

Amthor v Clouse

2017 NY Slip Op 33178(U)

November 6, 2017

Supreme Court, Orange County

Docket Number: EF002904-2017

Judge: Catherine M. Bartlett

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. CATHERINE M. BARTLETT, A.J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

ALICIA AMTHOR,

Plaintiff,

-against-

TERRY CLOUSE, HOME DEPOT U.S.A., INC.,
and ARI FLEET LT.,

Defendants.

To commence the statutory time
period for appeals as of right
(CPLR 5513 [a]), you are
advised to serve a copy of this
order, with notice of entry,
upon all parties.

Index No. EF002904-2017
Motion Date: November 3, 2017

The following papers numbered 1 to 3 were read on Defendants' motion pursuant to
CPLR §602 to transfer a related Ulster County action to this court for joint discovery and trial:
Notice of Motion - Affirmation / Exhibits 1-2
Affirmation in Response 3

Upon the foregoing papers it is ORDERED that the motion is disposed of as follows:

CPLR §602(a) provides:

When actions involving 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 the matters in issue, may order the
actions consolidated, and may make such other orders concerning the proceedings therein
as may tend to avoid unnecessary costs or delay.

CPLR §602(b) further provides:

Where an action is pending in the supreme court it may, upon motion, remove to itself
an action pending in another court and consolidate it or have it tried together with that in
the supreme court....

The court has discretion under CPLR § 602(a) to order consolidation or joint trial upon motion “[w]hen actions involving a common question of law or fact are pending before a court.” “Where common questions of law or fact exist, a motion to consolidate or for a joint trial pursuant to CPLR 602(a) should be granted absent a showing of prejudice to a substantial right by the party opposing the motion.” *County of Westchester v. White Plains Avenue, LLC*, 105 AD3d 690, 691 (2d Dept. 2013); *Perini v. WDF, Inc.*, 33 AD3d 605, 606 (2d Dept. 2006).

The above entitled action is one for personal injury. *State Farm Mutual Automobile Insurance Company a/s/o Alicia M. Amthor v. Ari Fleet LT and Terry L. Clouse*, now pending in Supreme Court, Ulster County under Index No. 1766/2017, is an action for property damage arising out of the same automobile accident. Thus, there are common questions of law and fact warranting joint discovery and trial. There is no opposition to Defendants’ motion.

It is therefore

ORDERED, that the action entitled *State Farm Mutual Automobile Insurance Company a/s/o Alicia M. Amthor v. Ari Fleet LT and Terry L. Clouse*, now pending in Supreme Court, Ulster County under Index No. 1766/2017, be removed to this Court, and it is further

ORDERED, that the aforesaid action be and the same is hereby joined for purposes of discovery and trial, without consolidation, with the action entitled *Alicia Amthor v. Terry Clouse, Home Depot U.S.A., Inc., and Ari Fleet LT.*, now pending in this Court under Index No. EF002904-2017, and it is further

ORDERED, that the Clerk of the Supreme Court, Ulster County, upon filing with him a certified copy of this order, be and is hereby directed to forthwith deliver to the Clerk of this Court all papers and records in *State Farm Mutual Automobile Insurance Company a/s/o Alicia*

M. Amthor v. Ari Fleet LT and Terry L. Clouse, Ulster County Index No. 1766/2017, and it is further

ORDERED, that upon receipt of the papers and records in the aforesaid Ulster County action, the Orange County Clerk shall assign said action to Hon. Catherine M. Bartlett and join said action for the purposes of discovery and trial with the action entitled *Alicia Amthor v. Terry Clouse, Home Depot U.S.A., Inc., and Ari Fleet LT.*, now pending in this Court under Index No. EF002904-2017, and it is further

ORDERED, that the caption of the joined actions shall be:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
ALICIA AMTHOR,

Plaintiff,

-against-

Index No. EF002904-2017

TERRY CLOUSE, HOME DEPOT U.S.A., INC.,
and ARI FLEET LT.,

Action No. 1

Defendants.

-----X
-----X
STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY *a/s/o* ALICIA M. AMTHOR,

Plaintiff,

Index No. (To be assigned)

-against-

Action No. 2

ARI FLEET LT and TERRY L. CLOUSE,

Defendants.
-----X

and it is further

ORDERED, that all pleadings and other papers in the joined actions are deemed amended accordingly, and it is further

ORDERED, that counsel for all parties are directed to appear for a Conference in Supreme Court, Orange County, Courtroom #5, on **December 7, 2017 at 9:00 a.m.**

The foregoing constitutes the decision and order of this Court.

Dated: November 6, 2017 ENTER
Goshen, New York


HON. CATHERINE M. BARTLETT, A.J.S.C.

HON. C. M. BARTLETT
JUDGE NY STATE COURT OF CLAIMS
ACTING SUPREME COURT JUSTICE