

Gularte v Khabir

2017 NY Slip Op 30983(U)

May 11, 2017

Supreme Court, New York County

Docket Number: 158919-2015

Judge: Paul A. Goetz

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: PART 22

-----X

Index # 158919-2015
 Mot. Seq: 002

IAN MATRTIN GULARTE, as Administrator of the
 ESTATE OF STELLA SAPIO, a/k/a, STELLA
 YOLANDA SAPIO, and IAN MARTIN GULARTE,
 individually,

DECISION/ORDER

Plaintiffs,

-against-

KARIM KHABIR, UPS GRUND FREIGHT, INC.,
 JULIO GOMEZ, GREEN CITY TRUCKING INC.,
 LUIS AGUERODURAN, PINO RECYCLING INC.,
 KENNETH FORSTER, BOZZUTO'S, INC.,
 CARL GERALD and DIEGO RAMIREZ,

Defendant(s)

-----X

PAUL A. GOETZ, J.S.C.

The motion brought by Defendants UPS Ground Freight, Inc., and Karim Khabir, for an Order, pursuant to CPLR §602(a), consolidating the above-captioned case with two related cases before this court (***Luis Agüero Duran and Doris Castillo v Karim Khabir, UPS Ground Freight, Inc., Julio Gomez, Green City Trucking, Inc., Kenneth Foster, Bozzuto's Inc., Ian Martin Gularte, as Administrator of the Estate of Stella Sapio, a/k/a, Stella Yolando Sapio and Carl Gerard*** (Index Number 152502-2016) and ***Diego E. Ramirez v Karim Khabir, UPS Ground Freight, Inc., Julio Gomez, Green Cuty Trucking, Inc., Kenneth Foster, Bozzuto's Inc., Ian Martin Gularte, as Administrator of the Estate of Stella Sapio, a/k/a, Stella Yolanda Sapio and Carl Gerard*** (Index Number 152510-2016) and changing venue, pursuant to CPLR 510(3), of all three related cases from this court to Supreme Court, County of Sullivan is determined as follows.

This case and the related cases arise from the same series of motor vehicle

accidents that occurred in Sullivan County, New York in the early morning of December 9, 2014. Defendants Julio Gomez and Green City Trucking, Inc., submit an attorney affirmation in support of the instant motion.

JOINT DISCOVERY AND JOINT TRIAL OF THREE RELATED ACTIONS

There is no dispute that all three related actions stem from the same series of motor vehicle accidents that occurred in Sullivan County on December 9, 2014. CPLR § 602(a) provides, among other things, that when actions involve a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all matters in issue.

Plaintiffs in this case oppose that portion of the motion seeking consolidation of all three related cases, pointing out that the proper remedy is not consolidation, but an order directing joint discovery and joint trial of all three related matters. Plaintiffs in the related cases do not oppose consolidation. In reply, movants concede that the proper remedy in this matter is not an order of consolidation, but an order directing joint discovery and joint trial of all three related matters.

Accordingly, that portion of the motion seeking an order of joint discovery and joint trial of this case with the two related cases, pursuant to CPLR § 602(a), is GRANTED without opposition to the extent that this case shall have joint discovery and joint trial with the two related cases pending before this court, to wit: ***Luis Aguero Duran and Doris Castillo v Karim Khabirm, UPS Ground Freight, Inc., Julio Gomez, Green City Trucking, Inc., Kenneth Foster, Bozzuto's Inc., Ian Martin Gularte, as Administrator of the Estate of Stella Sapio, a/k/a, Stella Yolando Sapio and Carl Gerard***, bearing New York County Supreme Court Index Number 152502-2016 and ***Diego E. Ramirez v Karim Khabir, UPS Ground Freight, Inc., Julio Gomez, Green City Trucking, Inc., Kenneth Foster, Bozzuto's Inc., Ian Martin Gularte, as Administrator of the Estate of Stella Sapio, a/k/a, Stella Yolanda Sapio***

and Carl Gerard, bearing Index Number 152510-2016, as all three related actions arise out of the same motor vehicle accidents that occurred on December 9, 2014.

CHANGE OF VENUE

CPLR § 510(3) provides that the court may change the place of trial of an action where the convenience of material witnesses and the ends of justice will be promoted by the change. “Upon a motion made pursuant to CPLR § 510(3), the movant bears the burden of demonstrating that the convenience of material witnesses would be better served by the change of venue (*Chimarios v. Duhl*, 152 A.D2d 508 [1st Dept 1989]). This showing must include (1) the identity of the proposed witnesses, (2) the manner in which they will be inconvenienced by a trial in the county in which the action was commenced, (3) that the witnesses have been contacted and are available and willing to testify for the movant, (4) the nature of the anticipated testimony, and (5) the manner in which the anticipated testimony is material to the issues raised in the case (*Cardona v Aggressive Heating Inc.*, 180 AD2d 572, 572 [1st Dept 1992]; see *Jacobs v. Banks Shapiro Gettinger Waldinger & Brennan, LLP*, 9 AD3d 299 [1st Dept 2004]).

The motion to change venue of all three related cases is opposed by Plaintiffs in all three related actions, who argue, among other things, that a change of venue is premature, that the proffered testimony of several of the proffered nonparty witnesses is cumulative and immaterial, and that accommodations can be made for the two remaining material nonparty witnesses.

Here, movants have made the requisite showing regarding the inconvenience of the proposed witnesses and demonstrated that several nonparty material witnesses are willing to testify, but would be inconvenienced by having to travel to New York County (see *Vered v Wittenberg*, 138 AD3d 646 [1st Dept 2016]). The Court notes that although venue in all three cases was properly placed in New York County based upon the New York County residences of parties Julio Gomez and Luis Aguero Duran

(defendants in this case and plaintiffs in the related cases), venue could also have been properly placed in Sullivan County based upon the residence of Defendant Carl Gerard.

Upon careful consideration and weighing of various factors, including, but not limited to, the convenience of the non party material witnesses and whether venue could have been properly placed in Sullivan County, the court exercises its discretion and the motion, pursuant to CPLR § 510(3), to change venue of all three related actions from this court to the Supreme Court, County of Sullivan is GRANTED.

Accordingly, it is

ORDERED that the motion, pursuant to CPLR 602(a), for joint discovery and joint trial is GRANTED only to the extent that this case and the two related cases shall have joint discovery and joint trial and that; and it is further

ORDERED that within 20 days, counsel for movant shall serve a copy of this order with notice of entry upon all parties in all three related cases and upon the Clerk of the Trial Support Office (60 Centre St, Room 148); and it is further

ORDERED that, the Clerk of the Court shall mark all three cases as related cases; and it is further

ORDERED upon the payment of the appropriate calendar fees and the filing of separate notes of issue and statements of readiness in each of the above cases, the Clerk of the Court shall place all three related cases upon the trial calendar for a joint trial; and it is further

ORDERED that all matters of the trial, including the order of the right to open and close before the jury, shall be left to the trial judge; and it is further

ORDERED that venue of this case and the two related cases is changed from this court to Supreme Court, County of Sullivan, and upon service by movants of a copy of this order with notice of entry and payment of appropriate fees, if any, the Clerk of this Court, is directed to transfer the papers on file in all three related actions (Index Numbers 158919-2015, 152502-2016, and 152510-2016) to the Clerk of the Supreme Court, County of Sullivan for joint discovery and joint trial; and it is further

ORDERED that within 30 days from entry of this Order, counsel for the movants or counsel for any of the plaintiffs shall serve a copy of this Order with Notice of Entry upon the appropriate court clerk to effectuate said transfer to Sullivan County, and it is further

This constitutes the Decision and Order of this Court.

Dated: May 11, 2017
New York, New York



PAUL A. GOETZ, J.S.C.