

Bailey v Rivulet Row Assoc., LLC

2024 NY Slip Op 31590(U)

May 6, 2024

Supreme Court, New York County

Docket Number: Index No. 151360/2022

Judge: Judy H. Kim

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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. JUDY H. KIM **PART** **04**

Justice

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ALICIA BAILEY,

Plaintiff,

- v -

RIVULET ROW ASSOCIATES, LLC,

Defendant.

-----X

INDEX NO. 151360/2022

MOTION DATE 10/23/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49

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

Upon the foregoing documents, plaintiff’s motion to consolidate is granted, in part.

On February 15, 2022, plaintiff commenced the instant action asserting claims for injuries allegedly sustained on March 2, 2019, when she was slipped and fell in front of the premises located at 541 Academy Street, New York, New York 10034. On June 1, 2022, plaintiff brought another action, Alicia M. Bailey v Marcus D. Evans et al, under index number 154632/2022, for injuries allegedly sustained on June 3, 2019, when a vehicle driven by Jonathan Infante—in which plaintiff was a backseat passenger—was rear-ended by a vehicle driven by Marcus D. Evans (the “Motor Vehicle Action”).

Plaintiff now moves, pursuant to CPLR §602, to consolidate this action and the Motor Vehicle Action for discovery and trial. Plaintiff maintains that consolidation is appropriate because these accidents occurred within three months of each other and plaintiff first received medical treatment after the second accident, making it “impossible” for plaintiff to discern which accident attributed to each injury. Defendant Rivulet Row opposes the motion only to the extent it requests

that if consolidation is granted, the Court issue a new joint Preliminary Conference Order which, inter alia, directs that all medical discovery is exchanged between the defendant's attorneys in each action. However, Marcus Evans, a defendant in the Motor Vehicle Action, opposes the motion, arguing that he would be prejudiced by consolidation insofar as a joint trial would result in juror confusion because the jurors would need to complete a verdict sheet addressing two separate negligence claims against different defendants, one of which involves a determination of serious injury under the no-fault law that is not present in the other. Evans adds that prejudice may result from consolidation for trial insofar as "there is a potential that a [t]rial judge would not allow each defense counsel to call separate medical specialist, but rather would require the complete defense side of the lawsuit to call one doctor to discuss all issues, while each defense counsel is focusing on different injuries and strategy based upon the facts of their respective accident" (NYSCEF Doc. No. 45 [Flores Affirm. in Opp. at ¶13]).

DISCUSSION

"When actions involving a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all the matters in issue, may order the actions consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay" (CPLR §602[a]). "Consolidation is generally favored by the courts 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. The burden of demonstrating prejudice to a substantial right is on the party opposing consolidation" (Liz v 158-160 Vermilyea, LLC, 58 Misc 3d 1205(A) [Sup Ct, NY County 2018] [internal citations and quotations omitted]).

In light of the foregoing, plaintiff's motion is granted to extent that this action and the Motor Vehicle Action are to be joined for trial. The scenario presented here is, in all material respects, identical to that in Richardson v Uess Leasing Corp., 191 AD2d 394, 395 (1st Dept 1993). In Richardson, plaintiff also commenced two separate actions arising out of, respectively, a slip and fall and a subsequent motor vehicle accident (Richardson v Uess Leasing Corp., 191 AD2d 394, 396 [1st Dept 1993]). In that case, the Appellate Division, First Department concluded that, while plaintiff's "injuries arose from two separate accidents at two separate locations and occurred at two different times" the interests of justice and judicial economy would best be served by a joint trial because "[t]he record reveals that Richardson suffered injuries affecting his gait in both accidents and received treatment from the same physician for those injuries" and therefore "[o]ne jury hearing all the evidence can better determine the extent to which each defendant caused plaintiff's injuries and should eliminate the possibility of inconsistent verdicts which might result from separate trials" (Richardson v Uess Leasing Corp., 191 AD2d 394, 396 [1st Dept 1993] citing Gage v Travel Time & Tide, 161 AD2d 276 [1st Dept 1990]). This reasoning applies with equal force here. Evans's speculative assertion, in opposition, of potential juror confusion at trial is insufficient to establish a particularized showing of prejudice to support a contrary conclusion— "[t]he potential prejudice identified by defendant could be prevented by the trial court's instructions to the jury" (Hopper v Regional Scaffolding and Hoisting Co., Inc., 272 AD2d 242 [1st Dept 2000]). His other argument, that the trial judge may not allow each defense counsel to call their own medical specialists, is similarly speculative and therefore insufficient to establish prejudice.

However, to the extent plaintiff also seeks to consolidate these actions for discovery, the Court declines to do so. Under the circumstances, “the appropriate procedure is a joint trial, particularly since the actions involve different defendants” (Frank v Y. Mommy Taxi, Inc., 206 AD3d 971, 973 [2d Dept 2022] citing Longo v Fogg, 150 AD3d 724 [2d Dept 2017] and Whiteman v Parsons Transp. Group of N.Y., Inc., 72 AD3d 677, 678 [2d Dept 2010]).

Accordingly, it is

ORDERED that plaintiff’s motion is granted to the extent set forth herein, and the above-captioned action shall be jointly tried with Alicia M. Bailey v Marcus D. Evans et al, pending in New York State Supreme Court, New York County under index number 154632/2022; and it is further

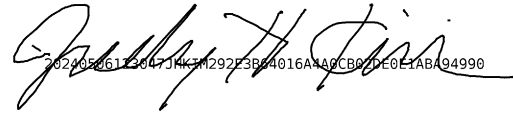
ORDERED that, upon payment of the appropriate calendar fees and the filing of notes of issue and certificates of readiness with the General Clerk’s Office in each of the above actions, the Clerk of the General Clerk’s Office shall place the aforesaid actions upon the trial calendar for a joint trial; and it is further

ORDERED that plaintiff shall, within twenty days of the date of this decision and order, serve a copy of this decision and order, with notice of entry, upon all parties as well as on the County Clerk (60 Centre Street, Room 141B) and the Clerk of the Trial Support Office (60 Centre Street, Room 158), and the Clerks shall mark their records to reflect the consolidation of these actions solely for joint trial; and it is further

ORDERED that service of this decision and order upon the Clerk of the Court and 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); and it is further

ORDERED that the parties are to appear in Part 4 (80 Centre Street, Room 308) for a status conference on June 7, 2024 at 10:00 a.m.

This constitutes the decision and order of the Court.



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5/6/2024
DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: