

Jean-Pierre v City of New York

2014 NY Slip Op 32478(U)

September 19, 2014

Supreme Court, New York County

Docket Number: 156358/2012

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
COUNTY OF NEW YORK: Part 5

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PATRICK JEAN-PIERRE,

Plaintiff,

DECISION/ORDER
Index No.: 156358/2012
Sequence No. 001

-against-

THE CITY OF NEW YORK AND NEW YORK CITY
DEPARTMENT OF TRANSPORTATION,

Defendants.

-----X
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(Exs.A-B)
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED.....
ANSWERING AFFIDAVITS.....
REPLYING AFFIDAVITS.....
EXHIBITS.....
STIPULATIONS.....
OTHER.....

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

Plaintiff Patrick Jean-Pierre moves, pursuant to CPLR 602(a), to consolidate the above-captioned matter commenced against defendants The City of New York and New York City Department of Transportation (Action # 1) with an action commenced in this Court against defendants 90 Fifth Owner, LLC and Benjamin Group Enterprises Inc. under Index No. 153576/2014 (Action # 2) on the grounds that the actions arise from the same occurrence and share common questions of law and fact. After a review of the instant application, which is unopposed, as well as all relevant statutes and case law, this Court **grants** the motion.

Factual and Procedural Background:

Action # 1, commenced on September 14, 2012, arises from personal injuries allegedly sustained by plaintiff on November 16, 2011 when he tripped and fell due to a cracked and broken curb on the north side of 14th Street, approximately 10 feet west of its intersection with Fifth Avenue in New York County. Ex. A, at par. 20.¹ Plaintiff claimed that he fell due to the negligence of defendants the City of New York (“the City”) and the New York City Department of Transportation (“DOT”) in their ownership, operation, and/or maintenance of the area. Ex. A, at pars. 21-25.

Action # 2, commenced under Index Number 153576/2014 on April 14, 2014, arises from the identical set of facts but, in that action, plaintiff alleged that defendants 90 Fifth Avenue Owner, LLC and Benjamin Group Enterprises Inc. were negligent in their ownership, operation, and/or maintenance of the premises where he fell. Ex. B.

The defendants in each action have joined issue by service of their answers, in which they denied all substantive allegations of wrongdoing. Exs. A and B.

Plaintiff's Argument:

Plaintiff argues that Action # 1 and Action # 2 should be consolidated because they involve the same incident and thus share common issues of law and fact. He also asserts that consolidation would avoid confusion and delay.

¹All references are to the exhibits annexed to plaintiff's affirmation in support of the instant application.

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. See *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). Here, as noted above, no such opposition has been submitted by the defendants in either Action # 1 or Action # 2. Therefore, no such prejudice has been established.

This Court therefore finds that consolidation of Action #1 and Action #2 would be appropriate and advantageous given the fact that they involve the same set of facts and the same plaintiff. Additionally, consolidation will conserve judicial resources and avoid potentially inconsistent results.

Therefore, in accordance with the foregoing, it is hereby:

ORDERED that plaintiff's motion is granted and the above-captioned action (Action # 1) is consolidated in this Court with the matter of Patrick Jean-Pierre v 90 Fifth Owner, LLC and Benjamin Group Enterprises Inc. (Action # 2) under Index No. 156358/2012, and the consolidated action shall bear the following caption:

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

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PATRICK JEAN-PIERRE,

Plaintiff,

-against-

THE CITY OF NEW YORK AND NEW YORK CITY
DEPARTMENT OF TRANSPORTATION, 90 FIFTH
OWNER, LLC and BENJAMIN GROUP
ENTERPRISES, INC.,

Defendants.

-----X
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 plaintiff is to serve a copy of this order, with notice of entry, upon counsel for all defendants in Action # 1 and Action # 2 within 30 days of the date of this order; and it is further,

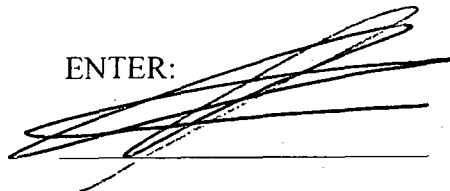
ORDERED that upon service on the Clerk of the Court of a copy of this order with notice of entry, the Clerk shall consolidate the papers in the actions hereby consolidated and shall mark his/her records to reflect the consolidation, and it is further,

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.

DATED: September 19, 2014

SEP 19 2014

ENTER:



Hon. Kathryn E. Freed,

HON. KATHRYN FREED
JUSTICE OF SUPREME COURT