Cordova v ASN Westmont, LLC

2026 NY Slip Op 31441(U)

April 6, 2026

Supreme Court, Kings County

Docket Number: Index No. 512078/2021

Judge: Rupert V. Barry

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This opinion is uncorrected and not selected for official publication.

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At an IAS Term, Part 13, of the Supreme Court of the State of New York, held in and for the County of Kings, at the courthouse at 360 Adams Street, Brooklyn, NY on the 6th day of April 2026.

P R E S E N T:

HON. RUPERT V. BARRY, J.S.C.

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ANGEL CORDOVA,

Plaintiff,

-against-

ASN WESTMONT, LLC,

Defendant.

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ASN WESTMONT, LLC,

Third-Party Plaintiff,

-against-

FINEST WINDOW INC. and COLONY INSURANCE CO.,

Third-Party Defendants.

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ASN WESTMONT, LLC,

Second Third-Party Plaintiff,

-against-

GN ARCHITECTURAL METAL & GLASS INC. and

NORTHFIELD INSURANCE COMPANY,

Second Third-Party Defendant.

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Cal No.:21 (MSQ No.:3)

Cal No.:22 (MSQ No.:2)

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DECISION & ORDER

Recitation as required by CPLR 2219 (a), of the papers considered in the review of Third- Party Defendant COLONY INSURANCE CO. (hereafter "COLONY") motion for an order, pursuant to CPLR 603, severing the Third-Party Action against Colony from the remainder of this action (MSQ No.: 3) and the cross-motion of Second Third-Party Defendant NORTHFIELD INSURANCE COMPANY (hereafter "Northfield") for an order, pursuant to CPLR 603 and Rule 1010, severing the claims asserted against Northfield only by Second Third-Party Plaintiff ASN WESTMONT, LLC (hereafter "ASN") in its Second Third-Party Complaint (MSQ No.: 2): NYSCEF Doc. Nos.: 75- 79; 83-92; 96-106.

Upon due consideration of the papers filed in these matters, and after oral arguments, this Court's decision is as follows:

Factual Background

This action arises from an alleged accident suffered by Plaintiff on May 11, 2021, at 730 Columbus Avenue New York, New York. The property is owned by Defendant ASN WESTMONT LLC (hereafter "ASN"). Plaintiff alleges that he sustained personal injuries when he fell off a ladder while performing construction, renovation, demolition, painting, repair and/ or alterations at the site. Plaintiff further alleges that the accident and his resulting injuries were caused by Defendant ASN's negligence, including failing to provide a safe place to work; failure to provide safe ladders secured and/or braced to prevent him from falling; and provide proper safety devices. Plaintiff was employed as a laborer for Second- Third Party Defendant GN Architectural Metal & Glass Inc. (hereafter "GN").

Motion to Sever

a. Third-party Defendant COLONY

Defendant COLONY issued a commercial general liability policy to FINEST WINDOW INC. (hereafter "FINEST"), with effective coverage dates of December 6, 2020, to February 6,

2022. COLONY declined coverage to FINEST and thereafter advised ASN that no coverage would be available in connection with the underlying personal injury lawsuit. On March 13, 2023, ASN commenced a third-party action against Third-Party Defendants FINEST and COLONY. ASN asserts that Third- Party Defendant COLONY is obligated to defend and indemnify Third-Party Defendant FINEST pursuant to a commercial general liability insurance policy issued by COLONY to FINEST. Third-Party Plaintiff ASN also asserts that COLONY is obligated to defend and indemnify ASN pursuant to the same policy.

CPLR 603 permits a court to sever claims to avoid prejudice and for convenience. Whether a claim should be severed is a matter of judicial discretion (*Isidore Margel Trust Mitzi Zank Trustee v Mt. Hawley Ins. Co.*, 155 AD3d 618, 619 [2d Dept 2017]). This discretion "should be exercised sparingly" (*Shanley v Callanan Indus., Inc.*, 54 NY2d 52, 57 [1981]).

In reversing the trial court's decision to consolidate an insurance coverage claim and a medical malpractice claim, the Second Department held that the court improvidently consolidated the two (*Hershfeld v JM Woodworth Risk Retention Group, Inc.*, 164 AD3d 1423, 1424 [2d Dept 2018].) The *Hershfeld* court further held that it was "inherently prejudicial to insurers to have the issue of insurance coverage tried before the jury that considers the underlying liability claims, even where common questions of law and fact exist" (*id.* at 1425).

Accordingly, for the forgoing reasoning, it is

ORDERED that, Third-Party Defendant COLONY's motion to sever the Third-Party Action against it by Third-Party Plaintiff ASN (MSQ No.: 3) is **GRANTED.** It is further

ORDERED that, the cross-motion of Second-Third-Party Defendant NORTHFIELD to sever the Second Third-Party action against it by Second Third-Party Plaintiff ASN (MSQ No.: 2) is **GRANTED.** It is further

ORDERED that, all applications not specifically addressed herein are denied.

This constitutes the decision and order of this Court.

Dated: April 6, 2026

R. V. BARRY

HON. RUPERT V. BARRY, J.S.C.