

**Bauman v Butler**

2017 NY Slip Op 33446(U)

September 7, 2017

Supreme Court, Nassau County

Docket Number: Index No. 605940/2016

Judge: John M. Galasso

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - COUNTY OF NASSAU  
PRESENT: HONORABLE JOHN M. GALASSO, J.S.C.

ORIGINAL

.....  
GLENN BAUMAN,

Plaintiff,

- against -

Corrected  
Index No. 605940/2016  
Sequence # 001

Part 22  
5/22/17

LATON BUTLER, HELZA BUTLER,  
TERRANCE CHISUM and NADINE CHISUM,

Defendants.

.....  
Notice of Motion.....1

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Upon the foregoing papers the motion defendants, Laton Butler and Hezla Butler, for an Order consolidating the instant matter with the matter, entitled *State Farm Mutual Automobile Ins. Co., a/s/o Lisa Zanazzi, v. Nadine V. Chisum, Terrance R. Chisum, Hezla K. Butler & Laton C. Butler*, under Suffolk County First District Court Index No. CV-006508-16/CE, for purposes of joint trial, is hereby granted to the extent set forth below.

The within action seeks to recover for the personal injuries alleged to have been sustained by both of the plaintiffs, as a result of a motor vehicle accident which occurred on December 26, 2015 at the location of Sunrise Highway, at or near its intersection with N. Delaware Avenue, Lindenhurst, New York. The within action was commenced by the filing of a summons and verified complaint dated July 18, 2016, with the Nassau County Clerk’s office on or about August 4, 2016. An action arising out of the same accident, in which the plaintiff seeks judgment against the same defendants for property damages and rental expenses associated with the vehicle owned by plaintiff’s subrogor, was commenced by State Farm Mutual Automobile Ins. Co., a/s/o Lisa Zanazzi, against defendants, Nadine V. Chisum, Terrance R. Chisum, Hezla K. Butler & Laton C. Butler, on October 18, 2016, in the Suffolk County First District Court under Index No. CV-006508-16/CE. Issue has been joined in both actions.

Movants, defendants Laton Butler and Hezla Butler, now move for an order joining the Suffolk County First District Court action with the instant action, for a joint trial in Nassau County.

“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” (*Perini Corp. v. WDF, Inc.*, 33 A.D.3d 605, 606, 822 N.Y.S.2d 295;

*see Alizio v. Perpignano*, 78 A.D.3d 1087, 1088, 912 N.Y.S.2d 132; *Mas-Edwards v. Ultimate Servs., Inc.*, 45 A.D.3d 540, 845 N.Y.S.2d 414). 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 A.D.3d 720, 722, 833 N.Y.S.2d 655). *Brown v. Cope Bestway Exp., Inc.*, 99 A.D.3d 746, 952 N.Y.S.2d 220 [2d Dept. 2012]. Because the two actions involve different plaintiffs, a joint trial, rather than consolidation, is the appropriate method of achieving the goal of avoiding the unnecessary duplication of proceedings. *See, Brown v. Cope Bestway Exp. Inc., supra, citations omitted.*

As the instant action was commenced first, it is ordered that, pursuant to CPLR §602(b), the Suffolk County First District Court action entitled, *State Farm Mutual Automobile Ins. Co., a/s/o Lisa Zanazzi, v. Nadine V. Chisum, Terrance R. Chisum, Hezla K. Butler & Laton C. Butler*, bearing Suffolk County Index No. CV-006508-16/CE, shall be transferred from Suffolk County First District Court to the Nassau County Supreme Court.

Movant is directed to serve a copy of this Order upon the Clerk of the Suffolk County First District Court within twenty (20) days of the date of this Order. Upon service of a copy of this Order on the Clerk of the Suffolk County First District Court and the payment of any requisite fees, the Clerk of the Suffolk County First District Court shall transfer the file to the Clerk of the Nassau County Supreme Court.

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It is further ordered that the within action is hereby joined with the *State Farm Mutual Automobile Ins. Co., a/s/o Lisa Zanazzi, v. Nadine V. Chisum, Terrance R. Chisum, Hezla K. Butler & Laton C. Butler* action, pursuant to CPLR§ 602(b), for the purposes of a joint trial in Nassau County. Accordingly, the actions shall retain separate index numbers and upon the transfer of the Suffolk County action to Nassau County, that caption shall read as follows:

SUPREME COURT - STATE OF NEW YORK - COUNTY OF NASSAU

.....  
GLENN BAUMAN,

Action 1  
Index No. 605940/2016

Plaintiff,

- against -

LATON BUTLER, HELZA BUTLER,  
TERRANCE CHISUM and NADINE CHISUM,

Defendants.

.....  
STATE FARM MUTUAL AUTOMOBILE INSURANCE CO.  
A/S/O LISA ZANAZZI,

Action No. 2  
Nassau Index No. to be assigned

Plaintiff,

- against -

NADINE V. CHISUM, TERRANCE R. CHISUM,  
HELZA K. BUTLER

Defendants.

.....

These actions are joined for trial and all parties shall serve upon any party so demanding copies of disclosure documents heretofore obtained in the other action, and it is further, ordered that

The joined actions shall bear the combined caption as set forth above and all matters of trial practice, including the right to open and close, are reserved to the Justice presiding at the joint trial, and it is further, ordered that

All papers shall reflect the joint caption of these actions, and upon completion of discovery, the parties shall file **separate** Notes of Issue and Certificates of Readiness, as to each action and its further, ordered that

Each party shall be entitled to enter separate Judgements and Bill of Costs and Disbursements, in each action respectively, if costs are allowed.

It is further ordered that Plaintiff in Action #2 shall file a Request for Judicial Intervention (“RJI”) in Nassau County Supreme Court, within twenty (20) days of the assignment of a Nassau County index number to Action #2, if the action is not resolved prior to said time.

The Movants are directed to serve a copy of this Order upon all parties to all actions, and upon the Clerk of the Supreme Court of Nassau County and the DCM Clerk of the Nassau County Supreme Court, within twenty (20) days of the date of this Order. Upon receipt of a copy of the within order, and after the transfer of the file in the *State Farm Mutual Automobile Ins. Co., a/s/o Lisa Zanazzi, v. Nadine V. Chisum, Terrance R. Chisum, Hezla K. Butler & Laton C. Butler* action, from Suffolk County First District Court to Nassau County Supreme Court, the Clerk of the Supreme Court of Nassau County is directed to join the files of these actions and amend the caption as indicated above.

It is further ordered that all parties to both actions parties shall appear for a Preliminary Conference to be held on October 16, 2017 at 9:30 a.m. at the Nassau County Supreme Court Drive, Mineola, N.Y. Counsel for all parties are required to appear for the conference on said date.

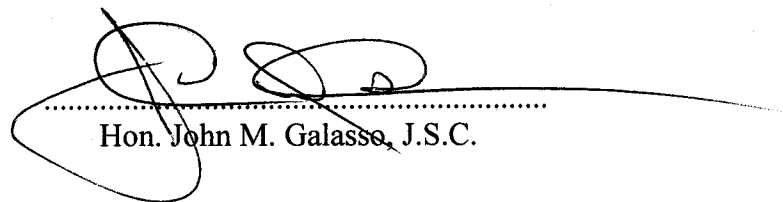
This constitutes the Decision and Order of this Court. Any request for relief not expressly granted herein is denied.

July 18, 2014 (INCORRECT YEAR)

**SHOULD READ JULY 18, 2017.**

**CORRECTED**

September 7, 2017

  
Hon. John M. Galasso, J.S.C.

**ENTERED**  
SEP 27 2017  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE