

Biggs v County of Suffolk
2017 NY Slip Op 33348(U)
October 23, 2017
Supreme Court, Suffolk County
Docket Number: Index No. 01767-2015
Judge: William G. Ford
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SHORT FORM ORDER

INDEX NO.: 01767-2015

**SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 38 - SUFFOLK COUNTY**

PRESENT:

**HON. WILLIAM G. FORD
JUSTICE of the SUPREME COURT**

**Motion Date: 04/20/17
Motion Seq 001 MG**

DONNA BIGGS,

Plaintiff,

-against-

**COUNTY OF SUFFOLK, ANTHONY L.
CASSINO & JENNIFER M. CORTES,**

Defendants.

PLAINTIFF'S COUNSEL:

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Bay Shore, NY 11706**

DEFENDANT'S COUNSEL:

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Hauppauge, NY 11788**

The Court has considered the following in reaching a determination on the pending unopposed motion by plaintiff seeking consolidation pursuant to CPLR 602(a):

1. Defendant Jennifer M. Cortes' Notice of Motion & Affirmation of in Support dated March 17, 2016; and supporting papers;
2. Defendants County of Suffolk & Anthony L. Cassano's Affirmation in Opposition dated March 30, 2017; it is

ORDERED that defendant's motion pursuant to CPLR 602(a) for consolidation having been fully considered is determined as discussed below.

Presently pending before this Court is plaintiff Donna Biggs' negligence action seeking a money judgment for the recovery of alleged personal injuries stemming from a motor vehicle accident on May 31, 2014 which occurred on County Route 51 in Suffolk County, New York.

Plaintiffs filed summons and complaint in the instant action, which shall be referred to as Action No. 1 on February 2, 2015 under Index No. 01767/2015. Defendant Jennifer M. Cortes joined issue with service of her answer with cross-claim on March 25, 2015.

A separate, but putatively related, subsequent litigation ensued arising from the same incident or occurrence was commenced by defendant Cortes against defendants County of Suffolk, the Suffolk County Department of Public Works and Anthony L. Cassano was commenced with the filing of a summons and complaint in Action No. 2, under Index No. 607201/2015 on or about July 13, 2015. That matter is presently pending before another court with the Hon. Denise F. Molia, AJSC presiding. Defendants joined issue with service of their answers on August 10 & 19, 2017 respectively.

Defendant Cortes, the movant herein, bases her application on the fact that both actions brought by and against the parties arise from the transaction, incident or occurrence, and thus would support judicial economy by preventing a multiplicity of litigation and also to prevent inconsistent results.

This application is opposed, in part, by co-defendant Suffolk County and Cassano, to the extent that as they argue, pure consolidation of the second subsequent and latter action into the previously "first in time" filed action would prejudice defendants' rights of conducting full, thorough or timely discovery. Defendants are concerned their rights to complete discovery would be hastened or truncated by an unreasonable schedule, given that most pretrial disclosure has already been conducted and completed in the prior action. Thus, defendants maintain that the only way to prevent significant and unfair prejudice befalling the County defendants, who were not previously joined as parties or participants in the prior action, would be to do the conversion of movants requested relief: consolidate the first in time filed and previous action into the second subsequent action.

Having review the papers filed on the instant application and heard the parties' arguments, this Court notes that neither approach is necessarily sound or supported in law and thus a third more viable alternative appears more palatable.

New York CPLR § 602(a) provides that "[w]hen 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 of the matters in issue, may order the actions consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

"[A] motion seeking a joint trial pursuant to CPLR 602(a) rests within the sound discretion of the trial court (*Clark v Clark*, 93 AD3d 812, 814, 941 NYS2d 192, 195 [2d Dept 2012]). Ordinarily, "[w]here common questions of law or fact exist, consolidation or a joint trial is warranted, 'unless the opposing party demonstrates prejudice to a substantial right' (*Bermejo v New York City Health and Hosps. Corp.*, 133 AD3d 808, 809, 20 NYS3d 401, 402 [2d Dept 2015]).

This Court finds agreement in movant's position that referenced the actions arise from the same incident and involve common questions of fact, consolidation is appropriate to avoid inconsistent verdicts (*see Fransen v Maniscalco*, 256 AD2d 305, 681 NYS2d 310 [2d Dept. 1998]); *see also Okin v White Plains Hospital*, 97 AD2d 399, 467 NYS2d 225 [2d Dept. 1983]). Further this Court agrees with the proposition that it present a waste of judicial resources and duplicitous to require two separate trials with the concomitant costs and expenses (*see Wieder v Skala*, 218 AD2d 507, 630 NYS2d 308 [1st Dept. 1995]).

Given the County defendants' stated opposition and allegation of prejudice, the Court accordingly grants movant's application in part.

Thus, it is

ORDERED that the motion by defendant Jennifer M. Cortes for an order of consolidation for joint discovery and joint trial of Action No. 1 and Action No. 2 is considered under CPLR 602(a) and is **GRANTED** to the extent that since the above referenced matters share common questions of fact and law and a joint trial will serve the interests of the court, the parties and their witnesses (*see Import Alley of Mid-Island, Inc. v Mid-Island Shopping Plaza, Inc.*, 103 AD2d 797, 477 NYS2d 675 [2d Dept. 1984]; *see also Indemnity Ins. Co. v Lamendola*, 261 AD2d 580, 690 NYS2d 659 [2d Dept. 1999]) and accordingly, the matters will proceed joined for trial, and it is further

ORDERED that the Calendar Clerk of this Court is hereby directed that upon consultation, that Action No.2 bearing Index Number 607201/2015 is now hereby respectfully transferred from the Supreme Court, IAS Part 39 (Hon. Denise F. Molia, AJSC) to the undersigned; and it is further

ORDERED that the movant shall promptly serve a copy of this Order via first class mail upon all appearing parties in both actions, and upon the Suffolk County Clerk; and it is further

ORDERED that movant is further directed forthwith to serve a copy of this decision and order on the Calendar Clerk of this Court

ORDERED that all counsel shall appear for a compliance conference on the previously scheduled date of **November 16, 2017 at 9:30 a.m.** before this Court, so as to establish one timetable for completion of discovery in this matter in light of the County defendants stated concerns of being foreclosed from completing full, complete or thorough pretrial disclosure; and it is further

ORDERED that to the extent any discovery demands remain uncompiled with or unproduced, that all counsel shall appear on that above scheduled date ready to enter into and bind their parties to a discovery Order, except as to those items that have already been agreed upon and exchanged by and between the parties; and it is further

ORDERED that all motions interposed in each joined action shall bear a single caption reflecting the action in which said motion is made; however, all motions shall be served upon counsel for all parties appearing in each joined action; and it is further

ORDERED that the new caption of these newly joined actions shall read as follows:

SUPREME COURT OF THE STATE OF NEW
SUFFOLK COUNTY

-----X
DONNA BIGGS,

Plaintiff,

Action No. 1

-against-

Index No.: 01767/2015

COUNTY OF SUFFOLK, ANTHONY L. CASSINO &
JENNIFER M. CORTES,

Defendants.
-----X

JENNIFER M. CORTES,

Plaintiff,

Action No. 2

-against-

Index No.: 607201/2015

ANTHONY L. CASSANO, COUNTY OF SUFFOLK &
SUFFOLK COUNTY DEPARTMENT OF PUBLIC
WORKS,

Defendants.
-----X

The foregoing constitutes the decision and order of this Court.

Dated: October 23, 2017
Riverhead, New York



WILLIAM G. FORD, J.S.C.

___ FINAL DISPOSITION

X NON-FINAL DISPOSITION