

**Joaquin v Franco**

2010 NY Slip Op 33964(U)

June 29, 2010

Supreme Court, Suffolk County

Docket Number: 25466/2009

Judge: Joseph Farneti

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This opinion is uncorrected and not selected for official publication.

Original

SHORT FORM ORDER

INDEX NO. 25466/2009

**SUPREME COURT - STATE OF NEW YORK  
I.A.S. TERM, PART 37 - SUFFOLK COUNTY**

**PRESENT:**

**HON. JOSEPH FARNETI**  
**Acting Justice Supreme Court**

JOHANA JOAQUIN, an infant under fourteen  
(14) years of age, by her Mother and Natural  
Guardian, EDITH YUPANQUI and EDITH  
YUPANQUI, Individually,

Plaintiffs,

-against-

CARMELINA FRANCO, NESTOR TREJO,  
KRISTIN MARINO and STAMINA HEATING  
AND COOLING, INC.,

Defendants.

ORIG. RETURN DATE: MARCH 23, 2010  
FINAL SUBMISSION DATE: APRIL 1, 2010  
MTN. SEQ. #: 001  
MOTION: MG

**ATTORNEYS FOR PLAINTIFFS  
IN ACTION NO. 1:**  
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**ATTORNEYS FOR DEFENDANTS  
KRISTIN MARINO AND  
STAMINA HEATING AND COOLING, INC.:**  
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Upon the following papers numbered 1 to 4 read on this motion \_\_\_\_\_  
FOR JOINT TRIAL

Notice of Motion and supporting papers 1-3 ; Affirmation in Response 4 ; it is,

**ORDERED** that this motion by defendants KRISTIN MARINO and STAMINA HEATING AND COOLING, INC. ("defendants") for an Order, pursuant to CPLR 602, consolidating the above-captioned action ("Action No. 1") with another action currently pending in Supreme Court, Suffolk County under Index No. 29921/2009 ("Action No. 2") for joint trial purposes, is hereby **GRANTED**. The Court has received an affirmation from counsel for plaintiff in Action No. 2 indicating that plaintiff has no opposition to the instant application.

Action No. 1 was commenced to recover damages for personal injuries allegedly sustained by plaintiff JOHANA JOAQUIN, an infant under fourteen (14) years of age, by her Mother and Natural Guardian, EDITH YUPANQUI and EDITH YUPANQUI, Individually, as a result of an automobile accident that occurred on or about June 17, 2009. This action was commenced by the filing of a summons and complaint on July 2, 2009, and issue was joined by the service of defendants' answer on or about July 20, 2009.

Action No. 2 was commenced to recover damages for personal injuries allegedly sustained by plaintiff NESTHALY TREJO, an infant under fourteen (14) years of age, by her uncle and guardian *ad litem*, NARCISCO FRANCO-TINEO, arising out of the same automobile accident. This action was commenced by the filing of a summons and complaint on February 4, 2010, and issue was joined by the service of defendants' answer on or about February 22, 2010.

Defendants allege that Action No. 1 and Action No. 2 arose out of the same accident. As such, defendants have filed the instant application to consolidate the two actions for joint trial purposes. The Court has not received opposition hereto, and as noted, counsel for plaintiff in Action No. 2 indicates that plaintiff has no opposition to this motion.

CPLR 602 provides in pertinent part:

(a) Generally. 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).

The Court finds that Action No. 1 and Action No. 2 have common questions of law and fact. Moreover, no party has come forth to demonstrate prejudice to any substantial rights if the Court were to consolidate the matters. Therefore, the Court finds that consolidation for joint trial purposes is warranted herein in the interests of judicial economy (see e.g. *Skelly v Sachem Cent. Sch. Dist.*, 309 AD2d 917 [2003]; *Nikolaidis v Makita Corp.*, 242 AD2d 322 [1997]; *Berman v Greenwood Village Community Dev., Inc.*, 156 AD2d 326 [1989]). Accordingly, defendants' motion is **GRANTED**. Action No. 2 shall be transferred to this Part and the caption shall now read:

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JOHANA JOAQUIN, an infant under fourteen (14) years of age, by her Mother and Natural Guardian EDITH YUPANQUI and EDITH YUPANQUI, Individually,

Plaintiffs,

-against-

Action No. 1 - Index No. 25466/2009

CARMELINA FRANCO, NESTOR TREJO, KRISTIN MARINO and STAMINA HEATING AND COOLING, INC.,

Defendants.

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NESTHALY TREJO, an infant under fourteen (14) years of age, by her uncle and guardian ad litem, NARCISCO FRANCO-TINEO,

Plaintiff,

-against-

Action No. 2 - Index No. 29921/2009

CARMELINA FRANCO, NESTOR TREJO, KRISTIN MARINO and STAMINA HEATING AND COOLING, INC.,

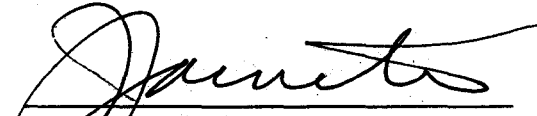
Defendants.

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[\* 4]

The foregoing constitutes the decision and Order of the Court.

Dated: June 29, 2010

  
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HON. JOSEPH FARNETI  
Acting Justice Supreme Court

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