

**Tirino v Village of Freeport**

2017 NY Slip Op 33439(U)

April 17, 2017

Supreme Court, Nassau County

Docket Number: Index No. 608121/16

Judge: Denise L. Sher

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This opinion is uncorrected and not selected for official publication.

**SHORT FORM ORDER**

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER  
Acting Supreme Court Justice

SUZANN TIRINO,

Plaintiff,

- against -

THE VILLAGE OF FREEPORT, FREEPORT FIRE  
DEPARTMENT and GEAUDI MARINES-INFANTE,

Defendants.

TRIAL/IAS PART 35  
NASSAU COUNTY

Index No.: 608121/16  
Motion Seq. No.: 01  
Motion Date: 03/01/17

**The following papers have been read on this motion:**

	Papers Numbered
Amended Notice of Motion, Affirmation and Exhibits	1

Upon the foregoing papers, it is ordered that the motion is decided as follows:

Defendants move, pursuant to CPLR § 602(b), for an order transferring the Nassau County District Court action, *Allstate Insurance Company As Subrogee of Carmen Rivera-Diaz v. Suzann Tirino, Geaudi Marines-Insante and Village of Freeport*, Index No. CV3355/16 (“Action 3”), to Nassau County Supreme Court; and move, pursuant to CPLR § 602(a) for an order consolidating the above captioned action (“Action 2”) with Nassau County Supreme Court action, *Carmen Diaz-Rivera v. Incorporated Village of Freeport, Geaudi Marines-Infante and Suzann Tirino*, Index No. 2789/16 (“Action 1”), and with Action 3, for the purposes of joint discovery and trial. No opposition was submitted to the motion.

The instant personal injury action stems from an automobile accident occurring on August 7, 2015, on Brooklyn Avenue, at or near its intersection with North Ocean Avenue, Freeport, County of Nassau, State of New York.

Defendants seek the above mentioned relief on the grounds that Action 1, Action 2 and Action 3 arose out of the same automobile accident and the issues of liability in the actions are identical. *See* Defendants' Affirmation in Support Exhibits A-G.

Counsel for defendants submits, in pertinent part, "[a]s all three Actions arise out of the same car accident, and all three actions are for either personal injury, or, with Action No. 3, for property damages, all three Actions contain common questions of both law and fact, as well as the same witnesses. It would be in the interests of justice, time and convenience of the Parties to join all three cases for joint discovery."

It is well settled that a motion for consolidation is addressed to the sound discretion of the trial court and, absent a showing of substantial prejudice by the party opposing the motion, consolidation is proper where there are common questions of law and fact. *See Zupick v. Flushing Hospital and Medical Center*, 156 A.D.2d 677, 549 N.Y.S.2d 441 (2d Dept. 1989); *TT Enterprises v. Gralnick*, 127 A.D.2d 651, 511 N.Y.S.2d 878 (2d Dept. 1987); *Marshall v. Monegro Investors*, 132 A.D.2d 651, 518 N.Y.S.2d 23 (2d Dept. 1987); *Stephens v. Allstate Insurance Co.*, 185 A.D.2d 338, 586 N.Y.S.2d 305 (2d Dept. 1992).

Such orders should be entered where, as here, common questions of fact and law are presented and any opponent thereto has failed to show substantial prejudice. *See Stephens v. Allstate Insurance Co.*, *supra*; *Marshall v. Monegro Investors*, *supra*; *Sarrds, Inc. v. Dove Demolition Corp.*, 71 A.D.2d 1001, 420 N.Y.S.2d 292 (2d Dept. 1979).

Accordingly, based upon the foregoing, defendants' motion, pursuant to CPLR § 602(b), for an order transferring Action 3, the Nassau County District Court action, *Allstate Insurance Company As Subrogee of Carmen Rivera-Diaz v. Suzann Tirino, Geaudi Marines-Insante and Village of Freeport*, Index No. CV3355/16, to Nassau County Supreme Court; and, pursuant to CPLR § 602(a) for an order consolidating Action 2 with Action 1, Nassau County Supreme Court action, *Carmen Diaz-Rivera v. Incorporated Village of Freeport, Geaudi Marines-Infante and Suzann Tirino*, Index No. 2789/16, and with Action 3, for the purposes of joint discovery and trial, is hereby **GRANTED**.

Accordingly, based upon the foregoing, it is hereby directed that:

1) upon presentation of a copy of this Decisions and Order, the clerk of the Nassau County District Court is to forthwith transfer the file for *Allstate Insurance Company As Subrogee of Carmen Rivera-Diaz v. Suzann Tirino, Geaudi Marines-Insante and Village of Freeport*, Index No. CV3355/16, to the Supreme Court, Nassau County upon the payment of all applicable fees, if any;

2) upon transfer of the action *Allstate Insurance Company As Subrogee of Carmen Rivera-Diaz v. Suzann Tirino, Geaudi Marines-Insante and Village of Freeport*, Index No. CV3355/16, to Supreme Court, Nassau County, the clerk of this Court is directed to issue a Nassau County Index Number upon payment of all applicable fees, if any; and

3) all parties shall serve upon any party so demanding copies of disclosure documents heretofore obtained in the other action;

4) all matters of trial practice, including the right to open and close, are reserved to the Justice presiding at the joint trial;

5) all papers shall reflect the joint status of these actions;

6) upon completion of discovery, the parties shall file separate notes of issues and certificates of readiness; and

7) each party shall be entitled to enter separate judgments and bill of costs and disbursements, in each action respectively, if costs are allowed.

All parties shall appear for a Compliance Conference, in Nassau County Supreme Court, IAS Part 35, at 100 Supreme Court Drive, Mineola, New York, on June 20, 2017, at 9:30 a.m.

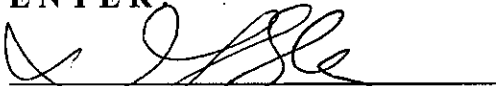
This constitutes the Decision and Order of this Court.

**ENTERED**

APR 18 2017

NASSAU COUNTY  
COUNTY CLERK'S OFFICE

ENTER:



DENISE L. SHER, A.J.S.C.

Dated: Mineola, New York  
April 17, 2017