

Hopkinson Assoc. LLC v Robinson & Miller Offset Corp.

2023 NY Slip Op 33232(U)

September 18, 2023

Supreme Court, New York County

Docket Number: Index No. 653212/2022

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

-----X

HOPKINSON ASSOCIATES LLC,
Plaintiff,

INDEX NO. 653212/2022

MOTION DATE 09/15/2023

MOTION SEQ. NO. 001

- v -

ROBINSON & MILLER OFFSET CORP.,
Defendant.

**DECISION + ORDER ON
MOTION**

-----X

ROBINSON & MILLER OFFSET CORP.
Plaintiff,

Third-Party
Index No. 595917/2022

-against-

GIGANTIC STUDIOS, LLC, JONATHAN GRAY, BRIAN
DEVINE, PEACEABLE ASSEMBLY, LLC, GRAY KRAUSS
STRATFORD SANDLER DES ROCHERS LLP

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 28, 29, 30, 31, 32, 33, 34, 35

were read on this motion to/for JOIN FOR TRIAL.

Third-party defendants Peaceable Assembly LLC and Gigantic Studios LLC

(collectively, "Movants")'s motion to join this matter for trial with another action is granted.

Background

In this action, plaintiff (a brokerage firm) operated by Steven Jacobson seeks to recover a brokerage commission from defendant, the owner of real property in Manhattan, in connection with a rental lease agreement. Defendant then filed a third-party complaint against the various tenants and guarantors for the property on the ground that plaintiff claims it acted as a broker on

behalf of the third-party defendants. Defendant's theory is that it should be indemnified by the third-party defendants to the extent that plaintiff is entitled to a commission.

In the related action, 653406/2023, Movants (certain tenants at the building) commenced a case against plaintiff and Mr. Jacobson. They claim that they hired Mr. Jacobson as their attorney in connection with a lease renewal for the subject property and that he was to be paid a flat fee discussed in their retainer agreement. Movants argue that Mr. Jacobson secretly went to the landlord (defendant in the instant action) to seek a broker's commission despite the fact that Movants never agreed to hire him as a broker.

Movants now seek to consolidate both actions as they arise out of the same set of facts.

In opposition, plaintiff argues that the causes of action are different and that the instant action has already progressed in discovery.

Discussion

"CPLR 602(a) gives the trial court discretion to consolidate actions involving common questions of law or fact. Although great deference is to be accorded to the motion court's discretion there is a preference for consolidation in the interest of judicial economy and ease of decision-making where there are common questions of law and fact, unless the party opposing the motion demonstrates that consolidation will prejudice a substantial right" (*Progressive Ins. Co. v Vasquez*, 10 AD3d 518, 519, 782 NYS2d 21 [1st Dept 2004] [citations omitted]).

The Court grants the motion. The two actions clearly arise out of the same questions of fact. They both involve plaintiff's role as an alleged broker relating to the same lease renewal. And it involves similar, although not identical, legal questions surrounding whether or not a commission should be awarded.

Given that depositions have not yet been held in the instant action, there is little prejudice to any party. In fact, it would be most efficient to join these cases for discovery and trial. That way, the parties can avoid incurring expenses in two parallel cases and having to take duplicative depositions. Plaintiff did not sufficiently establish what prejudice it would suffer if the Court were to grant the motion.

Accordingly, it is hereby

ORDERED that third-party defendants Peaceable Assembly LLC and Gigantic Studios LLC's motion is granted and this matter is joined for discovery and trial with the action under 653406/2023; and it is further

ORDERED that these cases shall be joined for discovery and trial before Justice Bluth in Part 14; and it is further

ORDERED that the discovery in both actions shall proceed together; and it is further

ORDERED that within 45 days from entry of this order, counsel for the movant shall serve a copy of this decision and order with notice of entry upon the Clerk of the Trial Support Office (Room 158) and the County Clerk (Room 141B) **via e-filing** and these offices are hereby directed to mark the court's records to reflect that these cases are joined for trial; and it is further

ORDERED that the caption of the joined action will be:

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 14**

----- X
HOPKINSON ASSOCIATES LLC,

Plaintiff,

Index No. 653212/2022

- v -

ROBINSON & MILLER OFFSET CORP.,

Defendant.

----- X

ROBINSON & MILLER OFFSET CORP.

Third-Party Plaintiff,

- v -

**GIGANTIC STUDIOS, LLC, JONATHAN GRAY,
BRIAN K. DEVINE, PEACEABLE ASSEMBLY, LLC,
GRAY KRAUSS STRATFORD SANDLER DES ROCHERS LLP**

Third- Party Defendants.

----- X

GIGANTIC STUDIOS, LLC, PEACEABLE ASSEMBLY, LLC,

Plaintiffs,

Index No. 653406/2023

- v -


**HOPKINSON ASSOCIATES LLC, STEVEN JACOBSON
Defendants.**

----- X

; and it is further

ORDERED that such service upon the County Clerk and 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/suptmanh)].

Conference: (see NYSCEF Doc. No. 26).

<u>9/18/2023</u> DATE		 ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE