

Belai v John Doe
2020 NY Slip Op 33304(U)
October 6, 2020
Supreme Court, New York County
Docket Number: 161570/2019
Judge: Shawn T. Kelly
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 57

-----X

ALAI BELAI,

Plaintiff,

- v -

JOHN DOE, STAPLES, INC.,

Defendant.

INDEX NO. 161570/2019

MOTION DATE 09/17/2020

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

-----X

STAPLES, INC.

Plaintiff,

-against-

IDRISSA KONE

Defendant.

Third-Party
Index No. 595693/2020

-----X

HON. SHAWN TIMOTHY KELLY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 13, 14, 15, 16, 17
were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL

Upon the foregoing documents, it is

In this personal injury action, Third-Party Plaintiff Staples, Inc., moves for an Order consolidating this action with the Supreme Court, Bronx County action, *Alai Belai v Staples, Inc., Staples The Office Superstore, LLC and Idrissa Kone*, Index No. 29233/2020E. No opposition or further papers have been submitted in response to this motion.

Although great deference is to be accorded to the motion court's discretion, it is well settled that there is a preference for consolidation in the interest of judicial economy where there are common questions of law and fact, unless the party opposing the motion demonstrates that

consolidation will prejudice a substantial right (*Raboy v McCrory Corp.*, 210 AD2d 145, 147, 621 NYS2d 14 [1994]; *Geneva Temps, Inc. v New World Communities, Inc.*, 24 AD3d 332, 334, 806 NYS2d 519, 521-22 [App Div 1st Dept 2005]).

There has been no showing of prejudice if the matters are consolidated and there are common questions of law and fact. Therefore consolidation is warranted (*see Teitelbaum v PTR Co.*, 6 AD3d 254, 774 NYS2d 699 [2004] [consolidation is mandated by judicial economy where two lawsuits are intertwined with common questions of law and fact]; *Matter of Tosca Brick Oven Bread, Inc.*, 243 AD2d 416, 665 NYS2d 252 [1997]). Accordingly, Third-Party Plaintiff's motion is granted and it is hereby,

ORDERED that the motion is granted and the action *Alai Belai v Staples, Inc., Staples The Office Superstore, LLC and Idrissa Kone*, Index No. 29233/2020E, pending in the Supreme Court, Bronx County, shall be consolidated in this Court with *Alai Belai v. John Doe, Staples, Inc.*, Index No. 161570/2019, New York County; and it is further

ORDERED that the consolidation shall take place under New York County Index No. 161570/2019 and the consolidated action shall bear the following caption:

-----X

ALAI BELAI,

Plaintiff,

- against -

JOHN DOE, STAPLES, INC., STAPLES THE OFFICE
SUPERSTORE, LLC and IDRISKA KONE,

Defendants.

-----X

STAPLES, INC.

Third- Party Plaintiff,

- against -

IDRISSA KONE

Third-Party Defendant.

-----X

And it is further

ORDERED that, within 30 days from entry of this order, counsel for the movant shall serve a certified copy of this order upon the Clerk of the Supreme Court, Bronx County, and shall pay the appropriate fee, if any, for such transfer and shall contact the staff of said Clerk to arrange for the effectuation of the transfer in an efficient manner; and it is further

ORDERED that service upon the Clerk of the Supreme Court, Bronx County shall be made in accordance with any applicable protocol or other procedures of said county; and it is further

ORDERED that the Clerk of the Supreme Court, Bronx County, shall transfer the documents on file under Index No. 29233/2020E to the Clerk of this Court for the purpose of consolidation; and it is further

ORDERED that the Clerk of the Supreme Court, Bronx County and the Clerk of this court shall coordinate the transfer of the documents being transferred so as to ensure an efficient transfer and to minimize insofar as practical the reproduction of such documents, including with regard to any documents that may be in digital format; and it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the Court (60 Centre Street, Room 141 B), who shall consolidate the documents in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that such service upon the Clerk of the Court shall be made in hard-copy format if the case pending in this county is a hard-copy case or, if this case is an e-filed one, 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 this court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents transferred from the Supreme Court, Bronx County in the consolidated case file under the New York County Index Number of the consolidated action in the New York State Courts Electronic Filing System or make appropriate notations of such documents in the e-filing records of the court so as to ensure access to the documents in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is hereby directed to reflect the consolidation by appropriately marking the court's records; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in hard-copy format if the case pending in this county is a hard-copy case or, if the case pending

here is an e-filed one, shall be made in accordance with the procedures set forth in the aforesaid *Protocol*; and it is further

ORDERED that counsel are directed to appear for a preliminary conference to be conducted remotely on December 2, 2020, at 11:30 AM.

<u>10/6/2020</u>					
DATE			SHAWN TIMOTHY KELLY, 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	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE