

Berlan v City of New York
2026 NY Slip Op 30209(U)
January 13, 2026
Supreme Court, New York County
Docket Number: Index No. 157586/2018
Judge: Ariel D. Chesler
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARIEL D. CHESLER PART 62M

Justice

-----X

LISA BERLAN,

Plaintiff,

- v -

CITY OF NEW YORK, CONSOLIDATED EDISON
COMPANY OF NEW YORK, INC.,

Defendant.

-----X

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Plaintiff,

-against-

Defendant.

-----X

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Plaintiff,

-against-

CITYWIDE PAVING INC

Defendant.

-----X

INDEX NO. 157586/2018
MOTION DATE 08/07/2025
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

Third-Party
Index No. 595481/2022

Second Third-Party
Index No. 595464/2025

The following e-filed documents, listed by NYSCEF document number (Motion 001) 68, 69, 70, 71, 72, 73, 74, 75, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92

were read on this motion to/for SEVER ACTION

Upon the foregoing documents, it is

In this proceeding, plaintiff, Lisa Berlan, moves for an Order pursuant to CPLR 603 and CPLR 1010, severing the third third-party action.

This action arises out of personal injuries allegedly sustained by plaintiff where plaintiff allegedly tripped and fell upon a defective manhole cover/grate located within the crosswalk of the intersection of Charles Street and Greenwich Avenue, New York, New York. This action was commenced by the filing of the Summons and Complaint on August 18, 2018. Defendant Consolidated Edison Company of New York (“Con Ed”) commenced an impleader action against its contractor Crown Castle Fiber LLC (“Crown Castle”) on June 14, 2022 (*see* NYSCEF Doc. No. 72). On March 4, 2024, third-party defendant Crown Castle commenced a second third-party action against Hylan Datacom & Electrical LLC (“Hylan”) (*see* NYSCEF Doc. No. 73). On May 7, 2025, Con Ed commenced another third-party action against its contractor Citywide Paving Inc. (“Citywide”) (*see* NYSCEF Doc. No. 74).

In support of the instant motion, plaintiff argues that to date, plaintiff has been deposed four times including a 50H Hearing and those transcripts were provided to Con Ed before it deposed the plaintiff on May 16, 2022. Plaintiff contends that Con Ed has been in the possession of all the information to timely commence a third-party action, especially against its own contractors. Plaintiff further argues that discovery between the defendants, third-party plaintiffs and third-party defendants, excluding Citywide, is complete. As such, plaintiff argues the failure of Con Ed to timely commence the “third third-party action” should not cause plaintiff to suffer a further delay of her day in court. Plaintiff attests that without a severance, she will be caused to suffer prejudice.

In opposition, third third-party defendant Citywide argues that plaintiff’s motion to sever should be denied. Citywide contends that regardless of the reasons for the delays in the commencement of the third third-party action, denial would not prejudice plaintiff as the case is not on the trial calendar and the parties can expeditiously complete discovery. In turn, Citywide

asserts that severance would preclude Citywide from obtaining all previously exchanged discovery, deposition transcripts, and other discovery which may be important to Citywide's defense. Citywide also notes that there are still depositions that have to take place, thus, the case is not close to being certified for trial and there is ample opportunity for Citywide to complete discovery in this case. Moreover, Citywide argues plaintiff failed to establish that prejudice due to delay outweighs the policy concerns of judicial economy and preventing different verdicts. Citywide also argues the claims arise out of the same set of facts and occurrence in the main action and involve the same questions of fact and law.

Defendant Con Ed also submits opposition. Con Ed argues that plaintiff's motion should be denied since the facts demonstrate that Citywide is a necessary party to this action. Con Ed notes that the delay was not deliberate or internal as Con Ed only became aware Citywide might be involved as a result of the deposition Hylan's witness on January 25, 2024. In addition, Con Ed argues that the Note of Issue has yet to be filed, so there will be ample time prior to this matter being scheduled for trial to maintain the new third third-party action with the main action and permit all outstanding discovery to be completed.

In opposition, second third-party defendant Hylan argues that it will be severely prejudiced if severance is granted as Hylan cannot appropriately advance its defenses if Citywide is severed from this action. Hylan further asserts that any slight delay in this litigation that may be caused by the appearance of the third third-party defendant is outweighed by the common and factual and legal issues present, and the interests of judicial economy.

Under CPLR 603, "[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 1010 provides “[t]he court may dismiss a third-party complaint, order a separate trial of the third-party claim or of any separate issue thereof, [and] [i]n 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.” “[S]everance is inappropriate absent a showing that a party’s substantial rights would otherwise be prejudiced” (*Rothstein v. Milleridge Inn, Inc.*, 251 AD2d 154, 155 [1st Dept 1998]). “To avoid the waste of judicial resources and the risk of inconsistent verdicts, it is preferable for related actions to be tried together...such as in a tort case where the issue is the respective liability of the defendant and the third-party defendant for the plaintiff’s injury” (*id.*).

As applied herein, the court declines to sever the third-party complaint from the main action because the claims involve common questions of fact regardless of the delay in commencing the third-party action (*Stark v. Greenberg, Dauber & Epstein*, 219 AD2d 571 [1st Dept 1995] [even though defendants should not have waited year and half to commence third-party action, this should not outweigh the consideration that the main action and third-party action involve common issues of law and fact and should proceed together]). In addition, the evidence does not suggest that the delay was intentional or deliberate (*Marbilla, LLC v. 143/145 Lexington LLC*, 116 AD3d 544, [1d Dept 2014] [“Defendant...provided a reasonable justification for bringing the third-party actions more than six years after the initial action was filed, i.e. that it was unaware of...potential liability until the deposition of a previously unavailable witness was taken”]; *cf. Skolnick v. Max Connor, LLC*, 89 AD3d 443, 444, [1st Dept 2011] [“Defendants/third-party plaintiffs delayed in bringing the third-party action until almost a year after the main action for personal injuries was commenced and months after the filing of the note of issue, despite being aware of a potential contractual indemnification claim against third-

party defendant”). The Court also notes that in the instant action, the note of issue has not yet been filed (*Range v. Trs. of Columbia Univ. in City of New York*, 150 A.D3d 515, 516 [1st Dept 2017] [“The motion court properly found that...substantial rights would not be prejudiced by its claimed lack of opportunity for meaningful discovery, in view of its ability to review existing discovery and obtain any required additional discovery ‘while this case makes its way up the trial calendar’”] [internal citations omitted]). Moreover, this matter will be placed on an expediated discovery schedule.

Accordingly, it is hereby

ORDERED, plaintiff’s motion pursuant to CPLR 603 and CPLR 1010 to sever the third third-party action is denied; and it is further

ORDERED, the parties shall schedule the exchange of discovery on an expediated basis at the next DCM conference scheduled for January 15, 2025.

This constitutes the Decision and Order of the Court.

**HON. ARIEL D. CHESLER
J.S.C.**



ARIEL D. CHESLER, J.S.C.

1/13/2026

DATE

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: