

Nationwide Mutual Insurance Co. v Devine
2007 NY Slip Op 34314(U)
December 12, 2007
Supreme Court, Suffolk County
Docket Number: 0022420/2005
Judge: Jeffrey Arlen Spinner
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SUPREME COURT OF THE STATE OF NEW YORK
IAS PART XXI - COUNTY OF SUFFOLK

PRESENT:

HON. JEFFREY ARLEN SPINNER
 Justice of the Supreme Court

<p>NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o ALBERT MENE and PATRICIA MENE,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">- against -</p> <p>MARY DEVINE, SOUTH BAY TRUCKING CORP and THOMAS J FLYNN,</p> <p style="text-align: right;">Defendants.</p>	<p><u>Action No. 1</u></p> <p>INDEX NO.: 2005-22420</p>
<p>SOUTH BAY TRUCKING CORP and THOMAS J FLYNN,</p> <p style="text-align: right;">3rd Party Plaintiffs,</p> <p style="text-align: center;">- against -</p> <p>ERNEST BIFULCO,</p> <p style="text-align: right;">3rd Party Defendant.</p>	<p>MOTION SEQ. NO.: 003 - MG ORIG. MOTION DATE: 10/25/07</p> <p>FINAL SUBMIT DATE: 10/31/07</p>

This Motion also concerns the following matters:

**DISTRICT COURT OF SUFFOLK COUNTY
 FIRST DISTRICT**

<p>ALLSTATE INSURANCE COMPANY a/s/o MARY DEVINE,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">- against -</p> <p>SOUTH BAY TRUCKING,</p> <p style="text-align: right;">Defendant.</p>	<p><u>Action No. 2</u></p> <p>INDEX NO.: CEC 17423-2005</p>
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**DISTRICT COURT OF SUFFOLK COUNTY
 FIRST DISTRICT**

<p>ALLSTATE INSURANCE COMPANY a/s/o MARY DEVINE,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">- against -</p> <p>ERNEST BIFULCO,</p> <p style="text-align: right;">Defendant.</p>	<p><u>Action No. 3</u></p> <p>INDEX NO.: CEC 1883-2007</p>
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK**

LANCER INSURANCE COMPANY a/s/o SOUTH
BAY TRUCKING,

Plaintiffs,

Action No. 4

- against -

INDEX NO.:

2006-22350

ERNEST BIFULCO,

Defendant.

UPON the following papers numbered 1 to 12 read on this Motion:

- Defendants SOUTH BAY & FLYNN's Motion (Pages 1-12 & Exhibits A-J);
it is,

ORDERED, that this unopposed application of Defendant Defendants SOUTH BAY & FLYNN is hereby granted to the extent set forth herein below.

Defendants SOUTH BAY & FLYNN moves this Court for an Order, pursuant to CPLR 602, removing the above referenced actions entitled *Allstate v South Bay* (Action No. 2; Index No: CEC 17423-2005) and *Allstate v Bifulco* (Action No. 3; Index No: CEC 1883-2007) from District Court of Suffolk County to Supreme Court, County of Suffolk; and upon removal, joining said actions with the actions entitled *Nationwide v Devine* (Action No. 1; Index No: 2005-22420) and Lancer v Bifulco (Action No. 4; Index No: 2006-22350), pending in Supreme Court, Suffolk County.

Since the actions arise from the same issues and involve common questions of fact, consolidation (*joinder, in the matter at bar regarding the instant Motion*) is appropriate to avoid inconsistent verdicts (*see Orkin v White Plains Hospital*, 97 AD2d 399, 467 NYS2d 225 [2 Dept 1983]). Moreover, it would be a waste of judicial resources and duplicitous to require two separate trials with the concomitant costs and expenses (*see Wieder v Skala*, 218 AD2d 507, 630 NYS2d 308 [1 Dept 1995]).

Furthermore, in *Barbalex Associates v Pesaitis*, 113 Misc2d 436, 449 NYS2d 387, the Court stated that:

"Consolidation or joinder of trials are procedural devices to promote the economic resolution of similar actions, irrespective of the number of parties involved. (See Tone and Stifler, Joinder of Parties and Consolidation of Multiparty Actions, 1967 Univ. of Illinois Law Forum 209, 221). A court considering consolidation is required to render a pragmatic judgment as to the feasibility of fusing two or more separately filed complaints and it must weigh this judgment against the possibility of an unwieldy trial. Id. at 222."

The Court is persuaded that the best interests of all parties to these actions, as well as expense of judicial resources, would best be served by joinder of these matters for trial.

That said, this Court reminds all parties of the distinctions set forth in *Mars Associates, Inc v New York City Educational*, 126 AD2d 178, 513 NYS2d 125 [1 Dept 1987], wherein the Court recited the following:

*“Although there are similarities between consolidating an action and ordering a joint trial of an action, there are also significant differences. On the one hand, with consolidation there is a total merger of the separate actions into one action. However, with the joinder of trials, each action remains independent of the other. In other words, as we stated in **Pigott v. Field**, 10 AD2d 99, 101, 197 NYS2d 648 (1st Dept. 1960), “consolidation gives rise to a new action displacing the actions affected thereby, whereas a joint trial preserves the integrity of each of the actions ...”. Thus, “[i]n consolidated actions only one judgment is entered, while in joint trials separate verdicts and judgments are entered and each may be appealed from ...” (2 Weinstein-Korn-Miller, N.Y.Civ.Prac., paragraph 602.02, page 6-11).”*

The Court further notes that Action No. 1 and another companion matter entitled **Lisa Hayward v Michael Berk, Joan Berk, Luis Mazara, Juana Torres and James Griffin Jr**, are presently pending before Supreme Court, Suffolk County.

For all the reasons stated herein above and in the totality of the papers submitted herein, it is, therefore,

ORDERED, that this unopposed application of Defendants SOUTH BAY & FLYNN for an Order removing the above referenced actions entitled Allstate v South Bay (Action No. 2; Index No: CEC 17423-2005) and Allstate v Bifulco (Action No. 3; Index No: CEC 1883-2007) from District Court of Suffolk County to Supreme Court, County of Suffolk; and upon removal, joining said actions with the actions entitled Nationwide v Devine (Action No. 1; Index No: 2005-22420) and Lancer v Bifulco (Action No. 4; Index No: 2006-22350), pending in Supreme Court, Suffolk County; and it is further

ORDERED, that Defendants SOUTH BAY & FLYNN are hereby directed to obtain from the Suffolk County Clerk a no-fee Index Number for Actions No. 2 and 3, and thereafter file a no-fee Request for Judicial Intervention, so that this action may properly proceed; and it is further

ORDERED, that thereafter all parties are directed to appear for a Preliminary Conference on February 6, 2008, at the Courthouse at 235 Griffing Avenue, Riverhead, New York, in order to set forth a new discovery schedule; and it is further

ORDERED, that Counsel for the moving party herein is hereby directed to serve a copy of this order, with Notice of Entry, upon Counsel for all parties, upon the Calendar Clerk of this Court, the Calendar Clerk of the Suffolk County District Court, and upon the Suffolk County Clerk, within twenty (20) days of the date this order is entered by the Suffolk County Clerk.

**Dated: Riverhead, New York
December 12, 2007**



HON. JEFFREY ARLEN SPINNER, J.S.C.

FINAL DISPOSITION	✓ NON-FINAL DISPOSITION
✓ SCAN	DO NOT SCAN

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