

**Gonzalez v Schwartz**

2017 NY Slip Op 33549(U)

October 5, 2017

Supreme Court, Suffolk County

Docket Number: Index No. 614562/2016

Judge: Martha L. Luft

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This opinion is uncorrected and not selected for official publication.

Short Form Order

Index No. 614562/2016

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 50 - COUNTY OF SUFFOLK

PRESENT:

Hon. Martha L. Luft  
Acting Justice Supreme Court

DECISION AND ORDER

\_\_\_\_\_  
STEPHANIE GONZALEZ and KRISTINA  
CANDELARIO,

Plaintiffs,

-against-

MARIA RUSSO SCHWARTZ, ABBEY  
SCHWARTZ and CLARIVEL MARTINEZ,

Defendants.  
\_\_\_\_\_x

Mot. Seq. No.: 001 - MG  
Orig. Return Date: 05/25/2017  
Mot. Submit Date: 05/30/2017

**PLAINTIFFS' ATTORNEYS**

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Upon reading and filing of the following: (1) Notice of Motion dated April 3, 2017 and supporting papers by defendants Maria Russo Schwartz and Abbey Schwartz, and there being no opposition, it is

**ORDERED**, defendants' Maria Russo Schwartz and Abbey Schwartz unopposed motion for a joint trial pursuant to CPLR 602(a) is granted and it is further

**ORDERED** that the caption shall be amended to read:

SUPREME COURT OF THE STATE OF  
NEW YORK, COUNTY OF SUFFOLK

\_\_\_\_\_  
STEPHANIE GONZALEZ and KRISTINA  
CANDELARIO,

Plaintiffs,

Index No. 614562/2016

Action No. 1

-against-

MARIA RUSSO SCHWARTZ, ABBEY  
SCHWARTZ and CLARIVEL MARTINEZ,

Defendants.

\_\_\_\_\_  
CLARIVEL MARTINEZ,

Plaintiff,

Index No. 617665/2016

Action No. 2

-against-

MARIA RUSO SCHWARTZ and ABBEY  
SCHWARTZ,

Defendants.

\_\_\_\_\_x

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and all future papers in this consolidated action shall contain this amended caption; and it is further

**ORDERED** that Action No. 2 shall be re-assigned to the undersigned in Part 50; and it is further

**ORDERED**, that counsel shall serve a copy of this order with notice of entry by mail upon all counsel and the Clerk of the Court, and unrepresented parties, if any, as well as upon the calendar clerks of Part 50 and Part 38 of this Court, within 30 days of such entry.

Where common questions of law or fact exist, a motion to consolidate or for a joint trial pursuant to CPLR 602 should be granted absent a showing of prejudice to a substantial right by a party opposing the motion. *Oboku v New York City Transit Auth.*, 141 AD3d 708, 35 NYS3d 710 [2d Dept 2016]; *Cieza v 20<sup>th</sup> Avenue Realty Inc.*, 109 AD3d 506, 970 NYS2d 311 [2d Dept 2013]. A motion pursuant to CPLR 602(a) to consolidate actions or to join separate actions for trial rests within the sound discretion of the trial court. *Alizio v Perpignano*, 78 AD3d 1087, 912 NYS2d 132 [2d Dept 2010]; *RCN Constr. Corp. v Fleet Bank, N.A.*, 34 AD3d 776, 825 NYS2d 140 [2d Dept 2006]. Consolidation or a joint trial is appropriate “where it will avoid unnecessary duplication of trials, save unnecessary costs and expense and prevent the injustice which would result from divergent decisions based on the same facts” *Horn Constr. Co. v City of New York*, 100 AD2d 824, 825, 474 NYS2d 763 [1st Dept 1984]. Consolidation gives rise to a new action that displaces the actions affected thereby. *Pigott v Field*, 10 AD2d 99, 101, 197 AD2d 648 [1st Dept 1960]; see *Kelley v Galina-Bouquet, Inc.*, 155 AD2d 96, 552 NYS2d 305 [1st Dept 1990]. However in a joint trial, the integrity of each action is preserved by the consolidation for the purpose of a joint trial, allowing each action to retain its separate identity. CPLR 602[b]; *Whiteman v Parsons Transp. Group of N.Y., Inc.*, 72 AD3d 677, 900 NYS2d 87 [2d Dept 2010]; *Import Alley of Mid-Is. v Mid-Island Shopping Plaza*, 103 AD2d 797, 477 NYS2d [2d Dept 1984]; *Champagne v Consolidated R. R. Corp.*, 94 AD2d 738, 462 NYS2d 491 [2d Dept 1983]).

Here, it has been demonstrated that the interests of justice and judicial economy would best be served by a joint trial of the two actions, since both actions arise out of a common incident and involve common questions of law and fact. *Brown v Cope Bestway Express, Inc.*, 99 AD3d 746, 952 NYS2d 220 [2d Dept 2012]; *Alizio v Feldman*, 97 AD3d 517, 947 NYS2d 326 [2d Dept 2012]; cf. *McGee v Cataldi*, 169 AD2d 822, 565 NYS2d 728 [2d Dept 1991]).

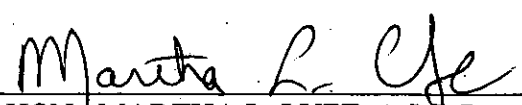
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Accordingly, the motion by plaintiffs for an order joining for trial *Clarivel Martinez v Mara Russo Schwartz and Abbey Schwartz*, Suffolk County Index No. 617665/2016 with the instant action is granted, since a joint trial of the two actions will serve the interests of the court, the parties and the witnesses.

ENTER

Dated: October 5, 2017  
Riverhead, New York

  
HON. MARTHA L. LUFT, A.J.S.C.

FINAL DISPOSITION

NON-FINAL DISPOSITION