

Reid v City of New York
2012 NY Slip Op 32178(U)
August 15, 2012
Supreme Court, New York County
Docket Number: 107724/2009
Judge: Barbara Jaffe
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

BARBARA JAFFE
J.S.C.

PRESENT: _____
Justice

PART 5

Index Number : 107724/2009
REID, KOBE
vs.
CITY OF NEW YORK CALL # 79
SEQUENCE NUMBER : 005
CONSOLIDATION/JOINT TRIAL

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). _____

Answering Affidavits — Exhibits _____ No(s). _____

Replying Affidavits _____ No(s). _____

Upon the foregoing papers, It is ordered that this motion is

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

FILED

AUG 20 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 8-15-12
AUG 15 2012

38 _____, J.S.C.
BARBARA JAFFE

1. CHECK ONE: ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☒ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

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

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK : PART 5

-----X
KOBE REID and DEBORAH REID,

Plaintiffs,

-against-

Index No. 107724/09

Motion subm.: 6/18/12

Motion seq. no.: 005

DECISION AND ORDER

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF HOMELESS SERVICES,
TENRIT STUDIOS LLC and THE FATHER
PETER G. YOUNG, JR. FOUNDATION, INC.,

Defendants.

-----X
KOBE REID and DEBORAH REID,

Plaintiffs,

-against-

AGUILA, INC.

Defendant.

-----X
KOBE REID and DEBORAH REID,

Plaintiffs,

-against-

THE LAPES GROUP, INC.

Defendant.

-----X
BARBARA JAFFE, J.:

For plaintiffs:
Matthew H. Mishkin, Esq.
Krieger Wilansky & Hupart, Esqs.
5602 Broadway, 2nd Floor
Bronx, NY 10463
(718) 432-0500

By notice of motion dated May 15, 2012 and submitted on default, plaintiffs seek an

Index No. 108492/10

FILED

AUG 20 2012

**NEW YORK
COUNTY CLERK'S OFFICE**

Index No. 101390/11

order consolidating the three above-captioned actions and modifying the default judgment granted on November 14, 2011 against The Lapes Group, Inc. (Lapes). Plaintiff Kobe Reid allegedly sustained injuries on March 4, 2008 when he fell at the Parkview Shelter at 55 West 110th Street in Manhattan. (Affirmation of Matthew H. Mishkin, Esq., dated May 15, 2012 [Mishkin Aff.], Exh. 1). Plaintiffs brought suit against the City, New York City Department of Homeless Services (NYCDHS), Tenrit Studios LLC (Tenrit), and the Peter G. Young Jr. Foundation, Inc. (Foundation) on May 9, 2009 (Mishkin Aff) and subsequently sued Aguila, Inc. (Aguila) on June 21, 2010 and then Lapes on June 24, 2011. (*Id.*, Exh. 2,3).

Tenrit failed to appear and a default judgment was entered against it on August 5, 2010. (*Id.*). The action against Foundation was discontinued by stipulation dated November 8, 2010. (*Id.*). Aguila joined issue by service of its answer on August 24, 2011. (*Id.*, Exh. 2). A default judgment against Lapes was issued by another justice of this court on November 14, 2011 as a result of its failure to appear. The court also directed plaintiff to file their note of issue by a date certain.

II. CONTENTIONS

Plaintiffs allege that the City, NYCDHS, Tenrit, and Aguila owned, operated, maintained, managed, controlled, and supervised the premises and existing homeless shelter at the aforementioned address, and that Lapes owned and operated it as well. (*Id.*, Exhs. 1, 2, 3). They argue consolidation of the above three actions is appropriate because they share common questions of fact and law in light of the combined interest all defendants have in and control of the premises and facility. Plaintiffs maintain that consolidation will result in no prejudice to defendants and they ask that the other justice's order be modified so that a note of issue need not be filed until the close of discovery in all actions.

order consolidating the three above-captioned actions and modifying the default judgment granted on November 14, 2011 against The Lapes Group, Inc. (Lapes). Plaintiff Kobe Reid allegedly sustained injuries on March 4, 2008 when he fell at the Parkview Shelter at 55 West 110th Street in Manhattan. (Affirmation of Matthew H. Mishkin, Esq., dated May 15, 2012 [Mishkin Aff.], Exh. 1). Plaintiffs brought suit against the City, New York City Department of Homeless Services (NYCDHS), Tenrit Studios LLC (Tenrit), and the Peter G. Young Jr. Foundation, Inc. (Foundation) on May 9, 2009 (Mishkin Aff) and subsequently sued Aguila, Inc. (Aguila) on June 21, 2010 and then Lapes on June 24, 2011. (*Id.*, Exh. 2,3).

Tenrit failed to appear and a default judgment was entered against it on August 5, 2010. (*Id.*). The action against Foundation was discontinued by stipulation dated November 8, 2010. (*Id.*). Aguila joined issue by service of its answer on August 24, 2011. (*Id.*, Exh. 2). A default judgment against Lapes was issued by another justice of this court on November 14, 2011 as a result of its failure to appear. The court also directed plaintiff to file their note of issue by a date certain.

II. CONTENTIONS

Plaintiffs allege that the City, NYCDHS, Tenrit, and Aguila owned, operated, maintained, managed, controlled, and supervised the premises and existing homeless shelter at the aforementioned address, and that Lapes owned and operated it as well. (*Id.*, Exhs. 1, 2, 3). They argue consolidation of the above three actions is appropriate because they share common questions of fact and law in light of the combined interest all defendants have in and control of the premises and facility. Plaintiffs maintain that consolidation will result in no prejudice to defendants and they ask that the other justice's order be modified so that a note of issue need not be filed until the close of discovery in all actions.

III. ANALYSIS

A. Consolidation

Pursuant to CPLR 602(a), the court may consolidate multiple actions. (*See Rodgers v Worrell*, 214 AD2d 553 [2d Dept 1995]). It is well-settled that consolidation should be granted where there are common questions of law and fact, unless the party opposing the motion demonstrates that consolidation will prejudice a substantial right. (*Geneva Temps, Inc. v New World Communities, Inc.*, 24 AD3d 332 [1st Dept 2005]; *Guasconi v Pohl*, 2 AD3d 1202 [3d Dept 2003]). Consolidation is appropriate where the proffered evidence is the same for each action and where there is no possibility of divergent decisions. (*See Best Price Jewelers.com v Internet Data Stor. & Sys., Inc.*, 51 AD3d 839 [2d Dept 2008]).

The instant matters all arise from Kobe Reid's fall on March 4, 2008 at the shelter. Due to the defendants' alleged joint operation and/or ownership of the premises, the evidence plaintiffs will offer to establish their liability will be similar (*see Maigur v Saratogian, Inc.*, 47 AD2d 982 [3d Dept 1975] [if admissible evidence in one action is admissible or relevant in other it is usually sufficient to warrant consolidation]), and separate actions will likely result in needless duplication and possibly disparate judgments. And Deborah Reid's derivative action for loss of consortium, premised on Mr. Reid's claims, depend on the same evidence. (*Id.*). Therefore, all three actions share common issues of law and fact.

B. Modification

As the action against Lapes is now consolidated with the other two actions in which discovery remains outstanding, there is no need for plaintiffs to file their note of issue until discovery is complete in the consolidated action.

IV. CONCLUSION

Accordingly, it is hereby

ORDERED, that Action 1 is consolidated in this Court, as Index No. 107724/09, with Kobe Reid and Deborah Reid v Aguila, Inc., Index. No. 108492/10 and Kobe Reid and Deborah Reid v The Lapes Group, Inc., Index No. 101390/11, and the consolidated action shall bear the following caption:

-----X
 KOBE REID and DEBORAH REID,

 Plaintiffs,

 -against-

 THE CITY OF NEW YORK, NEW YORK CITY
 DEPARTMENT OF HOMELESS SERVICES,
 TENRIT STUDIOS LLC, AGUILA INC. and THE
 LAPES GROUP,

 Defendants.
 -----X

it is further

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

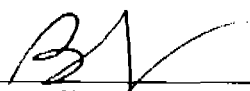
ORDERED, that plaintiffs shall serve a copy of this order with notice of entry upon the Clerk of the Clerk within 30 days of the date of this order; it is further

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 his records to reflect the consolidation, 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 (Room 158), who is hereby directed to mark the court's records

to reflect the consolidation; and it is further

ORDERED, that all of the parties in the consolidated action are directed to appear for the previously-scheduled compliance conference on November 27, 2012 at 2 pm, in room 103 at 80 Centre Street, New York, New York.


Barbara Jaffe, JSC
BARBARA JAFFE
J.S.C.

Dated: August 15, 2012
New York, New York
AUG 15 2012

FILED

AUG 20 2012

**NEW YORK
COUNTY CLERK'S OFFICE**