

Barahona v City of New York

2013 NY Slip Op 30232(U)

January 28, 2013

Sup Ct, New York County

Docket Number: 112730/2010

Judge: Kathryn E. Freed

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN FREED
JUSTICE OF SUPREME COURT Justice

PART 5

Index Number : 112730/2010
BARAHONA, DONALDO E.

vs
CITY OF NEW YORK

Sequence Number : 005
CONSOLIDATION/JOINT TRIAL

CAL # 21

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


FILED
FEB 04 2013
NEW YORK
COUNTY CLERK'S OFFICE

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

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

Dated: 1-28-13

JAN 28 2013


_____, J.S.C.
HON. KATHRYN FREED
JUSTICE OF SUPREME COURT

- 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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 5

-----X
DONALD E. BARAHONA,

Plaintiff,

DECISION/ORDER
Index No.: 112730/2010
Seq. No.: 005

-against-

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF TRANSPORTATION, NEW
YORK CITY DEPARTMENT OF ENVIRONMENTAL
PROTECTION, EMPIRE CITY SUBWAY COMPANY,
CONSOLIDATION EDISON COMPANY OF NEW
YORK, JAB CONSTRUCTION INC., WARREN
GEORGE, INC., TRIUMPH CONSTRUCTION CORP.,
LIMOS NLIMITED and SHARMA MANGAT RAM,

PRESENT:
Hon. Kathryn E. Freed
J.S.C.

Defendants.

FILED
FEB 04 2013
NEW YORK
COUNTY CLERK'S OFFICE

-----X
PRESENT: HON. KATHRYN E. FREED:

RECITATION, AS REQUIRED BY CPLR §2219(a), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION.

PAPERS	NUMBERED
NOTICE OF MOTION AND AFFIDAVITS ANNEXED.....1-2.....
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED.....
ANSWERING AFFIDAVITS.....
REPLYING AFFIDAVITS.....
EXHIBITS..... 3-10.....
STIPULATIONS.....
OTHER.....

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THIS MOTION IS AS FOLLOWS:

Defendants Limos Unlimited and Sharma Mangat Ram seek an Order of consolidation pursuant to CPLR§ 602(a), directing that the within action (Action #1) and third-party action, Limos Unlimited and Sharma Mangat Ram v. Shem Alleyne, be joined with Alleyne v. The City of NY, et al., (Action #2), an action currently pending in Supreme Court, New York, under Index No.

4011001/11, that was previously consolidated with Government Employees Insurance Company as Subrogee of Andrew Alleyne v. The City of New York and Hellman Electric Corp., under Index Number 401100/11, for a joint trial and joint discovery.

No opposition has been submitted. After a review of the instant motion, all relevant statutes and caselaw, the Court grants the motion in part.

Factual and procedural background:

Both actions are a result of the same three motor vehicle accident that occurred on August 10, 2010, at the intersection of 5th Avenue and 42nd Street, at 5:30 a.m. The police report indicates that the traffic control device located at this intersection was not functioning at the time the accident occurred. All three drivers claim to have had the green light. The drivers were Shem Alleyne, who was driving a vehicle registered to Andrew Alleyne, Donald Barahona who was driving a vehicle registered to Oscar Eduardo Euceda and Sharma Mangat Ram, who was driving a vehicle registered to Limos Unlimited, Inc. The traffic control device was subsequently repaired at 7:00 a.m. the same day.

Neither Actions# 1,2 or 3 have been noticed for trial. Action #1 is a personal injury commenced by plaintiff under Index No. 112730/10 in Supreme Court, New York County, via the filing of a Summons and Complaint on September 28, 2010. Issue was joined by service of an Answer by defendants Limos Unlimited and Sharma Mangat Ram. On January 31, 2011, Mangat commenced a third-party action, Action #2 against Shem Alleyne and Andrew Alleyne, via the filing of a Summons and Complaint under Index No. 590129/11. The Alleynes joined issue with an Answer on April 29, 2011.

On February 23, 2012, the deposition of plaintiff Barahona in Action #1 took place. Subsequently, via motion, Hon. Barbara Jaffe granted summary judgment on the issue of liability

of defendants Empire City Subway Company and Triumph Construction Corporation on March 27, 2012 and July 5, 2012. However, at this time, the only deposition that had been completed was plaintiffs.

Action #3 is a personal injury action emanating from the same accident at issue in Actions # 1 and 2. Plaintiff Shem Alleyne commenced this action in Supreme Court, Kings County, via the filing of a Summons and Complaint which was later amended and filed on February 7, 2011. Issue was subsequently joined by the service of an Answer on September 15, 2011. On July 18, 2011, an order by Hon. George Silver, was entered in New York Supreme Court which re-assigned Action #3 under Index No. 401100/11. Additionally, on May 10, 2012, Hon. Geoffrey Wright, granted a motion to consolidate the case of Shem C. Alleyne v. The City of New York, et al. , with the action of Government Employees Insurance Company as Subrogee of Andrew Alleyne v. The City of New York and Hellman Electric Corp., which was commenced in Queens County, under Index No. 18723/11. Both these actions are now under the same index number of 401100/11, pending in New York County.

Now, Limos Unlimited and Sharma Mangat Ram argue that consolidation is warranted to prevent multiplicity of suits all arising out of the exact same occurrence, wherein all the claims are similar in nature and there are common questions of law and fact. They also argue that since all parties are listed on the same police report, they will inevitably suffer undue costs and the burden from being compelled to conduct duplicate discovery and trials. Thus, the movants request that this Court order the joint discovery and trial of Actions #1, #2 and #3, with each retaining its own index number.

Conclusions of law:

CPLR§ 602(a) permits the consolidation of actions which involve common questions of fact;

and generally vests discretion with the trial judge to determine whether to order consolidation. “Consolidation is appropriate where it will avoid unnecessary duplication of trials, save unnecessary costs and expense and prevent the injustice which would result from divergent decisions based on the same facts.....” (Chinatown Apts., Inc. v. New York City Tr. Auth., 100 A.D.2d 824 [1st Dept. 1984]). Indeed, joint trials are favored in that they will foster judicial economy, quicken the disposition of cases (Matter of City of Rochester v. Levin, 57 A.D.2d 700 [4th Dept. 1977]), and potentially encourage settlements (In Re New York City Asbestos Litigation, 188 A.D.2d 214 [1st Dept. 1993], *lv granted* 81 N.Y.2d 707 [1993]).

Where consolidation is sought, the party opposing it bears the burden of demonstrating prejudice to a substantial right (*see* American Home Mtge. Servicing, Inc. v. Sharrocks, 92 A.D.3d 620, 622 [2d Dept. 2012]; Viafax Corp. v. Citicorp Leasing, Inc., 54 A.D.3d 846, 950 [2d Dept. 2008]). While consolidation is favored where it advances judicial economy, it should not be ordered where the issues raised in the two actions are “essentially different, or there is an insufficient identity of the factual or legal issues involved in the actions” (*see* 1 N.Y. Jur 2d, Actions § 62). Moreover, the prejudice inherent in delay may also militate against consolidation, when the actions sought to be consolidated are at markedly different stages (*see* 1 N.Y. Jur 2d, Actions § 64; *see also* Ahmed v. C.D. Kobsons, Inc., 73 A.D.3d 440, 441 [1st Dept. 2010]).

In the case at bar, the Court finds that consolidation would be appropriate, given the fact that the separate actions all involve the same set of facts and probable witnesses, and are clearly not at markedly different stages.

Therefore, in accordance with the foregoing, it is hereby

ORDERED that the motion of defendants’ Limos Unlimited and Sharma Mangat Ram is granted and the above-captioned action shall be jointly tried with Shem C. Alleyne v. City of New

York, Index No. 401100/11 pending in this court; and it is further

ORDERED that, within 30 days from the entry of this order, counsel for the movants shall serve a copy of it with notice of entry upon the Clerk of the Trial Support Office (Room 158); and it is further

ORDERED that the Clerk of the Trial Support Office shall assign the consolidated case to the undersigned. All parties to appear in Part DCM (Room 103), 80 Centre Street on March 12, 2013 at 2:00 p.m. for joint discover and it is further


ORDERED that upon payment of the appropriate calendar fees and the filing of notes of issue and statements of readiness in each of the above actions, the Clerk of the Trial Support Office shall place the aforesaid actions upon the trial calendar for a joint trial; and it is further

ORDERED that this constitutes the decision and order of this Court.

DATED: January 28, 2013

JAN 28 2013

FILED
 ENTER:
 FEB 04 2013
 NEW YORK
 COUNTY CLERK'S OFFICE



Hon. Kathryn E. Freed
 HON. KATHRYN FREED
 JUSTICE OF SUPREME COURT