

Tsering v New Today's Laudromat, Inc.

2011 NY Slip Op 33750(U)

February 10, 2011

Sup Ct, Queens County

Docket Number: 6690/08

Judge: Howard G. Lane

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: **HONORABLE HOWARD G. LANE**
Justice

IAS PART 6

ACTION NO. 1

TSECHOG TSERING, ADMINISTRATRIX OF
THE ESTATE OF PHURBU TSERING,
DECEASED,

Index No. 6690/08

Plaintiff,

Motion

Date November 9, 2010

-against-

Motion

Cal. No. 39

NEW TODAY'S LAUNDROMAT, INC., 4815
DEVELOPMENT CORP., CRC MANAGEMENT
CO., LLC, and CLEAN RITE CENTER,
LLC.,

Motion

Seq. No. 3

Defendants.

NEW TODAY'S LAUNDROMAT, INC.,
Third-Party Plaintiff

-against-

TODAY'S LAUNDROMAT, INC.,
Third-Party Defendant.

ACTION NO. 2

TSECHOG TSERING, ADMINISTRATRIX OF
THE ESTATE OF PHURBU TSERING,
DECEASED,

Index No. 30279/08

Plaintiff,

-against-

DAVID SAMMETT, M.D., HANG SIK BYUN,
M.D., EMANUELA BINELLO, M.D.,
ELMHURST HOSPITAL CENTER, NEW YORK
CITY HEALTH AND HOSPITALS CORPORATION
and "JOHN DOE", M.D., (name being
fictitious and intended to denote the
neurologist/neurosurgeon who treated
plaintiff's decedent at Elmhurst
Hospital on or about October 6, 2007
and thereafter, and named to preserve
any causes of action that plaintiff
may have against said individual.

Defendants.

PAPERS

NUMBERED

Notice of Motion-Affidavits-Exhibits.....	1-4
Affirmations in Support.....	5-8
Opposition.....	9-10
Reply.....	11-13
Sur-Reply Affirmation.....	14-16
Sur-Reply Affirmation in Support.....	17-18
Reply to Sur-Reply.....	19-20

Upon the foregoing papers it is ordered that this motion by defendant/third-party plaintiff, New Today's Laundromat, Inc. for an order consolidating the above-entitled Action No. 1 (Index No. 6690/08) with any and all matters in issue in the Queens County, Supreme Court action bearing Index No. 30279/08 for discovery and joint trial pursuant to CPLR 602 is hereby granted.

"Where common questions of law or fact exist, a motion to consolidate or for a joint trial pursuant to CPLR 602(a) should be granted absent a showing of prejudice to a substantial right by the party opposing the motion" (*Mas-Edwards v. Ultimate Services, Inc.*, 845 NYS2d 414, 415 [2d Dept 2007][internal citations omitted]).

Defendant/third-party plaintiff, New Today's Laundromat, Inc. contends that plaintiff's medical malpractice action should be consolidated with plaintiff's negligence action because they involve common questions of law or facts, specifically those relating to plaintiff's claims concerning decedent's alleged injuries and death. In Action No. 1, plaintiff alleges that defendants' purported negligence in the maintenance of the premises caused decedent's fall on October 6, 2007, and ultimately his death. Plaintiff in Action No. 2 also attributes decedent's death to the negligent and careless medical and diagnostic care and treatment, rendered to decedent by the defendants therein from October 6, 2007 to October 21, 2007. Defendant/third-party plaintiff, New Today's Laundromat, Inc. also argues that the Verified Bills of Particulars in Action No. 1 (the premises action) and Action No. 2 (the medical malpractice action) both allege that the decedent sustained the same injuries as a result of the respective defendants' allege negligence, and that consolidating the instant action with the medical malpractice action would allow for the same factual and legal issues regarding the alleged causes of plaintiff's decedent's death to be addressed in one action.

Tsechog Tsering, plaintiff in Action No. 1 and Action No. 2, opposes the motion for consolidation, contending that although both actions concern the same person, plaintiff's decedent, the issues are separate and distinct, involving different tortfeasors, different theories of liability, and different witnesses, lay and expert, as well as different questions of law

and fact. The Complaint in Action No. 1 alleges that on October 6, 2007, while plaintiff's decedent, Phurbu Tsering, was lawfully at the laundromat located at 48-15 31st Avenue, Woodside, New York, he fell down a flight of stairs, causing him to sustain severe and permanent injuries. The complaint and the bill of particulars allege that defendants, the owner and managing agent of the laundromat premises, were negligent in their operation, management and control of the premises and created a dangerous and defective condition by, inter alia, failing to warn, signal, or notify plaintiff's decedent that the door in the vending machine room was not latched shut, in failing to latch the door shut, etc. After he fell down the stairs, he was transported to Elmhurst Hospital Center, where he was treated up until his death on October 21, 2007. The Complaint and Bill of Particulars in Action No. 2 allege that defendants, the hospital and three treating physicians, failed to timely diagnose and treat decedent's aspiration pneumonia and traumatic brain injury, causing his death. It is also argued that there would be prejudice and jury confusion, since with both "premises" defendants and "medical malpractice" defendants in the consolidated action, there would be so many divergent claims that a jury could not follow the testimony and separate the legal claims and defenses among the various "premises" and "medical malpractice" defendants.

The Court finds that there are common issues of law or fact in that in both actions, decedent sustained the same injuries as a result of the respective defendants' alleged negligence. The Court finds plaintiff's contention of prejudice based upon the fact that decedent's hospital chart from Elmhurst Medical Center, a defendant in the medical malpractice action, reveals that plaintiff was intoxicated at the time of the accident, to be unavailing.

The caption of the actions to be jointly tried shall be:

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF QUEENS

 TSECHOG TSERING, ADMINISTRATRIX OF
 THE ESTATE OF PHURBU TSERING,
 DECEASED,

Plaintiff,

ACTION NO. 1

Index No. 6690/08

-against-

NEW TODAY'S LAUNDROMAT, INC., 4815
 DEVELOPMENT CORP., CRC MANAGEMENT
 CO., LLC, and CLEAN RITE CENTER,
 LLC.,

Defendants.

 NEW TODAY'S LAUNDROMAT, INC.,

Third-Party Plaintiff

-against-

TODAY'S LAUNDROMAT, INC.,
Third-Party Defendant.

TSECHOG TSERING, ADMINISTRATRIX OF
THE ESTATE OF PHURBU TSERING,
DECEASED,
Plaintiff

ACTION NO. 2

Index No. 30279/08

-against-

DAVID SAMMETT, M.D., HANG SIK BYUN,
M.D., EMANUELA BINELLO, M.D.,
ELMHURST HOSPITAL CENTER, NEW YORK
CITY HEALTH AND HOSPITALS CORPORATION,
and "JOHN DOE", M.D. (name being
fictitious and intended to denote
the neurologist/neurosurgeon who
treated plaintiff's decedent at
Elmhurst Hospital on or about
October 6, 2007, and thereafter, and
named to preserve any causes of
action that plaintiff may have
against said individual),

Defendants.

It is further ordered that a copy of this order with notice
of entry shall be served, within thirty (30) days of entry of
this order, on all parties to the actions combined, on the Clerk
of Queens County and at the time of filing of the notes of issue,
upon the clerk of the Trial Term Office of the Supreme Court,
Queens County, Room 140.

Plaintiff shall annex a copy of this order with any note of
issue submitted.

This constitutes the decision and order of the Court.

A courtesy copy of this order is being mailed to movant.

Dated: February 10, 2011

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Howard G. Lane, J.S.C.