

**American Intl. Ins. Co. v Aljer Plumbing & Heating Corp.**

2011 NY Slip Op 33722(U)

March 22, 2011

Sup Ct, New York County

Docket Number: 108906/10

Judge: Judith J. Gische

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY  
HON. JUDITH J. GISCHE

PRESENT: \_\_\_\_\_ J.S.C. \_\_\_\_\_  
*Justice*

PART 10

Index Number : 108906/2010  
AMERICAN INTERNATIONAL  
VS.  
ALJER PLUMBING & HEATING CORP.  
SEQUENCE NUMBER : 001  
CONSOLIDATION/JOINT TRIAL

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 001

MOTION CAL. NO. \_\_\_\_\_

this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion

**FILED**

MAR 23 2011

NEW YORK  
COUNTY CLERK'S OFFICE

**motion (s) and cross-motion(s)  
decided in accordance with  
the annexed decision/order  
of even date.**

Dated: MAR 22 2011

HON. JUDITH J. GISCHE J.S.C.  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

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 10**

-----X  
AMERICAN INTERNATIONAL INSURANCE  
COMPANY as subrogee of MARK ARMENANTE,

Plaintiff,

-against-

ALJER PLUMBING & HEATING CORP., D.  
HALLER INC., and THE RELIABLE AUTOMATIC  
SPRINKLER CO., INC.;

Defendants.  
-----X

**DECISION/ ORDER**  
Index No.: 108906/10  
Seq. No.: 001

**PRESENT:**  
Hon. Judith J. Gische  
J.S.C.

**FILED**

**MAR 23 2011**

Recitation, as required by CPLR § 2219 [a] of the papers considered for the review of  
this (these) motion(s): NEW YORK  
COUNTY CLERK'S OFFICE

<b>Papers</b>	<b>Numbered</b>
Def's n/m (consolidate) w/CV affirm, exhs .....	1

*Upon the foregoing papers, the decision and order of the court is as follows:*

The court has before it a motion by defendant, Aljer Plumbing & Heating Corp. ("Aljer"), to consolidate the above captioned action ("Action 2"), with another, earlier commenced action, also pending in Supreme Court, New York County. The first action is American International Insurance Company as subrogee of Christopher Hamick v. Aljer Plumbing & Heating Corp., D. Haller, Inc. and The Reliable Automatic Sprinkler Co., Inc., Index No. 108905/10 ("Action 1"). Aljer seeks consolidation for purposes of discovery and joint trial pursuant to CPLR § 602. The basis for Aljer's motion for consolidation is that both cases arise out of the same incident, involve common questions of fact or law, and will require presentation of nearly identical evidence and evaluation by the jury.

Though Aljer has filed proof of service of this motion, neither plaintiff nor the other defendants have opposed it or appeared. Therefore, it is being submitted to the court, and being considered, on default.

The court has the discretion to order the consolidation of actions where common questions of law or fact exist. CPLR 602 [a]; Bradford v. John A. Coleman Catholic High School, 110 A.D.2d 965 (3d Dept. 1985). It is unnecessary that all the facts and issues be the same, but there must be "at least some important rules of law and fact in common to both actions." Bradford, *supra* at 966. Thus, while Action 1 and Action 2 do not need to be identical in every respect, individual issues should not predominate. Bender v. Underwood, 93 A.D.2d 747 (1st Dept. 1983). Where the actions arise from the same incident, have substantially the same facts and issues of law, and the same witnesses would testify at both trials if actions were tried separately, consolidation is appropriate. Burger v. Long Island Rail Road Company, 24 A.D.2d 509 (2d Dept. 1965) [different damages, but same collision, same witnesses].

Here, Actions 1 and 2 involve the same parties, arise out of the same operative set of facts and will require similar legal analysis. The motion has been submitted without opposition, and therefore, no one has demonstrated prejudice to a "substantial right" resulting from the consolidation (see Maigur v. Saratogian, 47 A.D.2d 982 [3d Dept. 1975]). Accordingly, the motion to consolidate is granted and Action 1 and 2 are hereby consolidated.

**Conclusion**

*In accordance herewith, it is hereby:*

**ORDERED** that the motion to consolidate is granted; and it is further

**ORDERED** that the action entitled American International Insurance Company as subrogee of Mark Armenante v. Aljer Plumbing & Heating Corp., D. Haller, Inc. and The Reliable Automatic Sprinkler Co., Inc., Index No. 108906/10 is hereby consolidated under American International Insurance Company as subrogee of Christopher Hamick v. Aljer Plumbing & Heating Corp., D. Haller, Inc. and The Reliable Automatic Sprinkler Co., Inc., Index No. 108905/10, with the following caption:

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 10**

-----X  
AMERICAN INTERNATIONAL INSURANCE  
COMPANY as subrogee of CHRISTOPHER HAMICK  
and AMERICAN INTERNATIONAL INSURANCE  
COMPANY as subrogee of MARK ARMENANTE,

Index No.: 108905/10

Plaintiffs,

-against-

ALJER PLUMBING & HEATING CORP., D. HALLER  
INC., and THE RELIABLE AUTOMATIC SPRINKLER  
CO., INC.,

Defendants.  
-----X

and it is further

**ORDERED** that upon service on the Clerk of the Court of a copy of this Order with Notice of Entry, the Clerk shall consolidate the papers in the actions hereby consolidated, and shall mark this consolidation in the Court's files; and it is further

**ORDERED** that a copy of this order with notice of entry shall also be served upon the Clerk of the Trial Support Office, who is hereby directed to mark the Court's records to reflect the consolidation; and it is further


**ORDERED** that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

**ORDERED** that any requested relief not expressly addressed herein has nonetheless been considered by the court and is hereby expressly denied; and it is further

**ORDERED** that this shall constitute the decision and order of the Court.

Dated: New York, New York  
March 22, 2011

So Ordered:

  
\_\_\_\_\_  
HON. JUDITH J. GISCHE, J.S.C.

**FILED**

**MAR 23 2011**

NEW YORK  
COUNTY CLERK'S OFFICE