

Martinez v Pena
2018 NY Slip Op 32523(U)
October 5, 2018
Supreme Court, New York County
Docket Number: 161979/2014
Judge: Adam Silvera
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ADAM SILVERA

PART

IAS MOTION 22

Justice

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INDEX NO. 161979/2014

ZORAIDA MARTINEZ, EXPEDICTO MONTAN,

MOTION DATE 09/17/2018

Plaintiff,

MOTION SEQ. NO. 001

- v -

CARLOS PENA, JUAN SANTOS, SILVER BRICKS
INC., CONSOLIDATED EDISON COMPANY OF NEW YORK, M&A
TAVERN LLC D/B/A MCDERMOTT'S PUB

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 55, 56, 57, 58, 59, 60, 61, 62, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73

were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL

Upon the foregoing documents, it is ordered that defendant Carlos A. Pena's motion to consolidate is granted. Defendant moves to consolidate this personal injury action with another action currently pending in the Supreme Court, Bronx County (Juan Santos v Carlos A. Pena, Stuart Alexander and Lessie Serano, index no. 28581/16), arguing that the two actions arise out of the same accident and have common parties. CPLR §602(a) states that "[w]hen actions involving a common question of law or fact are pending before a court, the court, upon motion ... may order the actions consolidated".

Plaintiffs herein oppose the motion arguing that this action involves different legal principles such as the Dram Shop Act, and that the two actions are in different procedural stages. However, it is undisputed that the actions arise out of the same motor vehicle accident and involve many of the same parties. The two actions clearly have common questions of law, namely which party or parties are liable for the injuries of plaintiffs in both actions. Here, there is a risk of inconsistent verdicts if the two actions are not consolidated. Thus, defendant Pena's

motion to consolidate is granted to the extent that these actions are joined for discovery and trial.

Each action shall maintain separate pleadings, captions, and index numbers, with separate certificates of readiness and notes of issue.

Accordingly, it is

ORDERED that the motion is granted and the action Juan Santos v Carlos A. Pena, Stuart Alexander and Lessie Serano, index no. 28581/16, pending in the Supreme Court, Bronx County, shall be consolidated in this Court with Zoraida Martinez and Expedicto Montan v Carlos A. Pena, Juan Santos, Silver Bricks Inc., Consolidated Edison Company of New York, and M & A Tavern LLC d/b/a McErmott's Pub, Index No. 161979/14, New York County; and it is further

ORDERED that a separate index number be given to the action Juan Santos v Carlos A. Pena, Stuart Alexander and Lessie Serano, being transferred from the Supreme Court, Bronx County, to this Court upon payment of the appropriate fees, if any, and it is further

ORDERED that, within 30 days from entry of this order, counsel for the movant shall serve a certified copy of this order upon the Clerk of the Supreme Court, Bronx County, and shall pay the appropriate fee, if any, for such transfer and shall contact the staff of said Clerk to arrange for the effectuation of the transfer in an efficient manner; and it is further

ORDERED that service upon the Clerk of the Supreme Court, Bronx County shall be made in accordance with any applicable protocol or other procedures of said county; and it is further

ORDERED that the Clerk of the Supreme Court, Bronx County, shall transfer the documents on file under Index No. 28581/16 to the Clerk of this Court for the purpose of consolidation; and it is further

ORDERED that the Clerk of the Supreme Court, Bronx County and the Clerk of this court shall coordinate the transfer of the documents being transferred so as to ensure an efficient transfer and to minimize insofar as practical the reproduction of such documents, including with regard to any documents that may be in digital format; and it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the Court (60 Centre Street, Room 141 B), who shall consolidate the documents in the actions hereby consolidated and shall mark his records to reflect the consolidation for joint discovery and trial; and it is further

ORDERED that such service upon the Clerk of the Court shall be made in hard-copy format if the case pending in this county is a hard-copy case or, if this case is an e-filed one, shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on this court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents transferred from the Supreme Court, Bronx County in the consolidated case file under the New York County Index Number of the consolidated action in the New York State Courts Electronic Filing System or make appropriate notations of such documents in the e-filing records of the court so as to ensure access to the documents in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry upon the Clerk of the General Clerk's Office (60 Centre Street,

Room 119), who is hereby directed to reflect the consolidation by appropriately marking the court's records; and it is further

ORDERED that discovery shall proceed expeditiously; and it is further

ORDERED that within 14 days of obtaining a separate index number in the action Juan Santos v Carlos A. Pena, Stuart Alexander and Lessie Serano, movant shall request a preliminary conference.

This constitutes the Decision/Order of the Court.

10/5/2018
DATE



ADAM SILVERA, J.S.C.

CHECK ONE:

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CASE DISPOSED

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GRANTED

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DENIED

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NON-FINAL DISPOSITION

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GRANTED IN PART

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OTHER

APPLICATION:

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SETTLE ORDER

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SUBMIT ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

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FIDUCIARY APPOINTMENT

☐

REFERENCE