Vega v 1407 Broadway LLC

2026 NY Slip Op 31518(U)

April 13, 2026

Supreme Court, New York County

Docket Number: Index No. 159627/2016

Judge: Hasa A. Kingo

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. HASA A. KINGO** **PART** **65M**

Justice

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RENE VEGA,

Plaintiff,

- v -

1407 BROADWAY LLC,THE SWEET CONSTRUCTION GROUP,

Defendant.

----------X

INDEX NO. 159627/2016

MOTION DATE N/A

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

THE SWEET CONSTRUCTION GROUP

Plaintiff,

-against-

CHELSEA CONSTRUCTION GROUP, LLC

Defendant.

----------X

Third-Party
Index No. 595204/2017

1407 BROADWAY LLC

Plaintiff,

-against-

CHELSEA CONSTRUCTION GROUP, LLC

Defendant.

----------X

Second Third-Party
Index No. 595724/2018

1407 BROADWAY LLC

Plaintiff,

-against-

CHELSEA CONSTRUCTION GROUP, LLC

Defendant.

----------X

Third Third-Party
Index No. 595131/2026

THE SWEET CONSTRUCTION GROUP

Fourth Third-Party

Index No. 595413/2026

Plaintiff,

-against-

CHELSEA CONSTRUCTION GROUP, LLC

Defendant.
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The following e-filed documents, listed by NYSCEF document number (Motion 004) 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186

were read on this motion to/for SEVER.

Chelsea Construction Group, LLC ("Chelesa") moves, pursuant to CPLR §§ 603 and 1010, for an order dismissing, or alternatively severing, the second third-party action commenced by defendant 1407 Broadway, LLC and the third third-party action commenced by defendant The Sweet Construction Group ("Sweet"). In the alternative, Chelsea seeks, pursuant to 22 NYCRR § 202.21(e), to vacate plaintiff's note of issue and certificate of readiness and strike the matter from the trial calendar; pursuant to CPLR § 2201, to stay the trial of the main action pending completion of discovery in the third-party actions; pursuant to CPLR § 3126, to compel further discovery; and pursuant to CPLR § 2004, to extend Chelsea's time to move for summary judgment.

For the reasons that follow, the motion is granted only to the extent that the second third-party action and the third third-party action are severed from the main action, and is otherwise denied.

BACKGROUND AND PROCEDURAL HISTORY

This is a Labor Law and negligence action arising out of an alleged construction accident that occurred on October 3, 2016, at premises located at 1407 Broadway, New York, New York. Plaintiff Rene Vega ("plaintiff") alleges that he fell from a ladder while performing overhead drywall installation work and sustained personal injuries. Plaintiff commenced the main action in November 2016 against the owner, 1407 Broadway, LLC ("1407 Broadway"), and the general contractor, Sweet.

The record reflects that Sweet commenced a third-party action against Chelsea in 2017, and that 1407 Broadway thereafter commenced a third-party action against Chelsea in 2018. Both of those earlier third-party actions were voluntarily discontinued. Plaintiff thereafter filed a note of issue and certificate of readiness in the main action, and the case proceeded through the ordinary pretrial course and ultimately reached the trial calendar. The present record reflects that the matter appeared in the Trial Scheduling Part in January 2026 and was again scheduled for jury selection on April 15, 2026.

Notwithstanding the lengthy pendency of the case and the prior, discontinued impleader efforts, 1407 Broadway did not recommence its claims against Chelsea until February 5, 2026, when it filed the second third-party summons and complaint, and Sweet did not commence its

present third third-party action against Chelsea until the end of March 2026, less than two weeks before the scheduled trial date. Chelsea asserts, without material contradiction, that its current counsel was retained only on March 31, 2026 and that, as of the filing of this motion, Chelsea had not been provided with the discovery necessary to defend itself in the newly revived third-party disputes. The claims asserted against Chelsea sound in contractual indemnification, common-law indemnification, contribution, and breach of contract for failure to procure insurance.

ARGUMENTS

Chelsea contends that dismissal is warranted under CPLR § 1010 because 1407 Broadway and Sweet waited until the eve of trial to recommence or commence third-party claims against Chelsea despite having known of the accident, plaintiff's claims, and Chelsea's alleged role for many years, and despite having previously impleaded Chelsea and then voluntarily discontinued those actions. Chelsea argues that the extraordinary delay has caused concrete prejudice because the main action is trial-ready, Chelsea has not participated in discovery, and the passage of nearly a decade since the accident threatens the availability of witnesses, project records, and other evidence necessary to defend the indemnification, contribution, and insurance-procurement claims. Chelsea further argues that, at a minimum, severance is required to protect plaintiff's long-awaited trial date and to avoid forcing Chelsea into an imminent trial without any meaningful opportunity for disclosure. Failing dismissal or severance, Chelsea seeks vacatur of the note of issue, a stay of the trial, compelled discovery, and an extension of its time to move for summary judgment.

Plaintiff opposes only those branches of the motion that seek to disturb the note of issue, reopen the main action for discovery, strike the case from the trial calendar, or stay the trial. Plaintiff takes no position on dismissal of the third-party actions and affirmatively does not oppose severance if severance is the mechanism by which plaintiff's trial date may be preserved. Plaintiff argues, in substance, that whatever disputes now exist among the owner, the general contractor, and Chelsea concerning indemnification, contribution, or insurance procurement do not justify derailing the trial of a case arising from a 2016 accident and pending since 2016. Plaintiff further notes that claims for contribution and indemnification generally do not mature until payment has been made, and therefore contends that the third-party disputes may proceed separately without prejudice to the main action.

Sweet opposes the motion and contends that its present impleader should not be viewed as a dilatory tactic warranting severance or dismissal. Sweet attributes the late filing of its new third-party action to a change in counsel and to newly focused reliance on the subcontract between Sweet and Chelsea as the basis for contractual indemnification and related relief. In substance, Sweet argues that the present assertion of those claims should not be foreclosed because current counsel reevaluated the file and determined that Chelsea should be brought back into the case.

1407 Broadway also opposes the motion in its entirety. It argues that the claims against Chelsea share common questions of law and fact with the main action and that New York law disfavors severance where related claims may be resolved in one proceeding. 1407 Broadway acknowledges the lateness of the present impleader, but argues that lateness alone does not justify severance because any prejudice to Chelsea can be addressed through expedited discovery and a

brief adjournment. 1407 Broadway further offers, as part of its explanation for the 2026 recommencement of its claims against Chelsea, the existence of disputes among its insurance carriers concerning coverage and defense obligations.

DISCUSSION

The court begins with the settled principle that severance is a matter committed to the court's sound discretion. Although New York favors the resolution in one action of related claims arising from a common occurrence, that preference is not absolute. The Court of Appeals has emphasized both the utility of third-party practice in avoiding multiplicity of actions and the corresponding need for trial courts to exercise discretion pragmatically, bearing in mind convenience, prejudice, and the efficient administration of justice (*George Cohen Agency, Inc. v Donald S. Perlman Agency*, 51 NY2d 358, 365 [1980]). The Court of Appeals has also cautioned that while severance should be employed sparingly, the court must remain attentive to circumstances in which a single trial would impose unfairness or practical prejudice (*Shanley v Callanan Indus., Inc.*, 54 NY2d 52, 57 [1981]).

In the particular setting of late third-party practice, the Appellate Division, First Department, has repeatedly recognized that severance is the appropriate remedy where a main action is ready for trial and the newly asserted or belatedly prosecuted third-party claims would otherwise delay the plaintiff's trial or prejudice the third-party defendant's ability to prepare its defense. Thus, in *Freeland v New York Communications Ctr. Assoc.*, the Appellate Division, First Department, affirmed severance where the impleader was delayed and the attendant disclosure needs threatened prejudice and delay (193 AD2d 511, 511-512 [1st Dept 1993]). The same basic approach appears in the Appellate Division, First Department's later decisions in *Tomes v Visto Realty Corp.* (106 AD3d 645, 645 [1st Dept 2013]), *Dorador v Trump Palace Condominium* (126 AD3d 603, 604 [1st Dept 2015]), *Maron v Magnetic Constr. Group Corp.* (128 AD3d 426, 427 [1st Dept 2015]), and *South v Metropolitan Transp. Auth.* (176 AD3d 447, 448 [1st Dept 2019]), each of which recognizes that where the first-party action is trial ready and the third-party action is not, severance may be necessary to avoid prejudice and undue delay

That body of precedent governs here. This action arises from a 2016 accident. Plaintiff commenced suit in 2016. The prior third-party actions against Chelsea were commenced years ago and then voluntarily discontinued. The note of issue in the main action has long since been filed. The case is on the trial calendar, with jury selection scheduled for April 15, 2026. Yet Chelsea, as currently impleaded, was brought back into the case only in February 2026 by 1407 Broadway and at the end of March 2026 by Sweet. Chelsea's present counsel was retained only at the end of March 2026. On this record, there is no serious basis to conclude that Chelsea has had a full and fair opportunity to participate in disclosure, review prior discovery, take depositions, obtain records, or otherwise prepare to litigate the indemnification, contribution, and insurance-procurement claims in tandem with plaintiff's imminent trial.

The explanations offered by the opposing parties do not alter that conclusion. Sweet's assertion that new counsel, upon review of the file, decided to pursue contractual indemnification does not supply a persuasive justification for waiting until the eve of trial to assert claims arising from a 2016 subcontract and a 2016 accident. A change in attorneys does not reset the litigation

history of a case, nor does it erase years of prior knowledge available to the party itself. Likewise, 1407 Broadway's reference to carrier disputes does not satisfactorily explain why plaintiff should lose a trial date in a case that has already endured extraordinary delay, or why Chelsea should now be compelled to defend itself on a severely compressed schedule because insurance carriers elected to alter course late in the life of the litigation. The prejudice occasioned by such delay falls not on the parties who delayed, but on plaintiff and Chelsea. The law does not require the court to countenance that result.

At the same time, the court declines to dismiss the second and third third-party actions outright. CPLR § 1010 authorizes the court, in its discretion, to dismiss the third-party complaint, order a separate trial of the third-party claim, or make such other order as may be just where the third-party action will unduly delay determination of the main action or prejudice substantial rights. Here, although the present impleader is plainly untimely in a practical sense, the better exercise of discretion is not dismissal but severance. The claims asserted by 1407 Broadway and Sweet against Chelsea are not facially frivolous; rather, they are claims that, if viable, concern the ultimate allocation of responsibility among defendants and subcontractor and include contractual rights that can be adjudicated separately after the main action proceeds. Severance fully protects plaintiff's right to proceed to trial, preserves Chelsea's right to obtain appropriate discovery and motion practice in the severed actions, and avoids the unnecessarily harsh consequence of extinguishing potentially colorable claims on this record. In that respect, severance rather than dismissal most faithfully reconciles the policies underlying CPLR §§ 1007, 1010, and 603.

The court is also unpersuaded by Chelsea's request to vacate the note of issue and certificate of readiness in the main action. Under 22 NYCRR § 202.21(e), the court may vacate a note of issue where a material fact in the certificate of readiness was incorrect or where the certificate failed materially to comply with the rule. That standard is not met here. The lateness of the third-party impleader does not establish that the certificate of readiness in the main action was materially inaccurate when filed. Plaintiff did not create the present lack of readiness in the severed third-party disputes, and the present motion does not demonstrate that the main action itself was not properly certified as ready for trial. The problem before the court is not that plaintiff's action was improvidently placed on the trial calendar; it is that belatedly revived collateral disputes among defendants and the subcontractor were interposed long after the main action became trial ready. That circumstance calls for severance, not retroactive nullification of plaintiff's note of issue.

For the same reasons, the branches of the motion seeking to strike the main action from the trial calendar and to stay plaintiff's trial are denied. A stay would shift the consequences of the defendants' delay to the injured worker whose case has been pending for nearly a decade. The First Department cases cited above reflect that the proper means of protecting all interests in this setting is to sever the unready third-party disputes so that the first-party action may proceed. That course avoids prejudice to plaintiff while preserving Chelsea's ability to defend itself fully in the severed actions.

Chelsea's request to compel further discovery in the main action is likewise denied. Once the second and third third-party actions are severed, any disclosure necessary as between Chelsea, 1407 Broadway, and Sweet may be conducted in those severed actions under an appropriate

scheduling order. There is no basis on this motion to reopen plaintiff's main action for additional general discovery.

Chelsea's request for an extension of time to move for summary judgment requires a more tailored disposition. To the extent Chelsea seeks an extension tied to the severed second and third third-party actions, that relief should be granted. Chelsea was impleaded at the eleventh hour, has not meaningfully participated in disclosure, and cannot reasonably be held to any summary judgment deadline keyed to the note of issue in the main action. Good cause therefore exists to permit dispositive motions in the severed actions following completion of discovery therein (*see* CPLR 2004). To the extent Chelsea seeks an extension that would affect the summary judgment posture or trial schedule of the main action, the request is denied.

Finally, plaintiff correctly notes that severance does not work a substantive prejudice upon the third-party plaintiffs because claims for contribution and indemnification do not ordinarily accrue until the party seeking recovery has made payment or suffered an actual loss (*McDermott v City of New York*, 50 NY2d 211, 217-218 [1980]). That principle underscores the practical propriety of severance in this case. The central issue now ripe for adjudication is plaintiff's claim arising from the 2016 accident. The ultimate allocation of loss among owner, general contractor, and subcontractor may proceed separately without depriving any party of substantive rights.

Accordingly, the court concludes that severance of the second third-party action and the third third-party action is the proper and measured exercise of discretion. All other branches of Chelsea's motion are denied, except that Chelsea shall have an extended period to conduct disclosure and thereafter move for summary judgment in the severed actions.

The court declines to entertain Sweet's argument, raised at oral argument, that severance is unwarranted on account of Plaintiff's alleged failure to provide trial authorizations. That contention is both procedurally and substantively unpersuasive, and it does not alter the court's determination that severance is the appropriate and equitable exercise of discretion under controlling precedent.

As an initial matter, the record reflects that Plaintiff did, in fact, provide trial authorizations to Sweet's prior counsel, Pillinger Miller Tarallo, LLP. Sweet does not dispute that those authorizations were furnished; rather, it contends that new authorizations are now required because new counsel has entered the case. That position finds no support in the CPLR or in the jurisprudence of the Court of Appeals and the Appellate Division, First Department. A litigant is bound by the acts and omissions of its chosen counsel, and a substitution of counsel does not reset the discovery process or revive obligations that were previously satisfied. The Court of Appeals has long held that parties must bear the consequences of their litigation choices and that the orderly administration of justice depends upon adherence to procedural finality and diligence in trial practice (*see Brill v City of New York*, 2 NY3d 648, 652–653 [2004]; *Andrea v Arnone, Hedin, Casker, Kennedy & Drake, Architects & Landscape Architects, P.C.*, 5 NY3d 514, 521 [2005]).

Nor does the Appellate Division, First Department, countenance efforts to derail or delay a trial-ready action based upon belated demands that could and should have been pursued earlier. The appellate courts have repeatedly emphasized that where a case has been certified as ready for

trial and has reached the trial calendar, the court must guard against last-minute disputes that threaten to postpone adjudication of long-pending claims absent a showing of genuine, material necessity (*see Tirado v Miller*, 75 AD3d 153, 158 [1st Dept 2010]; *Audiovox Corp. v Benyamini*, 265 AD2d 135, 139 [1st Dept 2000]). The policy underlying these decisions is straightforward: litigation must have an endpoint, and the courts are not required to indulge tactical or dilatory requests that would undermine the efficient resolution of cases.

That principle applies with particular force here. This action arises from an incident that occurred in 2016 and has been litigated for nearly a decade. Plaintiff complied with discovery obligations and provided trial authorizations to Sweet's prior counsel in due course. The fact that Sweet has since retained new counsel does not create a new entitlement to rediscover materials already exchanged, nor does it supply a basis to oppose severance or otherwise delay the trial of the main action. To hold otherwise would permit parties to obtain *de facto* adjournments simply by changing counsel and renewing demands at the eleventh hour—a result squarely at odds with the strong public policy favoring the prompt and efficient disposition of civil actions.

Moreover, the argument advanced by Sweet improperly shifts responsibility for its own litigation management onto Plaintiff. The Appellate Division, First Department, has consistently rejected attempts to attribute prejudice to an opposing party where the moving party's own lack of diligence created the problem (*see Gonzalez v 98 Mag Leasing Corp.*, 95 NY2d 124, 129 [2000]; *Kihl v Pfeffer*, 94 NY2d 118, 123 [1999]). Here, any failure to utilize or process previously provided authorizations lies with Sweet and its former counsel, not with Plaintiff. The court will not permit Sweet to reap the benefit of its own delay by invoking a discovery issue that should have been addressed years earlier. Equally significant, Sweet's argument does not bear on the central inquiry governing severance under CPLR §§ 603 and 1010—namely, whether maintaining the third-party claims within the main action would cause undue delay or prejudice to the parties. The record demonstrates that the main action is trial-ready and that Plaintiff has waited many years for his day in court. The belated assertion of third-party claims, coupled with last-minute demands, cannot be allowed to derail that long-scheduled trial. As indicated, the Appellate Division, First Department, has repeatedly affirmed severance in analogous circumstances to preserve a plaintiff's right to proceed to trial without further delay, even where discovery disputes remained outstanding among defendants and third-party defendants (*see Freeland v New York Communications Ctr. Assoc.*, 193 AD2d 511, 512 [1st Dept 1993]; *South v Metropolitan Transp. Auth.*, 176 AD3d 447, 448 [1st Dept 2019]).

In short, Sweet's reliance on the purported absence of new trial authorizations is misplaced. Plaintiff satisfied his obligations by providing authorizations to Sweet's prior counsel. The substitution of counsel does not revive completed discovery, and it does not furnish a legally cognizable basis to oppose severance or to delay the trial of a case that has been pending for nearly ten years. To permit such an argument to prevail would reward inattention and invite precisely the sort of eleventh-hour maneuvering that the Court of Appeals and the Appellate Division, First Department, have repeatedly cautioned against.

Accordingly, the court finds that Sweet's argument concerning trial authorizations does not constitute a valid ground to deny severance, does not justify any adjournment of the trial, and does not warrant further discovery in the main action. The orderly administration of justice, and

the fundamental fairness owed to the Plaintiff, require that the case proceed to trial without additional delay.

Accordingly, it is hereby

ORDERED that the motion of Chelsea Construction Group, LLC is granted solely to the extent that the second third-party action asserted by 1407 Broadway, LLC against Chelsea Construction Group, LLC and the third third-party action asserted by The Sweet Construction Group against Chelsea Construction Group, LLC are severed from the main action; and it is further

ORDERED that the main action shall proceed independently and shall remain on the trial calendar; and it is further

ORDERED that those branches of Chelsea Construction Group, LLC's motion seeking dismissal of the second third-party action and the third third-party action are denied; and it is further

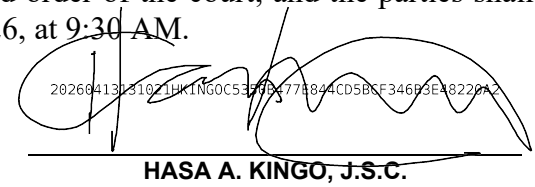
ORDERED that those branches of Chelsea Construction Group, LLC's motion seeking vacatur of the note of issue and certificate of readiness, striking of the main action from the trial calendar, and a stay of the trial of the main action are denied; and it is further

ORDERED that the branch of Chelsea Construction Group, LLC's motion seeking to compel further discovery in the main action is denied; and it is further

ORDERED that the branch of Chelsea Construction Group, LLC's motion seeking an extension of time to move for summary judgment is granted solely to the extent that Chelsea Construction Group, LLC may move for summary judgment in the severed second third-party action and the severed third third-party action within sixty days after the filing of a note of issue in those severed actions, or within such other time as may be fixed by subsequent order of the court presiding over those severed actions; and it is further

ORDERED that counsel for 1407 Broadway, LLC, The Sweet Construction Group, and Chelsea Construction Group, LLC shall appear for a conference in the severed actions on a date to be scheduled by the court for the purpose of setting a discovery schedule; and it is further

ORDERED that this constitutes the decision and order of the court, and the parties shall proceed to trial, as scheduled, on Tuesday April 15, 2026, at 9:30 AM.



4/13/2026
DATE

HASA A. KINGO, J.S.C.

CHECK ONE:		**CASE DISPOSED**		**X**	**NON-FINAL DISPOSITION**		
	X	**GRANTED**	**DENIED**		**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**			**SUBMIT ORDER**		
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**			**FIDUCIARY APPOINTMENT**		**REFERENCE**