

Garcia v Lucas
2018 NY Slip Op 30523(U)
March 23, 2018
Supreme Court, New York County
Docket Number: 805122/2017
Judge: George J. Silver
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: GEORGE J. SILVER
Justice

PART 10

EMILIANA GARCIA

Plaintiff

MOTION INDEX NO. 805122/2017

MOTION DATE

- v -

MOTION SEQ. NO. 001

**TYLER S. LUCAS, M.D., and NEW YORK CITY
HEALTH AND HOSPITALS CORPORATIONS**

Defendants.

Cross-Motion: ☐ Yes ☒ No

Defendants Tyler S. Lucas, M.D., and New York City Health and Hospitals Corporation ("defendants") move, unopposed and pursuant to CPLR § 602, for an order consolidating the above-entitled medical malpractice action with a related trip and fall action entitled *Emiliana Garcia Cabreja v. 129 Wadsworth Management Corp., et al.*, bearing New York County Supreme Court Index No. 155636/2016, which is currently pending before the Honorable Justice Manuel J. Mendez (Part 13), for joint discovery and trial. Defendants also request that the consolidated action be transferred to this court (Part 10) pursuant to an Administrative Order dated March 30, 2015.

The Trip and Fall Action ("Action No. 1")

On February 19, 2015, plaintiff Emiliana Garcia ("plaintiff") allegedly tripped and fell on premises located at 129 Wadsworth Avenue, New York, New York, which was owned, maintained, controlled and/or managed by defendants 129 Wadsworth Management Corp. and Alma Realty Corp. On July 7, 2016, plaintiff commenced a lawsuit against these defendants seeking to recover damages for personal injuries allegedly sustained in this trip and fall accident by filing a summons and complaint.

Specifically, plaintiff claims that, as a result of the alleged trip and fall, she sustained injuries to her left knee, including, *inter alia*, pain radiating up and down

**MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):**

the entire left leg; difficulty and pain upon prolonged periods of walking and standing; inability to bear full weight on the left leg; need for a cane to ambulate; need to undergo a total knee arthroplasty ("TKA") revision on February 29, 2016 at Metropolitan Hospital; permanent scarring, disfigurement, and disability of the left knee. Issue was joined on October 21, 2016, and plaintiff was deposed on August 22, 2017. Pursuant to the Status Conference Order dated December 6, 2017, defense deposition(s) were scheduled to be conducted on December 13, 2017.

Medical Malpractice Action ("Action No. 2")

On March 30, 2017, plaintiff commenced a second action against defendants by filing a summons and complaint. Action No. 2 relates to the above-referenced TKA revision at Metropolitan Hospital on February 29, 2016. Plaintiff alleges that defendants negligently performed the surgery, thereby causing her to suffer personal injuries.

Specifically, plaintiff claims that, as a result of the alleged medical malpractice, she sustained injuries to her left lower extremity, including, transection of the left peroneal nerve; left severe peroneal neuropathy at the fibular neck; left peroneal nerve palsy; permanent radiating leg pain; loss of sensation to the left lower extremity and toes; weakness in the left lower extremity; need for future surgery; limitation in movement; and inability to sit for long periods of time.

Issue was fully joined on May 25, 2017, and plaintiff was deposed on November 21, 2017. Pursuant to the So-Ordered Stipulation dated December 5, 2017, defense depositions are to be completed by February 17, 2018. A compliance conference was held before this court on February 27, 2018.

DISCUSSION

CPLR § 602 (a) provides in pertinent part:

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 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.

Where common questions of law or fact exist, consolidation is warranted in the absence of prejudice to a substantial right (*Fransen v. Maniscalco*, 256 AD2d 305 [2d Dept. 1998]). Consolidation of an action is appropriate to avoid unnecessary duplication of trials, to save costs and expenses and prevent injustice, which may result in divergent decisions based upon the same set of facts (*I. Burack, Inc. v. Rosner's Supply Corp.*, 236 AD2d 518 [2d Dept. 1997]).

Here, Action No. 1 should be consolidated with Action No. 2 as both actions arise out of the same facts and circumstances and pertain to the same injuries. Indeed, a common issue exists as to the extent to which each defendant is allegedly responsible for the injuries sustained by plaintiff as a result of the occurrence at 129 Wadsworth Avenue on February 19, 2015. As a result of that occurrence, plaintiff sought medical attention and underwent medical treatment by defendant Tyler Lucas, M.D. at Metropolitan Hospital, a New York Health and Hospitals Corporation facility. The defendants in both actions, by their separate and independent alleged acts of negligence, caused a single, inseparable injury which, because of its nature, is incapable of any reasonable or practicable division or allocation among multiple tortfeasors. Therefore, each defendant can be expected, and will be entitled to, make a case for apportionment of liability and damages with the other in accordance with CPLR Articles 14 and 16. There is no prejudice from consolidation to any substantial right plaintiff might have. Any discovery issues arising from the different procedural stages to which the two actions have progressed can be cured as soon as the two cases are consolidated. Consolidation will also prevent the injustice which would result if, as is likely, inconsistent verdicts were delivered in different trials. Moreover, without consolidation, each might not be able to avail itself of its statutory right to a CPLR Article 16 defense to limit joint and several liability, as well as under General Obligations Law § 15-108, without prejudice to plaintiff.

Accordingly, it is hereby

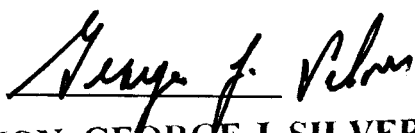
ORDERED that defendants motion granted; and it is further

ORDERED that the parties are directed to notify the clerk of the Honorable Justice Manuel J. Mendez (Part 13) that the case *Emiliana Garcia Cabreja v. 129 Wadsworth Management Corp., et al.*, bearing New York County Supreme Court Index No. 155636/2016 is hereby referred to me (Part 10) for joint discovery and trial; and it is further

ORDERED that the parties appear for a preliminary conference on April 24, 2018, at 9:30 AM in Room 1227 at 111 Centre Street.

This constitutes the decision and order of the court.

Dated: March 23, 2018


HON. GEORGE J. SILVER

1. Check one: ☐ Case Disposed ☒ Non-Final Disposition
2. Check as Appropriate: Motion is: ☒ Granted ☐ Denied ☐ Granted in Part