

267 Edgeco LLC v City of New York

2013 NY Slip Op 32804(U)

October 31, 2013

Sup Ct, New York County

Docket Number: 652795/2012

Judge: Kathryn E. Freed

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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. KATHRYN FREED
JUSTICE OF SUPREME COURT

PRESENT: _____
Justice

PART 5

Index Number : 652795/2012
267 EDGE CO LLC
vs.
CITY OF NEW YORK
SEQUENCE NUMBER : 001
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**

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

Dated: 10-30-13
OCT 30 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

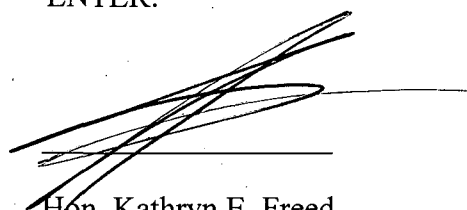
ORDERED that a copy of this order with notice of entry shall also be served upon the Clerk of the Trial Support Office (Room 158), who is hereby directed to mark the court's records to reflect the consolidation; and it is further

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

DATED: October 30, 2013

OCT 30 2013

ENTER:



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

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

-----X
267 EDGECO, LLC and BRADHURST
ASSOCIATES, LLC,

Plaintiff,

DECISION/ORDER
Index No. 652795/2012
Seq. No. 001

-against-

CITY OF NEW YORK and CONSOLIDATED
EDISON COMPANY OF NEW YORK, INC.,

Defendant.

-----X
KATHRYN E. FREED, JSC:

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.....
OTHER.....

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

Defendant Consolidated Edison Company of New York, ("Con Ed"), moves for an Order pursuant to CPLR 602 consolidating Actions No. 1 thorough No. 3 for joint discovery and Trial and referring Action No. 3 from Supreme Court Kings County to Supreme Court New York County. No opposition has been submitted.

After a review of the papers presented, all relevant statutes and case law, the Court **grants** the motion.

Factual and procedural background:

Con Ed seeks to consolidate three related actions. Action No. 1 is 267 Edgeco LLC and Bradhurst Associates, LLC v. City of New York and Consolidated Company of New York, Inc., Index No. 652795/12- Supreme Court, New York. Action No. 2 is Consolidated Edison Company of New York, Inc. v. City of New York, Index No. 157185/12-Supreme Court, New York. Action No. 3 is New York City Transit Authority v. The City of New York and Consolidated Edison Company of New York, Inc., Index No. 21509/12-Supreme Court, Kings County.

All three actions involve property damage claims against the City of New York (“the City”), emanating from a water main break occurring on August 12, 2011 on West 152nd Street and St. Nicholas Avenue in the County of New York. All three were timely commenced and are in an early stage of discovery.

Con Ed argues that consolidation of all the aforementioned cases for joint discovery and trial is in the interest of judicial economy, will prevent inconsistent results and will not prejudice any of the parties.

Pursuant to CPLR§602(a), when actions involving a common question of law or fact are pending before a court, the court “may order a joint trial of any or all the matters in issue, may order the actions consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.” Consolidation is mandated by judicial economy where two or more lawsuits are intertwined with common questions of law and fact (see *Teitelbaum v. PTR Co.*, 6 A.D.3d 254 [1st Dept. 2004]).

Moreover, consolidation is generally favored by the courts “in the interest of judicial economy and ease of decision making where there are common questions of law and fact, unless the

party opposing the motion demonstrates that consolidation will prejudice a substantial right” (*Amcan Holdings, Inc. v. Torys LLP*, 32 A.D.3d 337, 340 [1st Dept. 2006], citing *Amtorg Trading Corp. v. Broadway & 56th St. Assoc.*, 191 A.D.2d 212, 213 [1st Dept. 1993]). The burden of demonstrating prejudice to a substantial right is on the party opposing consolidation (*Progressive Ins. Co. v. Vasquez*, 10 A.D.3d 518, 519 [1st Dept. 2004]; *Geneva Temps, Inc. v. New World Communities, Inc.*, 24 A.D.3d 332, 334 [1st Dept. 2005]).

In the case at bar, the Court finds that common questions of law and fact exist which would make consolidation not only appropriate but necessary. Furthermore, the Court believes that towards the goal of judicial economy and convenience, the Kings County action should be transferred to New York County. Indeed, there is a substantial nexus between the underlying action and New York County in that the water main break, which is the gravamen of the instant action, occurred in New York County. In arriving at this decision, the Court is convinced that no prejudice will accrue to any party. The Court is also mindful that none of the other parties submitted any opposition, thereby inferring that consolidation of all three actions is necessary and desired.

Therefore, in accordance with the foregoing, it is hereby

ORDERED that the motion is granted and the above-captioned action is consolidated in this Court with *New York City Transit Authority v. The City of New York and Consolidated Edison Company of New York, Inc.*, Index No. 21509/12 of Kings County under Index No. 652795/12; and the consolidated action shall bear the following caption:

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

-----X
267 EDGECO, LLC and BRADHURST ASSOCIATES,
NEW YORK CITY TRANSIT AUTHORITY,

Plaintiffs,

INDEX NO. 652795/12

-against-

CITY OF NEW YORK and CONSOLIDATED EDISON
COMPANY OF NEW YORK, INC.,

Defendants.

-----X
CONSOLIDATED EDISON COMPANY OF NEW YORK
INC, (SM0079012)

Plaintiff,

-against-

CITY OF NEW YORK,

Defendant.

-----X

And it is further

ORDERED that the Clerk of Supreme Court, Kings County, shall transfer the papers on file under Index No. 21509/12 to the Clerk of this Court upon service of a certified copy of this order and payment of the appropriate fee, if any; 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 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/her records to reflect the consolidation, and it is further