

Ali v 500 Fifth Ave., Inc.
2012 NY Slip Op 33968(U)
July 2, 2012
Supreme Court, New York County
Docket Number: IndexNo. 105147/09
Judge: Louis B. York
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: Hon. LOUIS B. YORK Justice PART 2

-----X

ENRIQUE ALI,
Plaintiff,
-against-

Index No. 105147/09
Motion Date 03/07/12
Motion Seq. No. 005
Motion Cal. No. _____

500 FIFTH AVENUE, INC., 1472 BROADWAY, INC.,
QNNC ELECTRICAL CONTRACTING CORP., BORO-
WIDE ELECTRICAL CONTRACTORS, INC., H&L
ELECTRIC CORP., JACOBY ELECTRIC SERVICE
CORP., WILLIAM'S REAL ESTATE USA, INC., JAM
ELECTRIC CORP.,
Defendants,

-----X

500 FIFTH AVENUE, INC., 1472 BROADWAY, INC.,
and WILLIAM'S REAL ESTATE USA, INC.,
Third-Party Plaintiffs,

Index No.
590079/10

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-against-

PAL ENVIRONMENTAL SAFETY CORP.,
Third-Party Defendant,

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500 FIFTH AVENUE, INC., 1472 BROADWAY, INC.,
and WILLIAM'S REAL ESTATE USA, INC.,
Second Third-Party Plaintiffs,

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COUNTY CLERKS OFFICE
NEW YORK

-against-

PREMIER ELECTRIC,
Second Third-Party Defendant.

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The following papers, numbered 1 to _____ were read on this motion to Vacate Note of Issue/Readiness

NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits _____

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS

Cross-Motion: [] Yes [] No

Motion sequence numbers 005, 006, 007, and 008, are consolidated for disposition. In motion sequence number 006, third-party defendant Pal Environmental Safety Corp., moves, to vacate the note of issue. In sequence number 008, defendants/third-party plaintiffs 500 Fifth Avenue Inc., 1472 Broadway Inc., and Williams Real Estate, Inc., s/h/a Williams Real Estate USA, Inc., also move to vacate the note of issue.

The first RJI in this matter was filed on October 26, 2009, a preliminary conference was held on April 7, 2010, and compliance and status conferences were held on July 14, 2010, October 6, 2010, January 19, 2011, and May 11, 2011. The note of issue was filed on June 23, 2011, over one year ago. Plaintiff affirms that they have provided the outstanding discovery which they owed defendants.

Therefore, because the period for discovery ended over one year ago, it is

ORDERED that Pal Environmental Safety Corp.'s motion to vacate the note of issue is denied (sequence 006); and it is further

ORDERED that defendants/third-party plaintiffs 500 Fifth Avenue Inc., 1472 Broadway Inc., and Williams Real Estate, Inc., s/h/a Williams Real Estate USA, Inc. (sequence 008) ^{motion} is denied.

In motion sequence 007, defendants/third-party plaintiffs 500 Fifth Avenue Inc., 1472 Broadway Inc., and Williams Real Estate, Inc., s/h/a Williams Real Estate USA, Inc.,

move for leave to commence a second third-party action against Premier Electric. In motion sequence 005, Premier Electric moves, pursuant to CPLR 1010 and 603, to sever the second third-party action.

According to the April 7, 2010 preliminary conference order, the impleader deadline was September 7, 2010. This deadline was clearly missed by defendants/third-party plaintiffs as the motion to commence a second third-party action was just recently submitted. Defendants/third-party plaintiffs maintain that Premier Electric's involvement in the case was made known following a deposition of another party. Although the note of issue was filed over a year ago, the introduction of a second third-party action requires substantial documentary discovery, as well as additional depositions. While there are common issues in the main and second third-party action, any prejudice which would be caused to the defendants/third-party plaintiffs by a severance, would be less than the prejudice which would be caused to plaintiff for the further delay of this matter. *See, Garcia v Geshner Realty Corp.*, 280 AD2d 440, 440-441(1st Dept 2001).

Therefore, it is

ORDERED that defendants/third-party plaintiffs 500 Fifth Avenue Inc., 1472 Broadway Inc., and Williams Real Estate, Inc., s/h/a Williams Real Estate USA, Inc's motion to commence the second third-party action against Premier Electric is granted (sequence 007). It is further

ORDERED that because substantial discovery is needed for the second-third party action, and because this case greatly exceeds the court systems standards and goals as the RJI was filed in 2009, the second third-party action is severed (sequence 005). Any discovery served in the first and second action should be provided to Premier Electric. Third-party plaintiff must obtain a new index number for the severed action and the parties may use their third-party pleadings in the severed action.

Dated: 7/2/10

Enter:

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 Louis B. York, J.S.C.

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 Check if appropriate: DO NOT POST REFERENCE