

**Dunetz v Malik**

2007 NY Slip Op 31557(U)

May 3, 2007

Supreme Court, Queens County

Docket Number: 0013858/2006

Judge: Patricia P. Satterfield

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Short Form Order

**NEW YORK SUPREME COURT - QUEENS COUNTY**  
Present: HONORABLE PATRICIA P. SATTERFIELD IA Part 19  
Justice

-----X  
SYLVIA DUNETZ and NORMAN DUNETZ,

Index No: 13858/06  
Motion Date: 3/21/07  
Motion Cal. No.: 12

Plaintiffs,

-against-

ROGER MALIK, Executor of the estate of DORA  
MALIK, Deceased,

Defendant.

-----X  
ROGER MALIK, Executor of the estate of DORA  
MALIK, Deceased,

Index No.: 35040/06

Third-Party Plaintiff,

-against-

NORMAN DUNETZ,

Third-Party Defendant.

-----X

The following papers numbered 1 to 16 read on this motion, for an order:(1) pursuant to CPLR 602, directing that the above-captioned action and third part-action be joined for trial in the Supreme Court of the State of New York, County of Nassau, with the action known as *ROGER MALIK, Executor of the Estate of DORA MALIK, Deceased v. NORMAN DUNETZ*, which bears Index umber 7010/2006; and (2) pursuant to CPLR 510(3) and section 602(a), directing that the venue of the above captioned action and third-party action be transferred to Supreme Court of the State of New York, County of Nassau, so that the above captioned action and third-party action can be joined for trial with the action known as *ROGER MALIK, Executor of the Estate of DORA MALIK, Deceased v. NORMAN DUNETZ*, which bears Index umber 7010/2006.

	PAPERS NUMBERED
Notice of Motion-Affidavits-Exhibits.....	1 - 4
Affidavit in Support on behalf of Third Party Plaintiff.....	5 - 8
Affirmation in Support on behalf of Third Party Defendant.....	9 - 10
Affirmation in Opposition on behalf of Plaintiffs.....	11 - 12
Reply Affirmation.....	13 - 14
Sur-Reply on behalf of Plaintiffs.....	15 - 16

Upon the foregoing papers it is ordered that the motion is determined as follows:

This is an action for personal injury arising out of a motor vehicle accident that occurred on August 26, 2005, on or about Marcus Avenue, Lake Success, New York, in which the vehicle owned and operated by now-deceased defendant Dora Malik (“decedent”) came into contact with the vehicle owned and operated by plaintiff Norman Dunetz. Plaintiffs Sylvia Dunetz and Norma Dunetz (“Dunetz plaintiffs”) commenced this action in the Supreme Court, Queens County, on June 21, 2006; the third-party action was commenced on September 18, 2006. On May 1, 2006, prior to the commencement of the Queens County action, Roger Malik, as Executor of the estate of decedent, commenced a personal injury and wrongful death action in the Supreme Court, Nassau County, against Norman Dunetz, one of the plaintiffs herein, entitled *ROGER MALIK, Executor of the Estate of DORA MALIK, Deceased v. NORMAN DUNETZ*, which bears Index number 7010/2006. Attorneys for Third-Party Defendant Norman Dunetz now move for an order directing a joint trial of the Queens County and Nassau County actions, and a change of venue of the Queens County action and third-party action to the Supreme Court of the State of New York, County of Nassau. This application is supported by defendant and third-party plaintiff, Roger Malik, as Executor of the estate of decedent; and opposed by the Dunetz plaintiffs.

Although the place of trial generally is determined by the residency of the parties (see, Doe v. Hall, 36 A.D.3d 651 (2d Dept. 2007), where, as here, “common questions of law or fact exist, a motion to consolidate pursuant to CPLR 602(a) should be granted absent a showing of prejudice to a substantial right by the party opposing the motion (citations omitted). In addition, where actions commenced in different counties are consolidated pursuant to CPLR 602, the venue should be placed in the county where the first action was commenced, unless special circumstances exist (citations omitted).” Nigro v. Pickett, \_\_ A.D.3d \_\_, 2007 WL 1148979 (2d Dept. 2007); Moor v. Moor, \_\_ A.D.3d \_\_, 2007 WL 1017661 (2d Dept. 2007); See, also, Gomez v. Jersey Coast Egg Producers, Inc., 186 A.D.2d 629 (2d Dept. 1992); Gadelov v. Shure, 274 A.D.2d 375 (2d Dept. 2000).

A review of the record indicates that the interests of justice and judicial economy would be served by consolidation of this action for joint trial with the an action entitled *ROGER MALIK, Executor of the Estate of DORA MALIK, Deceased v. NORMAN DUNETZ*, which bears Index Number 7010/2006, since both actions concern the same parties, the claims arise out of the same circumstances, and the proof with respect to each action will overlap and turn on credibility determinations of the nature of the relationship of the parties. Perini Corp. v. WDF, Inc., 33 A.D.3d

605 (2d Dept. 2006). Plaintiffs opposition fails to demonstrated that any prejudice to a substantial right would result from consolidation (see CPLR 602(a); “delay of the trial is not a sufficient basis to justify the denial of a joint trial (citations omitted).” Perini Corp. v. WDF, Inc., 33 A.D.3d 605 (2d Dept. 2006).

Accordingly, because the first action was commenced by defendant Malik as plaintiff in Nassau County, and there are no special circumstances which would warrant placement of venue elsewhere, the motion to change the venue of the consolidated actions is granted, and it is hereby

**ORDERED**, that third party defendant Norman Dunetz’ motion for an order consolidating this action and the third party action for the purposes of a joint trial with the action known as *ROGER MALIK, Executor of the Estate of DORA MALIK, Deceased v. NORMAN DUNETZ*, Index Number 7010/2006, now pending in the Supreme Court of the State of New York, County of Nassau is granted, and it is further

**ORDERED**, that the title of the actions combined for joint trial shall be:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

-----X  
ROGER MALIK, Executor of the Estate of DORA  
MALIK, Deceased,

Plaintiff,

- against-

NORMAN DUNETZ,

Defendant.

-----X  
SYLVIA DUNETZ and NORMAN DUNETZ,

Plaintiffs,

-against-

ROGER MALIK, Executor of the estate of DORA  
MALIK, Deceased,

Defendant.

-----X

**ACTION NO. 1**  
Index No: 7010/06

**ACTION NO. 2**  
Index No: To Be Assigned

-----X  
ROGER MALIK, Executor of the estate of DORA  
MALIK, Deceased,

Index No: To Be Assigned

Third-Party Plaintiff,

-against-

NORMAN DUNETZ,  
Third-Party Defendant.

-----X  
and it is further

**ORDERED**, that the motion for changing the place of trial of Action No. 2, and the same hereby is granted; and it is further

**ORDERED**, that the place of trial in Action No. 2 shall be changed from the Supreme Court, County of Queens, to the Supreme Court, County of Nassau; and it is further

**ORDERED**, that the Clerk of this Court, upon being served with a copy of this order with notice of entry and payment of any required fees, if any, is directed to transfer all papers filed in her office in the instant action pending under Index No. 13858/06 to the Clerk of Nassau County; and it is further

**ORDERED**, that this action shall be disposed of in the Supreme Court, Nassau County, as though commenced in that Court; and it is further

**ORDERED**, that a copy of this Order with Notice of Entry shall be served upon all parties to this action.

Dated: May 3, 2007

.....  
J.S.C.

Enter,