

**Lazri v Decriscio**

2009 NY Slip Op 31900(U)

August 13, 2009

Supreme Court, Nassau County

Docket Number: 9549/08

Judge: Daniel R. Palmieri

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SC 09

**SHORT FORM ORDER**

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU**

**Present:**

**HON. DANIEL PALMIERI  
Acting Justice Supreme Court**

-----x  
**SETKIE LAZRI,**

**TRIAL TERM PART: 47**

**Plaintiff,**

**INDEX NO.:9549/08**

**ACTION NO. 1**

**-against-**

**MOTION DATE:5-8-09  
SUBMIT DATE:5-15-09  
SEQ. NUMBER - 001 &  
002**

**DEBRA A. DECRISCIO and ADRIAN J.  
DECRISCIO**

**Defendant.**

-----x  
**SUPREME COURT : KINGS COUNTY**

-----x  
**LUIZA LAZRI and VILDAN LAZRI,**

**Plaintiffs,**

**INDEX NO.: 14500/08  
( Kings County)**

**-against-**

**ACTION NO. 2**

**ADRIAN DECRISCIO, DEBRA DECRISCIO,  
FATMIR LAZRI and SETKIE LAZRI,**

**Defendants.**

-----x

**The following papers have been read on this motion:**

- Notice of Motion, dated 4-10-09.....1
- Notice of Cross Motion, dated 4-24-09.....2
- Affirmation in Opposition, dated 7-6-09.....3
- Reply Affirmation, dated 8-7-09.....4

Upon stipulation of counsel, the Court recalls its Decision and Order dated May 15, 2009, and this Decision and Order is substituted in lieu thereof.

The Decriscio defendants in Actions 1 and 2 and the Lazri defendants in Action 2 move (Seq. 1) and cross move (Seq. 2) to join Actions 1 and 2 for trial in Nassau County.

Luiza Lazri and Vildan Lazri, plaintiffs in Action 2, venued in Kings County, oppose the motions insofar as they seek to join the trials in Nassau county and argue that the cases should be joined in Kings County because the Kings County Action 2, was commenced one week before the Nassau County action.

The motions are granted and as such, the actions are joined for trial in Nassau County. Venue for Action 2 is transferred from Kings County to Nassau County CPLR §603 and the actions are joined for discovery and trial in Nassau County. CPLR §602.

It is proper and within the court's discretion to order consolidation, where as here, both actions involve common questions of law and fact and consolidation will avoid unnecessary duplication of trials, costs and inconsistent results. *Gutman v. Klein*, 26 AD3d 464 (2d Dept. 2006). This is such a case.

Plaintiffs in the Kings County action contend that they properly placed venue for their action in Kings County based on that being the place of residence of defendant Setkie Lazri (Setkie). In her oral deposition in the Kings County action, Setkie Lazri insists that she is a resident of Kings County but admits to spending time and receiving mail in the Nassau County address of Luiza Lazri and Vildan Lazri, plaintiffs against her in the Kings County action. In her own action in Nassau County where she is a plaintiff, Setkie has given a Nassau County address for her residence and has not denied the contention that her mail is

sent to the Nassau address, her medical records bear a Nassau address and that she is listed as a co-owner of the Nassau property where she, Luiza Lazri and Vildan Lazri say they reside. Setkie Lazri has not, in her capacity as plaintiff in Action 1 opposed this motion and as a defendant in Action 2 has moved for the same relief.

These actions arise from the same automobile accident that occurred in Nassau county on May 31, 2005. In both actions Summons and Complaints have been served and none of the actions have yet been noticed for trial. As upon trial, common questions of law and facts will arise and the time of the witnesses, jurors, parties and the Court will be used more efficiently if they are consolidated. Absent a showing of prejudice to a substantial right by a party opposing such a request, consolidation should be granted where common questions of law or fact exist and where actions commenced in different counties have been consolidated the venue should be placed in the county where the first action was commenced unless special circumstances are present. *Deutsch v. Wegh*, 269 AD2d 487 (2d Dept. 2000), *Mattia v. Food Emporium, Inc.*, 259 AD2d 527 (2d Dept. 1999). Here, although Action 2 was commenced a few days earlier in Kings County, the basis for such venue is a Kings County address of one of the defendants in that action, namely Setkie Lazri. However, it has not been denied by any party that all parties, other than Setkie, reside in Nassau County and Setkie has described herself in Action 1 as a resident of Nassau County. Hence, a change of venue to Nassau County together with joinder of the actions in Nassau County is appropriate.

The choice of venue for joinder of actions started in separate counties involves more than who won the race to the courthouse. This is a case where special circumstances justify a departure from the general rule that absent special circumstances, joinder should be in the county where the first action was started.

Special circumstances have been found to include whether the incident took place in the county of the later action, where hospitalization and treatment took place, convenience of witnesses, where a preponderance of witnesses, reside and where police reports were generated. *See Gomez v. Jersey Coast Egg Producers, Inc.*, 186 AD2d 629 (2d Dept. 1992); *Mager v. Hutcher*, 174 AD2d 941 (3<sup>rd</sup> Dept. 1991); *Usher v. Dean*, 163 AD2d 784 (3<sup>rd</sup> Dept. 1990); *Fields v. Zweibel*, 36 AD2d 808 (1<sup>st</sup> Dept. 1971), *Boyea v. Lambeth*, 33 AD2d 928 (3<sup>rd</sup> Dept. 1970). Courts have also considered calendar congestion however, no evidence of calendar congestion has been presented here. *Leung v. Sell*, 115 AD2d 929 (3<sup>rd</sup> Dept. 1985).

Here, such special circumstances include that, except for Setkie Lazri, all parties are Nassau County residents. Setkie Lazri appears to have dual residency in both Kings and Nassau counties and is the only party with any Kings County contact. It is not necessary for the Court to determine whether for initial venue purposes Kings County was Setkie's county of residence because her substantial contacts with Nassau County combined with the other factors here present are sufficient to establish the special circumstances necessary to join these actions in Nassau County

Therefore it is,

**ORDERED**, that the actions are joined for trial in Nassau County; and it is further

**ORDERED**, that the caption shall be as set forth above; and it is further

**ORDERED**, that the movants shall serve a copy of this Order upon the Kings County Clerk and upon all parties to Actions 1 and 2 forthwith. Upon receipt of this Order, the Kings County Clerk shall forward the file in Action 2 to the Nassau County Clerk, and it is further,

**ORDERED**, that all parties shall serve upon any party so demanding copies of disclosure documents heretofore obtained in the other action and it is further,

**ORDERED**, that all matters of trial practice, including the right to open and close, are reserved to the Justice presiding at the trial, and it is further,

**ORDERED**, that all papers shall reflect the consolidated status of these actions, and it is further,

**ORDERED**, that each party shall be entitled to enter separate Judgments and Bills of Costs and Disbursements, in each action respectively, if costs are allowed, and it is further,

**ORDERED**, that plaintiff in Action 2 is directed to serve and file a Nassau County Request for Judicial Intervention in said action duly noting the related nature of Action 1 and Action 2 thereon to insure that the undersigned is designated the I.A.S. Justice in both actions, and it is further,

**ORDERED**, that the movants shall serve within 30 days, a copy of this Order upon all parties to Actions 1 and 2 upon receipt of a copy of this order from any source and upon the Clerk of the Supreme Court of Nassau County, and upon receipt of this Order, the Nassau County Clerk is directed to join the files, and it is further,

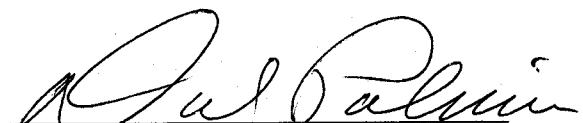
All parties are reminded of the Conference scheduled for October 8, 2009, and to be held before the undersigned in the Nassau County Supreme Courthouse, 100 Supreme Court Drive, Mineola, NY 11501, at 9:30 A.M. No adjournments of this conference will be permitted absent the permission of this Court. All parties are forewarned that failure to

attend the above scheduled conference may result in the dismissal of pleadings (see 22 NYCRR 202.27) or monetary sanctions (22NYCRR 130-2.1 et seq).

This shall constitute the Decision and Order of this Court.

ENTER

DATED: August 13, 2009

  
HON. DANIEL PALMIERI  
Acting Supreme Court Justice

**TO: Omrani & Taub, P.C.  
Attorney for Plaintiff (Action 1)  
535 Fifth Avenue  
New York, NY 10017**

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By: Danielle M. Peterson, Esq.  
Attorneys for Defendants  
2 Rector Street 22<sup>nd</sup> Floor  
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Mineola, NY 11501**

**Connors & Connors, P.C.  
Attorneys for Defendants (Action 2)  
766 Castleton Avenue  
Staten Island, NY 10310**

**ENTERED**  
AUG 19 2009  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE