SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. CAROL EDMEAD** **PART** **35**

Justice

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YAMIL RIVERA,

Plaintiff,

- v -

JP MORGAN CHASE &CO., JP MORGAN CHASE BANK, ROGERS ELECTRICAL CONTRACTORS, INC.,JONES LANG LASALLE AMERICAS, INC.,J.P. MORGAN CHASE,

Defendant.

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INDEX NO. 156677/2016

MOTION DATE 02/14/2022

MOTION SEQ. NO. 016

DECISION + ORDER ON MOTION

JONES LANG LASALLE AMERICAS, INC.

Plaintiff,

-against-

ROGERS ELECTRIC CONTRACTORS, INC.

Defendant.

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Second Third-Party
Index No. 595917/2019

JP MORGAN CHASE &CO., JP MORGAN CHASE BANK, J.P. MORGAN CHASE

Plaintiff,

-against-

FOREST ELECTRIC CORP.

Defendant.

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Third Third-Party
Index No. 595466/2020

JP MORGAN CHASE &CO., JP MORGAN CHASE BANK, J.P. MORGAN CHASE

Plaintiff,

-against-

JAMES F. VOLPE ELECTRICAL CONTRACTING CORP.

Defendant.

Fourth Third-Party
Index No. 595332/2021

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The following e-filed documents, listed by NYSCEF document number (Motion 016) 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 491, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 513, 514, 515

were read on this motion to/for SEVER.

Upon the foregoing documents, it is

ORDERED AND ADJUDGED that the application of Plaintiff Yamil Rivera to server Defendant/Fourth Third-Party Plaintiff JP Morgan Chase Bank's Fourth Third-Party Action from the main action (Motion Seq. 016) is denied; and it is further

ORDERED that the parties shall appear for a Microsoft Teams Conference on June 14, 2022 at 2:30pm to discuss an expedited discovery schedule for the Fourth Third-Party Action; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that counsel for JP Morgan Chase Bank shall serve a copy of this order, along with notice of entry, on all parties within ten (10) days.

MEMORANDUM DECISION

CAROL R. EDMEAD, J.S.C:

In this Labor Law action, Plaintiff Yamil Rivera moves pursuant to CPLR §603 and §1010 to sever Defendant/Fourth Third-Party Plaintiff JP Morgan Chase Bank's (hereinafter "JP Morgan") fourth third-party action against James F. Volpe Electrical Contracting Corp. (hereinafter "Volpe") from the main action (Motion Seq. 016). JP Morgan opposes the motion in its entirety.

For the foregoing reasons, Plaintiff's motion to sever is denied.

BACKGROUND

The Underlying Accident

Plaintiff, an electrician employed by Third Third-Party Defendant Forest Electric Corp. (hereinafter "Forest"), alleges that on July 13, 2016, he fell from a ladder and received an electrical shock while performing electrical work at a JP Morgan Chase Bank branch located at 1051 Jackson Avenue in Long Island City. Plaintiff testified at his deposition that Durrell Hall-Brooks, an employee of Defendant/Second Third-Party Defendant Rogers Electrical Contractors, Inc. (hereinafter, "Rogers"), told him that a lighting fixture in the branch parking lot needed to be reinstalled. (Plaintiff's 2/15/18 Deposition Transcript, NYSCEF doc No. 250 at 61-62.) To perform the work, Plaintiff brought a ladder provided by Forest and a pair of pliers (*Id*. at 52-53, 72.) According to Plaintiff's testimony, his coworker held the ladder while Plaintiff climbed to reinstall the fixture. (*Id*. at 96.) Plaintiff testified that when he was on the third or fourth rung from the top, "I felt the ladder moving a little bit. And because I felt I was losing my balance, grabbed onto the fence. And that's when I felt the shock." (Plaintiff's 3/5/18 Deposition Transcript, NYSCEF doc No. 251 at 26.) After suffering the shock, Plaintiff then fell off the

ladder. (NYSCEF doc No. 250 at 110-111.) Plaintiff further testified that he did not know how long the fence had been electrified before the accident and he had not made any complains about the fence. (*Id*. at 209.)

On the date of the accident, JP Morgan owned the premises upon which Plaintiff was working. (NYSCEF doc No. 274.) In 2016, pursuant to a Master Agreement, JP Morgan hired Rogers to perform the lighting installation services that would convert the branch's lighting system from florescent lights to LED lights. (NYSCEF doc No. 277.) Rogers subcontracted the project's electrical work to Forest, which, as discussed *supra*, employed Plaintiff on the project. (*See* NYSCEF doc No. 277.) In a separate Master Agreement that began in 2013 but was still in effect the date of the accident, JP Morgan hired Jones Lang LaSalle Americas, Inc. (hereinafter "Jones") to perform facility management and other property services, which included all maintenance and repair work on various JP Morgan-owned premises in New York City and Yonkers. Through a Service Contractor Agreement, Jones subcontracted electrical repair services to Volpe. According to Robert Walsh, an employee of Jones, he would perform periodic inspections of JP Morgan branches throughout New York City and would report to Volpe any electrical problems that needed immediate fixing. (*See* Robert Walsh Deposition, NYSCEF doc No. 486 at 40-43.)

James Caputo, Forest's foreperson on the day of the accident, testified that when removing old fluorescent lights, an electrician had to perform a lockout/tagout procedure at the electrical panel to de-energize any circuits with which an employee might come into contact. (*See* NYSCEF doc No. 252 at 12.) Similarly, Hall-Brooks, as an employee of Rogers, testified that he was not required to shut off the power so that Forest electricians could do their work, but rather Forest electricians had to shut off the power. (Hall-Brooks Deposition Testimony,

NYSCEF doc No. 256 at 11-12.) After Plaintiff received the shock and fell, Caputo confirmed that Plaintiff had correctly performed the lockout/tagout procedure as to the lighting installation he was replacing, but when he tested the fence with a multimeter, he found that the fence was electrified. (*Id*. at 132.) While Caputo could not determine why the fence was electrified, a post-accident investigation determined that the fence was electrified from a breaker in the basement of the bank, one different from the breaker Forest had been working on. (*Id*. at 156.) The post-accident investigation concluded that the "power from the gate was coming out of a piece of conduit that was coming closer to the building." (NYSCEF doc No. 269.) Ultimate liability for the electrified fence and the resulting fall remains heavily disputed among the parties.

Procedural History

Plaintiff commenced the instant action on August 10, 2016, naming JP Morgan and Rogers as defendants. (NYSCEF doc No. 1.) JP Morgan and Rogers interposed verified answers on August 29, 2016, and February 17, 2017, respectively. On April 5, 2018, Plaintiff filed a Supplemental Summons and Amended Complaint that added Jones as a defendant. (NYSCEF doc No. 477).

On May 1, 2019, Plaintiff filed a Second Amended Complaint. Therein, Plaintiff sought recovery against JP Morgan, Rogers, and Jones under Labor Law §§ 240 (1), 241 (6), 200 and under principles of common-law negligence. (NYSCEF doc No. 136.)

On July 4, 2019, JP Morgan filed its verified answer, and asserted cross claims for contractual and common-law indemnification, contribution, and breach of contract against both Rogers and Jones. (*See* NYSCEF doc Nos. 331.) Rogers asserted cross claims against JPMC and Jones for indemnification and contribution.

On July 10, 2019, the parties conducted a deposition of Robert Walsh. According to Plaintiff, Walsh's deposition first revealed Volpe's existence and potential liability to JP Morgan.

Thereafter, on July 18, 2019, Plaintiff filed the Note of Issue and Certificate of Readiness for Trial. Plaintiff indicated that discovery had yet to be completed, as outstanding discovery included "written discovery responses to Plaintiff's demands Post EBT of Defendant Jones Lang LaSalle's witness, Notice for Discovery and Inspection, and deposition of additional Jones Lang LaSalle witness." (NYSCEF doc No. 152.) All parties acknowledge that discovery continued after Plaintiff filed the Note of Issue.[1] This post-Note-of-Issue discovery included but was not limited to a neuro-psychological Independent Medical Exam (IME) of Plaintiff in September 2019, a deposition of Plaintiff in October 2020, Plaintiff serving a supplemental Bill of Particulars in March 2020, and Jones serving a response to JPMC's Notice for Discovery and Inspection in August 2020 (which contained the subcontract between Rogers and Forest).

On October 21, 2019, Jones commenced a second third-party action against Rogers asserting various causes of action for: (1) contractual indemnification; (2) common-law indemnification; (3) contribution; and (4) damages for failure to procure insurance. (NYSCEF doc No. 162.)

On June 22, 2020, JP Morgan commenced a third third-party action against Forest.

On or before December 4, 2020, the parties filed their respective motions for summary judgment, with opposition and reply papers filed by March 2021.

[1] Plaintiff and JP Morgan characterize the amount of post-note-of issue discovery differently. Plaintiff describes it as minimal (*see* NYSCEF doc No. 513 at ¶ 3), while JP Morgan describes it as significant (*see* NYSCEF doc No. 507 at 9).

On April 14, 2021, while the parties' summary judgment motions were *sub judice*, JP Morgan commenced the fourth third-party action against Volpe that is the subject of the instant motion (the Fourth Third-Party Action). JP Morgan asserts causes of action for contractual and common-law indemnification, contribution, and breach of contract based on an alleged failure to secure liability insurance. (NYSCEF doc No. 436.)

By Decision and Order dated December 6, 2021, the Court resolved the summary judgment motions (Motion Seqs. 10-13) (the December 2021 Decision). As the Court is required to analyze the common facts and law between the main action and the action now sought to be severed, a thorough discussion of the December 2021 Decision is warranted—particularly as to which causes of action the Court granted summary judgment on, which were dismissed, and which remain viable.

In its December 2021 Decision, the Court first granted Plaintiff partial summary judgment against JP Morgan and Rogers under Labor Law §240 (1) and § 241 (6)[2]. (NYSCEF doc No. 450.) Under §240 (1), the Court found that JP Morgan and Rogers failed to adequately secure the ladder Plaintiff used to change the light fixture and their failure proximately caused Plaintiff's harm. (*Id.* at 15.) The Court recognized that §240 (1) imposes absolute liability on owners and their agent (in this case, JP Morgan and Rogers, respectively) arising from a failure to adequately protect workers from the types of injury flowing from the application of gravity, *i.e.,* workers falling from certain heights. (*Id.*) Under §241 (6), the Court held JP Morgan and Rogers liable for failing to ensure Plaintiff would not be working in close proximity to an electric

[2] To plead a violation of Labor Law §241 (6) a plaintiff must prove a concrete violation of a provision in the New York State Industrial Code. Here, Plaintiff alleged violations of 12 NYCRR 23-1.13 (b) (4), which pertains to electrical circuits that pose a danger to workers, and 12 NYCRR 23-1.21, which governs the proper use of ladders and ladderways. The Court only granted Plaintiff summary judgment based on section 23-1.13 (b) (4), while allowing Plaintiff's claim under section 23-1.21 to proceed to trial.

power circuit, as required by 12 NYCRR 23-1.13 (b) (4). (*Id.* at 21.) The Court noted that, while it was granting summary judgment as to liability under these sections, a trial on damages would be needed, at which point JP Morgan and Rogers could argue that Plaintiff was comparatively negligent.[3] (*Id.*) In contrast, the Court declined to grant Rogers', Jones', and Forest's motions to dismiss plaintiff's §241 (6) cause of action based on 12 NYCRR 23-1.21, holding that defendants had failed to establish that section 23-1.21 is inapplicable to the present litigation. Plaintiff did not move for summary judgment on this cause of action.

The December 2021 Decision then denied Rogers' and Jones' motions to dismiss Plaintiff's Labor Law §200[4] and common-law negligence causes of action, as well as Plaintiff's motion for summary judgment under the *res ipsa loquitur* doctrine. The Court found material issues of fact as to (1) whether Rogers and Jones had actual or constructive knowledge of the open electrical circuit (meaning neither Plaintiff nor the two defendants were entitled to summary judgment/dismissal under Labor Law §200)[5]; (2) whether Rogers, through its contract with JP Morgan, even owed Plaintiff a duty to provide a safe place to work; and (3) whether Plaintiff's voluntary acts contributed to the accident such that the doctrine of *res ipsa loquitur* would not apply. (*Id.* at 24-26.) JP Morgan did not move to dismiss Plaintiff's Labor Law §200 or common-law negligence claims against it.

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[3] JP Morgan argued in its opposition that issues of fact exist as to whether Plaintiff was a proximate cause of his own injuries. JP Morgan argued that by failing to use, or misusing safety devices provided, by failing to properly conduct the lockout/tagout procedure, and by improperly climbing the ladder and grabbing the fence, plaintiff contributed to his own accident. (NYSCEF doc No. 393 at 16.)

[4] Labor Law §200 (1) is a codification of the common-law duty imposed upon owners or general contractors to provide construction sites that are safe for workers. (*See Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993].)

[5] The Court recognized that both Rogers and Jones failed to demonstrate when they last inspected the premises prior to the accident, or that the electrified fence was a latent condition that could not be discovered upon reasonable inspection. (*Id.* at 24-25.)

Next, the December 2021 Decision resolved the parties' summary judgment motions on their various contractual and common-law indemnification, breach-of-contract, and contribution causes of action. As to JP Morgan's contractual and common-law indemnification claims against Jones, the Court held outstanding questions of fact precluded the Court from entering summary judgment in JP Morgan's favor. (*Id*. at 28.) The Court noted neither party had demonstrated the other's negligence nor their own lack of negligent conduct. The Court therefore determined that the trier of fact must determine whether JP Morgan or Jones (or both) were negligent in failing to inspect the parking lot and de-electrify the fence.[6] (*Id*. at 29.) For a similar reason, the Court found that neither Jones nor Rogers were entitled to summary judgment on Jones' common-law indemnification and contribution claims: Jones had not demonstrated it was free from negligent conduct in its inspection of the parking lot and the electrical fixtures, and Rogers failed to demonstrate it did not have actual or constructive knowledge of the electric current running through the fence. (*Id*. at 38.)

The Court's December 2021 Decision then: (1) denied JP Morgan summary judgment on its common law indemnification claim against Rogers; and (2) dismissed JP Morgan's common law indemnification, contractual indemnification, and contributions claims against Forest. In dismissing JP Morgan's common law indemnification and contribution claims, the Court held that Forest demonstrated that Plaintiff had not suffered a 'grave injury' as required by Workers Compensation Law § 11 and therefore JP Morgan could not recover under such theories; with respect to JP Morgan's contractual indemnification claim, the Court found JP Morgan would be an indemnitee only had it been expressly identified as such in Forest's subcontract with Rogers.

[6] Under General Obligation Law §5-322.1, as applied by the Court of Appeals in *Itri Brick & Concrete Corp. v Aetna Cas & Sur. Co.* (89 NY2d 786 [1997]), a party cannot contractually indemnify itself for its own negligence. Consequently, here, JP Morgan would not be entitled to indemnification from Jones for its own negligence.

Since this was not the case, the Court held JP Morgan is not entitled to contractual indemnification. Lastly, the Court granted partial summary judgment on JP Morgan's breach-of-contract claims against Forest and Jones, determining that both failed to provide evidence they had obtained a commercial general liability insurance policy as required by their contracts with JP Morgan. (*Id.* at 37-38.)

On January 7, 2022, JP Morgan moved for leave to reargue the branch of the Court's December 2021 Decision that granted Forest summary judgment and dismissed its claim for contractual indemnification. (Mot. Seq. 015.) Upon reargument, JP Morgan seeks to vacate said branch and reinstate its claims against Forest. As JP Morgan's motion for reargument is limited to said claims, the motion does not have any bearing on the respective arguments advanced by JP Morgan and Plaintiff in the instant motion.

The Instant Motion

In support of its motion to sever the Fourth Third-Party Action from the main action, Plaintiff argues that JP Morgan unreasonably delayed commencing its action. (*See* NYSCEF doc No. 475 at 6.) Plaintiff contends that JP Morgan first learned of Volpe's existence and possible liability from Robert Walsh in his deposition taken in July 2019 yet waited until April 2021—nearly two years from when the Note of Issue was filed—to commence its action. Absent severance, Plaintiff argues JP Morgan's unjustified delay will severely prejudice the main action as parties will have to reopen discovery, which will further delay an action that is approaching six years of litigation. (*Id.*) Additionally, Plaintiff asserts that severance should be ordered where the main and third-party actions do not involve common questions of fact or law. Plaintiff suggests that the Court has already determined JP Morgan and Rogers to be primarily liable in the main action and that the only determination left is a trial on damages. In contrast, Plaintiff

suggests the issues in the Fourth Third-Party Action are limited to JP Morgan's indemnification and contribution from Volpe and do not implicate Plaintiff's damages. (*Id*. at 10.)

In opposition, JP Morgan disputes Plaintiff's characterization of its delay as "unjustified," and maintains that it diligently investigated Volpe's potential liability after Walsh's deposition and, on this account, waited to commence the action until it had more information on Volpe's involvement in the project.[7] (NYSCEF doc No. 507.) Further, JP Morgan contends the main action and its third-party action against Volpe have a common nucleus of fact and law, especially as Plaintiff has not sought to sever any of the other third-party actions, such that the interest of justice and judicial economy are better served by denying Plaintiff's motion. (*Id*. at 8.) Lastly, JP Morgan asserts that Plaintiff's rights will not be prejudiced as an ultimate determination of the main action will not be unduly delayed.[8]

DISCUSSION

CPLR § 603, entitled "Severance and separate trials," provides: "In 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 any separate issue." Similarly, CPLR § 1010, entitled "Dismissal or separate trial of third-party complaint," provides: "The court may. . . order a separate trial of the third-party claim or of any separate issue thereof. . . In 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

[7] JP Morgan has not provided the Court with what specific further information led it to conclude the Fourth Third-Party Action was warranted.

[8] In its opposition papers, JP Morgan has detailed for the Court Volpe's intended timeframe for conducting discovery. Volpe has served various discovery notices against the parties seeking documents within 20 days from the issuance of the demand notice. (NYSCEF doc No. 485.) Additionally, Volpe sought depositions from various parties within 90 days of the issuance of its Notice to Take Depositions. (*Id*.) JP Morgan asserts that Volpe has taken efforts to complete discovery as expeditiously as possible.

rights of any party." (CPLR § 1010; *see also Andresakis v Lynn*, 236 AD2d 252 [1997] [Severance of a third-party action is within the discretion of the trial court.])

To avoid the waste of judicial resources and the risk of inconsistent verdicts, it is preferable for related actions to be tried together. (*Rothstein v Milleridge Inn, Inc.*, 251 AD2d 154, 155 [1st Dept 1998]; *Shanley v Callanan Indus.*, 54 NY2d 52 [1981] ["Where complex issues are intertwined. . . it would be better not to fragment trials, but to facilitate one complete and comprehensive hearing and determine all the issues involved between the parties."]) In tort cases, where two actions arise from a common nucleus of facts or where the issue to be determined is the respective liability of the defendant and the third-party defendant for plaintiff's injury, a trial court may only sever the actions to prevent prejudice or substantial delay to one of the parties. (*See Sichel v Community Synagogue*, 256 AD2d 276, 277 [1st Dept. 1998]; *Dolce v Jones*, 145 AD2d 594 [2d Dept 1988].)

An unjustifiable delay in the commencement of a third-party action, even a significant delay, is not enough, by itself, to warrant severance—the movant must show prejudice or an unreasonable *prospective* delay. (*See DeLeon v 650 W. 172nd St. Assoc.*, 44 AD3d 305, 305 [1st Dept. 2007]; citing *Fries v Sid Tool Co.*, 90 AD2d 512, 512 [2d Dept. 1982] [affirming denial of motion to sever and ordering expedited discovery in case where facts between the main and third-party action "are virtually identical" but defendant waited nearly two years to bring the third-party action]; *Johnston Products Corp. v ATI, Inc.*, [87 AD2d 604, 605 [2d Dept. 1982] ["While there is no justification for the substantial delay in serving the third-party complaint, there has been no showing that plaintiffs in the main action will be prejudiced by the short additional delay required for discovery by the third-party defendant.]") Courts have recognized that where the main action is trial-ready but discovery is still being conducted in the third-party

action, a joint trial *may* prejudice the plaintiff and cause an unreasonably delay in bringing the plaintiff's case to trial. (*Pena v City of New York*, 222 AD2d 233 [1st Dept. 1995].)

With these principles in mind, the Court finds that the main action and the Fourth Third-Party Action have a common nucleus of facts such that a joint trial better advances the interest of judicial economy and that, with an expedited discovery schedule, Plaintiff will not suffer prejudice or an undue delay.

Common Nucleus of Facts and Law

As discussed *supra*, Plaintiff asserts that the main action and the Fourth Third-Party Action involve separate issues of fact and law, i.e., issues related to damages in the main action, and liability in the other. Yet Plaintiff's framing of the two actions as damages versus liability ignores the significant overlap of issues. As the Court's December 2021 Decision makes explicitly clear, the remainder of the main action is not limited to JP Morgan's and Roger's liability to Plaintiff under Labor Law §§ 240 and 241. Indeed, *Plaintiff* has several remaining causes of action that will require a trial on liability, including under Labor Law §241 (6) (as based on 12 NYCRR 23-1.21), Labor Law § 200, and common-law negligence principles against each defendant. Adjudicating, for instance, Plaintiff's Labor Law § 200 claim at trial will require the parties to present evidence regarding whether the owner or general contractor "provided supervisory control over the injury-producing work" such that they are liable for providing dangerous or defective equipment (*see* NYSCEF doc No. 450; citing *Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 146 [1st Dept 2012]), and whether each defendant had actual or constructive knowledge of the electrified fence (and if they did not have the knowledge, whether a reasonable inspection would have uncovered the dangerous condition).

The Fourth Third-Party Action raises these exact issues as to Volpe: it alleges that Volpe's negligence and/or acts of omissions created the alleged defective conditions that led to Plaintiff's injuries. (NYSCEF doc No. 436 at ¶22.) From this perspective, the all the various contractors' and subcontractors' liability, including Volpe's, are interconnected: evidence as to one's liability or lack thereof likely implicates the claims of the others. (*See Range v Trustees of Columbia Univ. in the City of N.Y.*, 150 AD3d 515, 516 [1st Dept. 2017] [upholding denial of severance motion where issues of fact and law between the two actions were "intertwined, since the inspection of the job site by second third-party defendant was integral to plaintiff's liability claims" and a trial would likely require the same witnesses].)

Furthermore, the Court cannot accept Plaintiff's strict delineation between a trial for damages versus one for liability when issues of fact remain as to Plaintiff's alleged contributory negligence. JP Morgan's contribution and common-law indemnification claims against Volpe are premised on Plaintiff suffering the alleged injuries through another party's negligence rather than his own. (NYSCEF doc No. 436 at ¶22.) Should a jury find Plaintiff contributory negligent in the main action, JP Morgan's third-party action against Volpe would be affected in the same way as its action against Forest. This means that not only do the main and the Fourth Third-Party Action have common issues (*i.e.*, Plaintiff's alleged contributory negligence) but severance would also create the risk of inconsistent verdicts as to said issues. Lastly, the common issues of fact that the Court has just described do not even account for the various cross and counter claims that parties have asserted against each other for indemnification, contribution, and breach of contract, none of which have been the subject of a motion to sever.

Simply stated, the Court finds the main action and the Fourth Third-Party Action share a common nucleus of facts and law such that a comprehensive trial on all remaining claims best

promotes the efficient use of judicial resources. (*See Rothstein* 251 AD2d at 155 [1st Dept 1998].)

Prejudice to Plaintiff from Unreasonable Delay

Plaintiff and JP Morgan do not dispute that, even where a court has found common issues of fact, it may nonetheless issue an order to sever claims where it finds a plaintiff may be unreasonably prejudiced by a delay stemming from prosecuting the third-party action. (*See Stewart v Bogoopa-Junction* (2008 NY Slip Op. 32719[U] [Sup. Ct. Queens County 2008]); *Singh v Piccolo* (161 AD2d 698 [2d Dept 1990].) Plaintiff argues that it will experience such prejudice: a comprehensive trial that includes JP Morgan's third-party action would significantly delay Plaintiff's recovery on claims which the Court has already granted summary judgment. In support, Plaintiff notes that Volpe has already intimated it will demand depositions from numerous parties, which, it argues, would likely require parties to re-open discovery. Such a possibility would therefore impede resolution of Plaintiff's claims. (NYSCEF doc No. 475.)

JP Morgan asserts that Plaintiff has significantly overstated the degree of prejudice it will suffer absent severance. It argues that the instant litigation is yet to receive an immediate trial date, and consequently, Plaintiff's claims would not be unreasonably delayed as any discovery that Volpe seeks could be conducted while the case "makes its way up the trial calendar." (*See Trustees of Columbia Univ.*, 150 AD3d at 516 [citing *Marbilla, LLC v 143/145 Lexington LLC*, 116 AD3d 544 [1st Dept. 2014].) JP Morgan also notes that Volpe can review existing discovery and exert its right to additional discovery while awaiting trial.

While the Court recognizes that any estimation as to when this case might be put on the trial calendar is speculative, it is also cognizant of the fact that the Court's Trial Part is now progressing through an immense backlog of cases that were necessarily delayed due to the

COVID-19 pandemic. As such, the prospect that this case will receive an imminent court date is exceedingly unlikely. A necessary corollary, then, is that Plaintiff has not demonstrated that it is likely to suffer undue *prospective* delay from trying the two actions together, especially since JP Morgan and Volpe have, from all appearances, sought to conduct the remaining outstanding discovery as expeditiously as possible. (*See Trustees v Columbia Univ.*, 150 AD 3d at 516 [upholding denial of severance motion where motion court found that outstanding discovery in third-party action could be completed while the entire case made its way to trial calendar]; *Coluccio v Urbanek*, 129 AD2d 551, 551 [2d Dept. 1987] [upholding denial of severance where trial court had found a third-party action would not be unduly delayed given a backlog of cases in the medical malpractice calendar].) However, to ensure that Plaintiff is not prejudiced by any undue delay, the Court will direct that all discovery required for the Fourth Third-Party Action be conducted and completed on an expedited basis. (*See Rago v Nationwide Ins. Co.*, 110 AD2d 831, 831-832 [2d Dept. 1985] [holding trial court "adequately protected" the interests of all parties by allowing additional time for discovery but restoring the action to the Trial Calendar and setting a date certain for the completion of discovery].)

Accordingly, Plaintiff's application to sever the Fourth Third-Party Action is denied, and the Court directs that all parties appear at the Microsoft Teams Conference scheduled *infra* to discuss an expedited schedule for all discovery needed in the Fourth Third-Party Action.

CONCLUSION

Based on the foregoing, it is hereby

ORDERED AND ADJUDGED that the application of Plaintiff Yamil Rivera to server Defendant/Fourth Third-Party Plaintiff JP Morgan Chase Bank's Fourth Third-Party Action from the main action (Motion Seq. 016) is denied; and it is further

ORDERED that the parties shall appear for a Microsoft Teams Conference on June 14, 2022 at 2:30pm to discuss an expedited discovery schedule for the Fourth Third-Party Action; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that counsel for JP Morgan Chase Bank shall serve a copy of this order, along with notice of entry, on all parties within ten (10) days.

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5/25/2022
DATE

CAROL EDMEAD, J.S.C.

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