

Kinnally v Perlman
2016 NY Slip Op 33154(U)
April 6, 2016
Supreme Court, Westchester County
Docket Number: Index No. 58591/2016
Judge: Charles D. Wood
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
MARK RAYMOND KINNALLY, by the co-guardians of
his Person and Property, MARK KINNALLY and LISA
KINNALLY and MARK KINNALLY and LISA
KINNALLY, Individually,

Plaintiffs,

- against -

ALEXANDER H. PERLMAN, RICHARD I. PERLMAN,
SUSAN L. LAMOREAUX, IRON MOUNTAIN
INFORMATION MANAGEMENT SERVICES, INC.,
IRON MOUNTAIN INFORMATION MANAGEMENT, LLC,
IRON MOUNTAIN INFORMATION SERVICES, INC.,
IRON MOUNTAIN, INC. and ARI FLEET, L.T.,

Defendants.

DECISION and ORDER

On Motion for Joint Trial and
Discovery
Index No. 58591/2016
Sequence No. 1

Action No. 1

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER

-----X
SUSAN LAMOREAUX,

Plaintiff,

-against-

ALEXANDER H. PERLMAN and RICHARD I.
PERLMAN,

Defendants.

Index No. 2397/2016

Action No. 2.

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WOOD, J.

The following papers were read in connection with the motion of moving defendants

Alexander H. Perlman and Richard I. Perlman in actions 1 and 2 (“Perlman Defendants”), as opposed by defendants Iron Mountain Information Management Services, Inc., Iron Mountain Information Management, LLC, Iron Mountain Information Services, Inc., Iron Mountain, Inc., AND Ari Fleet, Lt (‘corporate defendants’), as well as Susan L. Lamoreaux (“Lamoreaux”) (collectively”Opposing Parties”).

Perlman Defendants’ Notice of Motion, Counsel’s Affirmation, Exhibits,
Opposing Parties’ Counsel’s Affirmation in Opposition.
Perlman Defendants’ Counsel’s Reply Affirmation, Exhibit.

In this action for damages for personal injuries involving a motor vehicle accident, Perlman Defendants move for an order pursuant to CPLR 602(a) for joining Action No. 1 with Action No 2 for discovery and trial in Westchester County Supreme Court. Opposing Defendants oppose the instant motion.

Based upon the foregoing, the motion is decided as follows:

It is well-settled that a motion to consolidate or join for trial two or more actions “rests within the sound discretion of the trial court.” Where common questions of law or fact exist, consolidation or a joint trial is warranted, “unless the opposing party demonstrates prejudice to a substantial right” (Scotto v Kodsi, 102 AD3d 947, 948 [2d Dept 2013]). The interests of justice and judicial economy are better served by consolidation in those cases where the actions share material questions of law or fact. A motion to consolidate should be granted absent a showing of prejudice to a substantial right by a party opposing the motion (Hanover Ins. Grp. v Mezansky, 105 AD3d 1000, 1001 [2d Dept 2013]).

Regarding discovery, Opposing Parties do not oppose the application for a joint

discovery schedule with Action No. 2 with the stipulation that the pleadings are delineated separately for the purposes of separate trial. However, as to joint trial regarding Lamoreaux, and corporate defendants as well as plaintiff and defendant, they claim that it will unduly prejudice defendants. Opposing Parties' counsel argues that placing Lamoreaux before the court to gain monetary recovery while defending the action is prejudicial as the positions are conflicting. They argue that Lamoreaux's interests (as the driver of the truck) in seeking monetary relief solely against Perlman Defendants could be construed by a jury as inconsistent with her liability defense against party Kinnally.

Firstly, because the two actions involve different plaintiffs, a joint trial, rather than consolidation, is generally the appropriate method of achieving the goal of avoiding the unnecessary duplication of proceedings (Brown v Cope Bestway Exp. Inc., 99AD3d 746 [2d Dept 2012]). The record before this court shows that this action and the Ulster County action clearly share common questions of law and fact surrounding the subject accident. A joint trial would prevent different juries from making different findings of fact on the same issues. Notably, Perlman Defendants are not seeking to join the Court of Claims action. Since, in the interests of justice and judicial economy will be served by joint trial of the two actions, the court grants such relief.

“When consolidation or joint trials are ordered under CPLR 602(a), venue should generally be placed in the county where the first action was commenced (*see*, Nigro v Pickett, 39 AD3d 720, 722). Special circumstances, however, may warrant the court, in its discretion, to place venue elsewhere” (Brown v Cope Bestway Exp., Inc., 99 AD3d 746, 748 [2d Dept 2012]). Action 1 was commenced in Westchester County prior to Action 2 being commenced in Ulster

County. In any event, there appears to be no objection of venue in Westchester County.

Accordingly, under these circumstances, the actions are joined for discovery and a joint trial, and the venue will be Westchester County.

The court has considered the remainder of the factual and legal contentions of the parties and to the extent not specifically addressed herein, finds them to be either without merit or rendered moot by this decision. This constitutes the decision and order of the court.

For the above stated reasons it is hereby

ORDERED, that the branch of Perlman Defendants' motion to join the instant action with the Ulster County Action 2 Index Number 2397/2016 is granted, and shall be jointly tried and for discovery in the Supreme Court, Westchester County; and it is further

ORDERED, that upon receiving a new index number for Action 2, the Ulster County matter, such index number shall be appropriately filled in with the new caption reading:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
MARK RAYMOND KINNALLY, by the co-guardians of
his Person and Property, MARK KINNALLY and LISA
KINNALLY and MARK KINNALLY and LISA
KINNALLY, Individually,

Plaintiffs,

- against -

Index No. 58591/2016

ALEXANDER H. PERLMAN, RICHARD I. PERLMAN,
SUSAN L. LAMOREAUX, IRON MOUNTAIN
INFORMATION MANAGEMENT SERVICES, INC.,
IRON MOUNTAIN INFORMATION MANAGEMENT, LLC,
IRON MOUNTAIN INFORMATION SERVICES, INC.,
IRON MOUNTAIN, INC. and ARI FLEET, L.T.,

Action No. 1

Defendants.

-----X
SUSAN LAMOREAUX,

Plaintiff,

-against-

Index No.
Action No. 2.

ALEXANDER H. PERLMAN and RICHARD I.
PERLMAN,

Defendants.


-----X

ORDERED, that counsel for Perlman Defendants shall serve a copy of this order with
notice of entry upon the Ulster County Clerk, and the Westchester County Clerk, and all parties
to this action in accordance with NYSCEF protocols, within ten (10) days of entry, and file proof
of service on within five (5) days of service; and it is further

ORDERED, that upon the service of a certified copy of this order and payment of an appropriate fee, if any, the Clerk of Ulster County Supreme Court shall have the file in the Ulster County matter, namely, Susan Lamoreaux v Alexander H. Perlman and Richard I. Perlman, Index No. 2397/2016 transferred to the Clerk of the Westchester County Supreme Court for purposes of joint discovery and trial in Westchester County; and it is further

ORDERED, that once the Ulster County Action 2 is transferred, the Westchester County Clerk shall assign an index number to the transferred case and shall mark the records to reflect joint trials and discovery for the transferred case, with the pending Westchester County case.

Dated: April 6, 2016
White Plains, New York



HON. CHARLES D. WOOD
Justice of the Supreme Court

To: All Parties by NYSCEF