

Lancer Ins. Co. v Riccardi

2011 NY Slip Op 30316(U)

January 26, 2011

Sup Ct, Nassau County

Docket Number: 5207/10

Judge: Denise L. Sher

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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

LANCER INSURANCE COMPANY,

Plaintiff,

- against -

MARK RICCARDI, KELLY RICCARDI and
ROCK EQUIPMENT CORPORATION,

Defendants.

TRIAL/IAS PART 32
NASSAU COUNTY

Index No.: 5207/10
Motion Seq. Nos.: 02, 03
Motion Dates: 12/17/10
01/10/11

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The following papers have been read on these motions:

	Papers Numbered
<u>Notice of Motion (Seq. No. 02), Affirmation and Exhibits</u>	<u>1</u>
<u>Notice of Cross-Motion (Seq. No. 03) and Affirmation</u>	<u>2</u>
<u>Affirmation in Opposition to Cross-Motion</u>	<u>3</u>

Upon the foregoing papers, it is ordered that the motions are decided as follows:

In a personal injury action stemming from an accident occurring on August 22, 2008, in which defendant Mark Riccardi was injured in the course and scope of his employment by Dutchess Iron Works when he fell from a trailer while he was off-loading steel at a public school in the Bronx during a renovation project; said trailer owned by defendant Rock Equipment Corporation ("Rock"), loaded by Steelfab, Inc. ("Steelfab") and delivered to the Bronx job site by a tractor owned by Speedway Transportation, Inc. ("Speedway"), plaintiff Lancer Insurance Company ("Lancer") moves, pursuant to CPLR § 602, for an order

consolidating the above captioned action (“Lancer Action”) with Bronx County Supreme Court action, *Steelfab Inc. v. Lancer Insurance Company*, Index No. 308284/10 (“Steelfab Action”), for the purpose of a joint trial in Nassau County. Defendants Mark Riccardi and Kelly Riccardi oppose plaintiff’s motion and cross-move, pursuant to CPLR § 602, for an order joining the Lancer Action and the Steelfab Action (both Declaratory Judgment actions) for trial in Bronx County rather than Nassau County. Plaintiff opposes defendants Mark Riccardi and Kelly Riccardi’s cross-motion.

Plaintiff commenced the Lancer Action on March 16, 2010, in the Nassau County Supreme Court, seeking declaratory judgment that a motor vehicle liability insurance policy issued by plaintiff to Speedway provides no coverage to defendant Rock for any liability for damages arising out of the accident in which defendant Mark Riccardi was injured. On or about October 7, 2010, Steelfab commenced the Steelfab Action in Bronx County Supreme Court seeking a declaration that the Lancer policy issued to Speedway provides coverage to Steelfab for liability for damages arising out of defendant Mark Riccardi’s accident. Prior to both the Lancer Action and the Steelfab Action, a personal injury action was commenced by Mark Riccardi and Kelly Riccardi (defendants in the instant matter) in Bronx County (“Underlying Action”). The Underlying Action involves multiple defendants including The City of New York, New York City School Construction Authority, The Board of Education of the City of New York, The New York City Department of Education, Andron Construction Corporation, Steelfab Inc, Rock Equipment Corp. and Speedway Transportation, Inc.

Plaintiff Lancer argues that the Lancer Action and the Steelfab Action should be consolidated in Nassau County as both seek a determination of plaintiff Lancer’s rights and

obligations with respect to putative additional insureds for coverage against liability arising out of defendant Mark Riccardi's accident. Plaintiff Lancer submits that discovery in both the Lancer Action and the Steelfab Action will involve an investigation into the indemnification, ownership and use of the tractor and trailer which Speedway delivered to the site where the accident allegedly occurred. Plaintiff Lancer states that "Mark Riccardi and Kelly Riccardi, as bodily injury claimants, have an interest in the determinations of liability insurance coverage sought in both the Lancer Action and the Steelfab Action. Plaintiff Lancer contends that it would be in the interest of litigation economy and efficiency for the Steelfab Action to be consolidated with the Lancer Action or to have the two actions tried together in Nassau County.

In their cross-motion, defendants Mark Riccardi and Kelly Riccardi argue that the Lancer Action should be transferred to Bronx County Supreme Court and joined with the Steelfab Action since "the issue of insurance coverage being litigated in the Declaratory Judgment actions is significant in terms of its effect on the underlying personal injury action as the owner of the flatbed trailer, that being Rock Equipment Corporation, is the subject of Lancer's Declaratory judgment action which seeks a declaration that it does not owe indemnification to Rock Equipment Company (*sic*). Moreover, Steelfab, the entity that manufactured the steel components and loaded the subject trailer is seeking to obtain primary insurance status pursuant to the Lancer Insurance policy with Speedway Transportation Inc. Thus, all of the parties will be directly or indirectly affected by the Declaratory Judgment actions." Defendants Mark Riccardi and Kelly Riccardi submit that "if the Declaratory Judgments are venued in Nassau County there is the risk that the cases will languish and that discovery will not be completed when discovery is completed in the underlying personal injury

action. By permitting the Declaratory Judgment actions to be venued in Bronx County, the cases can be managed in such a fashion that the Declaratory Judgment actions would not delay trial in this case...Moreover, to transfer the venue to Nassau County will deny the litigants in the personal injury actions the ability to insure that the Declaratory Judgment actions and the Supreme Court actions are proceeding timely and down parallel paths. The 'interest of justice' would be best served by having the actions in the Bronx along with the underlying personal injury action and there is no practical reason to transfer (*the Steelfab Action*) in Nassau County."

It is well settled that a motion for consolidation is addressed to the sound discretion of the trial court and, absent a showing of substantial prejudice by the party opposing the motion, consolidation is proper where there are common questions of law and fact. *See Zupick v. Flushing Hospital and Medical Center*, 156 A.D.2d 677, 549 N.Y.S.2d 441 (2d Dept. 1989); *TT Enterprises v. Gralnick*, 127 A.D.2d 651, 511 N.Y.S.2d 878 (2d Dept. 1987); *Marshall v. Monegro Investors*, 132 A.D.2d 651, 518 N.Y.S.2d 23 (2d Dept. 1987); *Stephens v. Allstate Insurance Co.*, 185 A.D.2d 338, 586 N.Y.S.2d 305 (2d Dept. 1992).

Therefore, such orders should be entered where common questions of fact and law are presented and any opponent thereto has failed to show substantial prejudice. *See Stephens v. Allstate Insurance Co.*, *supra*; *Marshall v. Monegro Investors*, *supra*; *Sarrds, Inc. v. Dove Demolition Corp.*, 71 A.D.2d 1001, 420 N.Y.S.2d 292 (2d Dept. 1979).

The Court, in its discretion, finds that having all three actions (the Underlying Action, the Lancer Action and the Steelfab Action) heard in the Bronx County Supreme Court would be in the interest of litigation economy and efficiency for all parties involved. As plaintiff Lancer, itself, stated, defendants Mark Riccardi and Kelly Riccardi have an interest in the determinations of liability insurance coverage sought in both the Lancer Action and the Steelfab

Action. The Court also notes that defendants Mark Riccardi and Kelly Riccardi were the first to bring suit in Bronx County.

The Court concurs with defendants Mark Riccardi and Kelly Riccardi that having all three actions heard in Bronx County Supreme Court “makes the most sense as all three cases can be managed most effectively in the Bronx, and particularly, the completion of discovery can be coordinated in Bronx County to ensure that the Declaratory Judgment actions do not delay justice in the personal injury action.”

The Court grants the cross-motion (Seq. No. 03) by defendants Mark Riccardi and Kelly Riccardi which seeks an order transferring the matter of *Lancer Insurance Company v. Mark Riccardi, Kelly Riccardi and Rock Equipment Corporation*, Index No. 5207/10, from Nassau County Supreme Court to Bronx County Supreme Court. The motion (Seq. No. 02) by plaintiff Lancer (Seq. No. 02) is therefore denied.

Accordingly, based upon the foregoing, it is hereby directed that:

- 1) the instant Nassau County Supreme Court matter, *Lancer Insurance Company v. Mark Riccardi, Kelly Riccardi and Rock Equipment Corporation*, Index No. 5207/10, is to be jointly tried, in the Bronx County Supreme Court, with the Bronx County Supreme Court matter *Steelfab Inc. v. Lancer Insurance Company*, Index No. 308284/10, Index No. 20150/09;
- 2) upon presentation of a copy of this order, the clerk of the Nassau County Supreme Court is to forthwith transfer the file in the matter of *Lancer Insurance Company v. Mark Riccardi, Kelly Riccardi and Rock Equipment Corporation*, Index No. 5207/10, to the Bronx County Supreme Court, upon the payment of all applicable fees, if any;
- 3) all parties shall serve upon any party so demanding copies of disclosure documents

heretofore obtained in the other action;

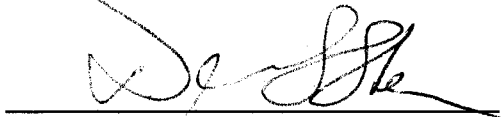
- 4) all matters of trial practice, including the right to open and close, are reserved to the Justice presiding at the joint trial;
- 5) all papers shall reflect the joint status of these actions;
- 6) upon completion of discovery, the parties shall file separate notes of issues and certificates of readiness; and
- 7) each party shall be entitled to enter separate judgments and bill of costs and disbursements, in each action respectively, if costs are allowed.

Accordingly, it is hereby

ORDERED, that the cross motion (Seq. No. 03) by defendants Mark Riccardi and Kelly Riccardi for an order, pursuant to CPLR § 602 (a), for an order joining the Lancer Action and the Steelfab Action (both Declaratory Judgment actions) in Bronx County rather than Nassau County for the purpose of a joint trial is hereby **GRANTED**.

This constitutes the decision and order of this Court.

ENTER:



DENISE L. SHER, A.J.S.C.

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Dated: Mineola, New York
January 26, 2011

ENTERED
FEB 01 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE