

<b>Brown v MTA Bus Co.</b>
2010 NY Slip Op 30854(U)
April 7, 2010
Supreme Court, New York County
Docket Number: 401419/09
Judge: Michael D. Stallman
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4-14-10

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. MICHAEL D. STALLMAN  
*Justice*

PART 21

YVETTE BROWN,  
  
Plaintiff,

INDEX NO. 401419/09

- v -

MOTION DATE 2/3/10

MOTION SEQ. NO. 002

MTA BUS COMPANY et al.,  
  
Defendants.

MOTION CAL. NO. 10

The following papers, numbered 1 to 9 were read on this motion to consolidate

Amended Notice of Motion— Amended Affirmation — Exhibits A-C

**FILED**  
APR 14 2010  
NEW YORK  
COUNTY CLERK'S OFFICE

PAPERS NUMBERED

1-2

Affirmation; Affirmation; Affirmation — Exhibits 1-5

3; 4; 5-6; 7

Replying Affirmation; Reply Affirmation  
Sur-Reply Memo

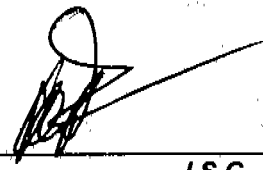
8; 9

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ORDERED that this motion to consolidate is decided in accordance with the annexed memorandum decision and order.

Copies to counsel.

Dated: 4/7/10  
New York, New York

  
\_\_\_\_\_  
J.S.C.  
**HON. MICHAEL D. STALLMAN**

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 21**

-----X  
YVETTE BROWN,

Plaintiff,

- against -

Index No. 401419/09

MTA BUS COMPANY, JOHN P. SPRVILL, MINERVA  
TORRES, PAUL GUERRERO, WORLD FRUIT FARM  
CORP. and DANIEL PAK,

**Decision and Order**

Defendants.

(and three other actions).

**FILED**

APR 14 2010

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**HON. MICHAEL D. STALLMAN, J.:**

NEW YORK  
COUNTY CLERK'S OFFICE

These actions “consolidated for the purpose of joint discovery and trial” arise out of a motor vehicle accident that allegedly occurred October 3, 2007 on the Bruckner Expressway, between Bronx River Avenue and Evergreen Avenue in the Bronx. The alleged accident involved three vehicles: a 1995 Navistar Intern allegedly owned by World Fruit Farm Corp. (World Fruit) and allegedly operated by Daniel Pak; a 1997 Honda allegedly owned by Minerva Torres and allegedly operated by Paul Guerrero; and a 2007 motor coach (a BxM11 bus) allegedly registered to the MTA Bus Company and allegedly operated by John P. Spruill. The New York City Transit Authority (NYCTA) is alleged title owner of the bus. Yvette Brown, Ronald Mellow, Sophie McFadzean, Mayritta Brown, and Latoya Bennett allegedly were passengers on the bus.

Yvette Brown, Mayritta Brown, and Latoya Bennett commenced separate actions against the MTA Bus Company, “John P. Sprvill,” Torres, World Fruit, and Pak in the Supreme Court, Bronx County. Mellow and McFadzean commenced an action against World Fruit and Pak in the Supreme Court, Bronx County. By order dated July 8, 2008, Justice Norma Ruiz consolidated Brown’s action

and Mellow and McFadzean's action, under a single index number, but maintained separate captions. By decision and order dated January 8, 2009, the Supreme Court, Bronx County (Patricia Anne Williams, J.) granted Spruill and MTA Bus Company's motion to change venue of the action to New York County. By a stipulation of partial discontinuance dated October 1, 2009, and filed on October 5, 2009, Yvette Brown apparently discontinued her claims against the MTA Bus Company and John Spruill with prejudice.

Meanwhile, Latoya Bennett commenced a separate action against the MTA Bus Company, "John W. Spruill," Torres, World Fruit, and Daniel "Park" in the Supreme Court, Bronx County; Mayritta Brown commenced a separate action against the MTA Bus Company, "MTA-New York City Transit," Spruill, and Pak in the Supreme Court, Kings County. By decision and order dated September 29, 2009, Justice Harold Beeler "consolidated for the purpose of joint discovery and trial" Bennett's and Mayritta Brown's actions with Brown's consolidated action in New York county. Justice Beeler did not specify how the caption of the consolidation of the four actions should read, and the parties have listed the actions separately, though under the same index number, Index No. 401419/2009.

Guerrero has commenced an action against World Fruit and Pak in the Supreme Court, Bronx County. Spruill and his wife have commenced an action against Torres, Guerrero, World Fruit, and Pak in the Supreme Court, Bronx County.

### **DISCUSSION**

World Fruit and Pak now move to "consolidate for the purposes of joint discovery and joint trial" Guerrero's and the Spruills' actions in the Bronx with this action, and to change the venue of Guerrero's and the Spruills' actions from the Bronx to New York County. The Spruills and Mayritta

Brown oppose the motion, arguing that consolidation would be overly complicated and would only confuse the jury. The Spruills argue that, if the actions are consolidated, then the venue should be changed to the Bronx, where the accident allegedly occurred. MTA Bus Company, Minerva Torres and Paul Guerrero do not oppose “consolidation,” but oppose transfer of the action(s) back to the Bronx.

The apparent “consolidation for the purposes of joint trial” of actions of Yvette Brown, Mellow and McFadzean, Mayritta Brown, and Latoya Bennett under a single index number with separate captions has undoubtedly created confusion as to whether consolidation or joint trial was ordered.

“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 [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, ‘[in] 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, NY Civ Prac para. 602.02, at 6-11).”

*Mars Associates, Inc. v. New York City Educational Constr. Fund*, 126 AD2d 178, 185 (1st Dept 1987). Here, the original four actions involve different plaintiffs, who allegedly suffered different damages, and who would be entitled to separate judgments. It would appear that Justice Williams and Justice Beeler, who both kept the captions of the original actions, intended for the actions to be tried jointly, rather than consolidated.

Moreover, consolidation would create confusion. John Spruill is a defendant in the consolidated action, while he and his wife are plaintiffs in another action. Therefore, consolidation

would not be proper because it would result in Spruill being both a plaintiff and defendant in the consolidated action. *Geneva Temps, Inc. v New World Communities, Inc.*, 24 AD3d 332, 335 (1<sup>st</sup> Dept 2005). Thus, this Court exercises its discretion, *sua sponte*, to sever the “consolidated action” under index number 401419/2009 into four separate actions joined for trial, and directs that the County Clerk issue each severed action its own index number.<sup>1</sup>

All these actions involve common questions of law and fact as to the liability, but not as to damages. Therefore, all actions, including Guerrero’s and the Spruills’ actions, should be joined for trial as to liability only.

Because the Guerrero’s and the Spruills’ actions were not filed in the same county as this action, the Court directs those two actions to be transferred to New York County so that a joint trial is possible.

The Spruills argue that the venue of this action should be in Bronx County because the NYCTA is a party, and that, pursuant to CPLR 505 (b), a trial against NYCTA must be in the county in which the cause of action arose. However, the issue of venue based on the involvement of NYCTA was necessarily decided by Justice Beeler when he “consolidated” and removed Mayritta Brown’s action (in which NYCTA was named as a defendant) to New York County. The NYCTA did not oppose the transfer of this action to New York County.<sup>2</sup> Although Mayritta Brown opposed

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<sup>1</sup> See Alexander, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR C603, at 5; *Marine Midland Bank, N. A. v Cafferty*, 174 AD2d 932 (3d Dept 1991) (“We note that Supreme Court correctly ordered *sua sponte* that the counterclaims be severed despite the absence of a motion for such relief”).

<sup>2</sup> The Court notes that the MTA Bus Company admits that John Spruill was employed by MTA Bus Company at the time of the accident, and that the MTA Bus Company was the registered owner that was allegedly involved in the accident. *Polese Aff.* ¶¶ 5, 7.

“consolidation” of the actions, she did not argue that the venue of the consolidated actions in New York County would be improper. Therefore, Justice Beeler’s decision to transfer Mayritta Brown’s action involving NYCTA to New York County is law of the case.

Next, the Spruills argue that the actions should be tried in Bronx County because their actions, index number 308994/2008 “was commenced . . . prior to the commencement of any other actions.” According to records from the Bronx County Clerk’s office, which were filed with the Clerk of New York County upon transfer of the consolidated action, Yvette Brown’s action was apparently commenced on January 18, 2008 and issued index number 300476/2008. Thus, contrary to the Spruills’ argument, Yvette Brown’s action was apparently commenced earlier than the Spruills’ action.

### CONCLUSION

Accordingly, it is hereby

ORDERED that the motion by defendants World Fruit Farm Corp. and Daniel Pak for consolidation is granted to the extent that *Guerro v Park*, Supreme Court of New York, Bronx County, Index No. 301379/2009 and *Spruill v Torres*, Supreme Court of New York, Bronx County, Index No. 308994/2008, are joined with this action for trial as to liability only and for discovery; and it is further

ORDERED that the Clerk of the Supreme Court, Bronx County, upon receipt of a certified copy of this order and upon payment of the proper fees, shall transfer to the Clerk of the Supreme Court, New York County, all of the papers on file in the actions *Paul Guerro v Daniel Park et ano.*, Supreme Court of New York, Bronx County, Index No. 301379/2009 and *John W. Spruill v Torres et al.*, Supreme Court of New York, Bronx County, Index No. 308994/2008; and it is further

ORDERED that the Clerk of the Supreme Court, New York County, upon receipt of a copy of this order with notice of entry, shall, without further fee, assign separate index numbers to the files transferred pursuant to this order; and it is further

ORDERED that this action, *Brown v MTA Bus Company et al.* is severed into four actions, which shall be joined for trial as to liability and for discovery, and it is further

ORDERED that the Clerk of the Supreme Court, New York County, upon receipt of a copy of this order with notice of entry, shall, without further fee, assign separate index numbers to the newly severed actions; and their captions shall read as follows:

\_\_\_\_\_  
YVETTE BROWN, Index No. 401419/09  
  
Plaintiff,

- v -

MTA BUS COMPANY, JOHN P.  
SPRVILL, MINERVA TORRES, PAUL  
GUERRERO, WORLD FRUIT FARM  
CORP. and DANIEL PAK,  
  
Defendants.

\_\_\_\_\_  
RONALD MELLOW and SOPHIE Index No.  
McFADZEAN, (To be assigned a new  
Plaintiffs, index number by the  
County Clerk)

- v -

WORLD FRUIT FARM, CORP. and  
DANIEL PAK,  
  
Defendants.

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MAYRITTA BROWN,

Plaintiff,

Index No.  
(To be assigned a new  
index number by the  
County Clerk)

- v -

MTA BUS COMPANY, MTA – NEW  
YORK CITY TRANSIT, JOHN 2.  
SPRUILL, MINERVA TORRES, PAUL A.  
GUERRERO, WORLD FRUIT FARM  
CORP. and DANIEL PAK,

Defendants.

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LATOYA BENNETT,

Plaintiff,

Index No.  
(To be assigned a new  
index number by the  
County Clerk)

- v -

JOHN SPRUILL, MTA BUS COMPANY,  
DANIEL PARK, WORLD FRUIT FARM  
CORP., PAUL GUERRERO, and  
MINERVA TORRES,

Defendants.

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and it is further

ORDERED that upon payment of the appropriate calendar fees, the filing of notes of issue and statements of readiness in each of the above actions, and upon service of a copy of this order with notice of entry on the Clerk of the Trial Support Office (60 Centre Street, Room 158), said Clerk shall place *Yvette Brown v MTA Bus Company et al.*, *Mellow v World Fruit Farm Corp.*, *Brown v MTA Bus Company et al.*, *Bennett v Spruill et al.*, *Guerrero v Park*, and *Spruill v Torres et al.* upon the trial calendar for a joint trial as to liability only; and it is further


ORDERED that discovery of all common issues shall proceed on a coordinated basis; and

it is further

ORDERED plaintiff's counsel shall serve a copy of this order with notice of entry upon the Clerk of the Trial Support Office (60 Centre Street, Room 300), who is hereby directed to mark the court's records to reflect the joint trial; and it is further

ORDERED that a status conference is scheduled in these joined actions for June 17, 2010 at 10:30 AM in IAS Part 21, 80 Centre St Room 278, New York, New York.

**Dated:** 4/7/10  
New York, New York

**ENTER:**   
\_\_\_\_\_  
J.S.C.

**MICHAEL D. STALLMAN**  
J.S.C.

**FILED**  
APR 14 2010  
NEW YORK  
COUNTY CLERK'S OFFICE