

Shahinian v Granite Bldg. 2, LLC

2015 NY Slip Op 32908(U)

March 9, 2015

Supreme Court, Nassau County

Docket Number: 12482/2013

Judge: Daniel Palmieri

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This opinion is uncorrected and not selected for official publication.

(290)

SHORT FORM ORDER

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

P R E S E N T : HON. DANIEL PALMIERI, J.S.C.

-----X
SIROON SHAHINIAN,

Plaintiff,

-against-

**GRANITE BUILDING 2, LLC,
LALEZARIAN PROPERTIES, LLC and
LALEZARIAN DEVELOPERS, INC.,**

Defendants.

-----X
-----X

SIROON SHAHINIAN,

Plaintiff,

-against-

**TOWN OF NORTH HEMPSTEAD, INCORPORATED
VILLAGE OF LAKE SUCCESS, THE COUNTY OF
NASSAU and NASSAU COUNTY INDUSTRIAL
DEVELOPMENT AGENCY,**

Defendants.

-----X

The following papers were read on these motions:

- Notice of Motion, dated 2-5-15.....1**
- Affirmation in Opposition, dated 2-10-15.....2**
- Affirmation in Reply, dated 2-18-15.....3**

The motion by the plaintiffs, in both actions to consolidate the above actions pursuant to CPLR §602(a) is granted.

Defendant in Action No. 2, Village of Lake Success is the only party opposing this request on the grounds that it will be prejudiced by the consolidation, however it fails to articulate the

TRIAL/IAS PART 20

INDEX NO. 12482/2013

**Action No. 1
Mot. Seq. No. 001
Mot. Date: 2-20-15
Submit Date: 3-4-15**

INDEX NO. 5808/2014

Action No. 2

nature of the prejudice. Both actions have now been assigned to this Court.

It has been held that even delay of a trial (not claimed here) is an insufficient basis upon which to deny a motion for consolidation or for a joint trial. *Whiteman v. Parsons Transp. Group of N.Y., Inc.* 72 A.D.3d 677 (2d Dept. 2010); *Alsol Enters., Ltd. v. Premier Lincoln-Mercury, Inc.*, 11 A.D.3d 494 (2d Dept. 2004).

It is proper and within the court's discretion to order consolidation, where as here, both actions involve common questions of law and facts and consolidation will avoid unnecessary duplication of trials, costs and inconsistent results. *Gutman v. Klein*, 26 A.D.3d 464 (2d Dept. 2006).

These actions arise from the same trip and fall accident that occurred in Nassau County on September 24, 2011. In both actions, Summons and Complaints have been served and neither have been placed on the trial calendar. While the actions are in different stages of discovery, they are not such that can be held as "markedly" different. The procedural disparity is not so great as to give rise to substantial prejudice, especially since this Court will direct an expedited discovery schedule in Action No. 2. *Citibank, N.A. v. Van Brunt Properties, LLC* 34 Misc.3d 1240(A), N.Y. Sup 2012; *Cf. Abrams v. Port Auth. Trans-Hudson Corp.*, 1 A.D.3d 118, 119 (1st Dept. 2003). Furthermore, any supposed prejudice is outweighed by the potential of inconsistent verdicts if separate trials would in fact proceed. *Pierre-Louis v. DeLonghi Am., Inc.*, 66 A.D.3d 855, 856 (2d Dept. 2009).

Absent a showing of prejudice to a substantial right by a party opposing such a request, the existence of common questions of law or fact justifies the grant of a motion for consolidation.

ORDERED, that all matters of trial practice, including the right to open and close, are reserved to the Justice presiding at the trial; and it is further

ORDERED, that all parties shall serve upon any party so demanding copies of disclosure documents heretofore obtained in the other action; and it is further

ORDERED, that each party shall be entitled to enter separate Judgments and Bills of Costs and Disbursements, in each action respectively, if costs are allowed; and it is further

ORDERED, that the movants shall serve within 30 days, a copy of this Order upon all parties to Actions No. 1 and 2 upon receipt of a copy of this Order from any source and upon the Clerk of the Supreme Court of Nassau County, and upon receipt of this Order, the Nassau County Clerk is directed to join the files; and it is further

Each party shall provide to every other party copies of all discovery material exchanged to date and the parties shall be prepared to establish at the conference described below, an expedited discovery schedule.


The attorneys shall appear at a compliance conference before the undersigned at the Supreme Courthouse, 100 Supreme Court Drive, Mineola, N.Y., on April 1, 2015, at 9:30 a.m. No adjournments of this conference will be permitted absent the permission of or Order of this Court. All parties are forewarned that failure to attend the conference may result in Judgment by Default, the dismissal of pleadings (see 22 NYCRR 202.27) or monetary sanctions (22 NYCRR 130-2.1 et seq.).

The previously scheduled conference on March 25, 2015 before Judge Jerome C. Murphy is cancelled.

This shall constitute the Decision and Order of this Court.

Dated: Mach 9, 2015

ENTER


HON. DANIEL PALMIERI
Supreme Court Justice

ENTERED

MAR 11 2015

NASSAU COUNTY
COUNTY CLERK'S OFFICE

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