

Henry v 4395 Broadway Owners L.P.

2021 NY Slip Op 31616(U)

May 14, 2021

Supreme Court, New York County

Docket Number: 154813/2019

Judge: W. Franc Perry

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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. W. FRANC PERRY PART IAS MOTION 23EFM

Justice

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INDEX NO. 154813/2019

TAMMY HENRY, CLAIRE PETERSON,

MOTION DATE 07/24/2020

Plaintiff,

MOTION SEQ. NO. 001

- v -

4395 BROADWAY OWNERS L.P., RESIDENTIAL
MANAGEMENT (NY), INC., LABE TWERSKI

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 19, 20, 21, 22, 23, 24, 25

were read on this motion to/for SEVER ACTION

In this personal injury action, defendants seek an order pursuant to CPLR 603, severing the claims alleged by the two plaintiffs, as they involve separate and distinct causes of action which do not share any legal or factual basis. Defendants contend that plaintiff Henry alleges that on December 16, 2018 she slipped on a puddle in the hallway on the 6th floor of the building and claims to have suffered an injury to her ankle. (NYSCEF Doc. Nos. 1 and 14, ¶¶ 2, 3).

Plaintiff Peterson alleges that she was exposed to mold for 20 years and claims that she suffers from asthma and other respiratory illnesses allegedly sustained from said exposure. (NYSCEF Doc. Nos. 1 and 14, ¶¶ 16, 20). Plaintiffs oppose the motion, claiming that judicial economy will be served by litigating their claims together and that defendants have not demonstrated that they will be prejudiced, thus warranting denial of the motion.

The determination of whether to grant or deny a request for a severance pursuant to CPLR 603 is a matter of judicial discretion, which should not be disturbed absent a showing of prejudice to a substantial right of the party seeking the severance. (see *Miller v Howard*, 137

AD3d 1698, 1699, 28 N.Y.S.3d 204 [4th Dept 2016]; *Global Imports Outlet, Inc. v Signature Group, LLC*, 85 AD3d 662, 662, 926 N.Y.S.2d 87 [1st Dept 2011]; *Finning v Niagara Mohawk Power Corp.*, 281 AD2d 844, 844, 722 N.Y.S.2d 613 [3d Dept 2001]). The factors to be weighed when severing a cause of action are efficiency of the discovery process, delay of trial, possible jury confusion, and prejudice to one of the parties. (*Reid v Haher*, 88 AD2d 873, 451 NYS2d 775 [1st Dept 1982]).

Here, a review of the allegations set forth in the complaint and the bill of particulars demonstrates that the causes of action asserted by the two plaintiffs should be severed. This action is in the early stages and a preliminary conference has not been held. Plaintiff Henry alleges personal injuries resulting from a slip and fall while plaintiff Peterson alleges personal injuries resulting from exposure to mold over 20 years. The only common denominator is that plaintiffs seek to recover damages from the same defendants, however, both actions arise from separate facts and involve different legal issues.

Contrary to plaintiffs contention, severing their claims will create efficiency in the discovery process as plaintiff Henry's claim will involve discrete discovery related to the incident alleged to have occurred on the 6th floor of the building on December 16, 2018; whereas, the discovery process for the mold exposure as alleged by plaintiff Peterson will involve discovery related to plaintiff's alleged exposure to a specific toxin or allergen over 20 years, and expert discovery to quantify the level of exposure and causation issues. In addition, the damages claim for each plaintiff will require separate expert testimony and separate independent medical examinations.

In opposing severance, plaintiffs maintain that judicial economy, convenience to parties, and disparity of financial position require that the motion be denied. (NYSCEF Doc. No. 20, ¶

17). Plaintiffs aver, without any proof, that insurance companies and landlords have “unlimited monies and assets to spend on this case and have handled almost identical cases before”. (Id.). Yet, plaintiffs gloss over the real prejudice to defendants in trying these separate and distinct claims together. It is undeniable that the liability and damage issues presented by each cause of action are distinct and as such, different proof and witness testimony will be required thereby resulting in possible jury confusion and prejudice to the defendants. (see *Reid v Haher*, 88 AD2d 873, 451 NYS2d 775 [1st Dept 1982] [two separate medical malpractice claims; different plaintiffs; arising out of two wholly separate transactions; same doctor; same hospital], see also *County of Westchester v White Plains Ave., LLC*, 105 AD3d 690, 691, 962 NYS2d 648 [2d Dept 2013]). While the court’s discretion to order severance should be exercised “sparingly”, “[e]ven where a plaintiff will to some extent rely on the same evidence, severance is appropriate where individual issues predominate, concerning particular circumstances applicable to each [plaintiff], and there is the possibility of confusion for the jury” (*Miller v Howard*, 137 AD3d at 1699 [internal quotation marks, citations and alterations omitted]). Defendants’ motion is granted as severance is required “[in] furtherance of convenience [and] to avoid prejudice”. (CPLR 603). Accordingly, it is hereby,

ORDERED that defendants’ motion to sever plaintiffs’ causes of action is granted; and it is further

ORDERED that plaintiff Claire Petersons’ claims be severed and plaintiff shall commence an action and purchase a new index number with the following caption:

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

-----X
CLAIRE PETERSON,

Plaintiff,

Index No. To Be Assigned

-against-

4395 BROADWAY OWNERS L.P., RESIDENTIAL
MANAGEMENT (NY), INC., LABE TWERSKI

Defendant.

-----X
IT IS FURTHER

ORDERED, that the instant action, after severance will proceed with the following caption:

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

-----X
TAMMY HENRY

Plaintiff,

Index No.: 154813/2019

-against-

4395 BROADWAY OWNERS L.P., RESIDENTIAL
MANAGEMENT (NY), INC., LABE TWERSKI

Defendants.

-----X
IT IS FURTHER

ORDERED that movant is directed to serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119) within ten days from entry and the Clerk shall mark the causes of action severed as directed herein; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made 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 at the address www.nycourts.gov/supctmanh).

5/14/2021

DATE

W. FRANC PERRY, 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