSCEF Doc. 51).

At the time the Third-Party Complaint was filed, the parties represented that all discovery was complete aside from a response owed from Defendants/Third-Party Plaintiffs to Defendant's notice to produce dated June 2, 2025, and a non-party deposition, which was to be held by July 1, 2025. The deadline to file the note of issue, which had been extended numerous times, was extended again to July 31, 2025 (NYSCEF Doc. 50).

Plaintiff now moves to sever the Third-Party Complaint, arguing the unjustified delay in filing the Third-Party Complaint will unduly prejudice him by delaying his ability to file the note of issue, as the Third-Party Defendant has indicated it will require depositions of the numerous named parties who have already been deposed, and further paper discovery. He also argues the Third-Party Complaint was filed in violation of the preliminary conference order which required impleader to take place within 60 days from the last party's deposition. Third-Party Plaintiffs oppose and argue that there is no prejudice to Plaintiff and severing would risk inconsistent verdicts.<sup>1</sup> Third-Party Defendant takes no position on the motion.

Plaintiff's motion is granted. Despite years of case management conferences, Third-Party Plaintiffs have proffered no reasonable excuse for their years-long delay in filing the Third-Party Action. Third-Party Plaintiffs clearly knew of Third-Party Defendant's existence and were in

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<sup>1</sup> The Third-Party Plaintiffs' opposition was also filed late, but in the interest of justice and resolving cases on the merits, the Court will consider it.

possession of a lease and lease amendments with indemnification and insurance provisions in it executed by Third-Party Plaintiffs and Third-Party Defendant since the inception of this lawsuit (NYSCEF Docs. 74 and 81). The unjustified delay in filing a Third-Party Complaint until the parties were at the very end of discovery is unduly prejudicial to Plaintiff in delaying his trial (*see, e.g. WVH Housing Dev. Fund Corp. v Brooklyn Insulation and Soundproofing, Inc.*, 193 AD3d 523, 523-24 [1st Dept 2021]; *Maron v Magnetic Const. Group Corp.*, 128 AD3d 426, 427 [1st Dept 2015]; *Torres v Cisto Realty Corp.*, 106 AD3d 645 [1st Dept 2013]). It also prejudices Third-Party Defendant, who was brought into this action after years of discovery (*Lopez v Halletts Astoria LLC*, 205 AD3d 573, 574 [1st Dept 2022]).

Nor is there any risk of inconsistent verdicts as Third-Party Defendant's liability is contingent on a finding of liability against Third Party Plaintiffs (*see also Admiral Indem. Co. v Popular Plumbing & Heating Corp.*, 127 AD3d 419 [1st Dept 2015]). Therefore, Plaintiff's motion to sever is granted.

Accordingly, it is hereby,

ORDERED that Plaintiff's motion to sever the Third-Party Complaint is granted, and the Third-Party Action bearing Index No. 595631/2025 is severed from the main action bearing Index No. 151160/2022; 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), 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 Third-Party Action bearing Index No. 595631/2025 from the main action bearing Index No. 151160/2022, 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 by removing the Third-Party Action bearing Index No. 595631/2025 from the caption; and it is further

ORDERED that all remaining discovery must be completed by January 30, 2026, which is also the date the note of issue must be filed by. If the note of issue is not filed by that date, Plaintiff and Defendants shall appear for an in-person status conference on February 11, 2025 at 9:30 a.m.

This constitutes the Decision and Order of the Court.

11/14/2025  
DATE

Mary V Rosado JSC  
HON. MARY V. ROSADO, 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