

Brown v Mount Sinai Hosp.

2018 NY Slip Op 32932(U)

November 15, 2018

Supreme Court, New York County

Docket Number: 150994/13

Judge: Manuel J. Mendez

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

PRESENT: HON. MANUEL J. MENDEZ PART 13
Justice

DARRIUS BROWN,

- Against- Plaintiff(s)

INDEX NO. 150994/13
MOTION DATE 11-14-2018
MOTION SEQ. NO. 006
MOTION CAL. NO.

MOUNT SINAI HOSPITAL and MORGAN CONSTRUCTION ENTERPRISES, INC.,

Defendant(s).

The following papers, numbered 1 to 7 were read on this motion to bifurcate liability trial and consolidate (or join) damages trial with case pending Civil Court :

Table with 2 columns: Description of papers and PAPERS NUMBERED. Rows include Notice of Motion/ Order to Show Cause, Answering Affidavits, and Replying Affidavits.

Cross-Motion: Yes X No

Upon a reading of the foregoing cited papers, it is Ordered that Plaintiff's motion to bifurcate the liability portion of this action and, if the jury returns a verdict for plaintiff on liability, to consolidate (or join) the damages portion of this trial with the damages portion of an action pending in the Civil Court of the City of New York, County of New York, bearing the caption DARRIUS BROWN v. CHRIS BENTON and CLEAN VENTURE, INC., is granted.

On June 26, 2012 plaintiff was caused to sustain physical injuries while in the course of his employment when he was electrocuted after opening an electrical box. As a result of the electric shock plaintiff was caused to be hurled backwards, striking his body with a hard surface, sustaining physical injuries. Plaintiff alleges that the accident occurred because defendants failed to shut down the electric current and allowed plaintiff to perform work on a live wire. Plaintiff alleges that as a result of this occurrence plaintiff sustained severe and permanent injuries to his head, neck, lumbar spine, left shoulder, left arm and left leg. Plaintiff commenced an action against the defendants to recover for violations of the labor law .

On October 15, 2012 while plaintiff was stopped at a red light at the intersection of West 151st Street and Macombs Place, his vehicle was struck in the rear by a vehicle being operated by the defendant Chris Benton. As a result of this second accident plaintiff sustained injuries to his head, neck, lumbar spine and right shoulder. Plaintiff commenced an action against the defendants Chris Benton and

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

Clean Venture, Inc., to recover for the injuries sustained in the motor vehicle accident. The action was commenced in the Supreme Court of the State of New York, County of New York, under index number 153311/2013.

The automobile action was administratively transferred to the Civil Court of the City of New York, County of New York, on September 4, 2018 by order of the Honorable Deborah Kaplan (see Transfer Order, Opp. Exhibit A).

Plaintiff's orthopedic surgeon, Dr. Michael Gerling, M.D. states in an affidavit submitted in support of this motion, that it is [his] opinion, with a reasonable degree of medical certainty, that the trauma [plaintiff] sustained in both accidents contributed to all of [his] symptoms of neck and back injuries and his need for medical treatment, including major cervical and lumbar disc surgeries, which [he] performed." He further states in the same affidavit that "...it is not possible for [him] to say which accident caused the need for the surgeries related to these conditions. The trauma of either accident, alone, was, in [his] opinion, with a reasonable degree of medical certainty, competent and sufficient to cause the injuries and/or exacerbate pre-existing degenerative conditions of the discs in plaintiff's neck and back, causing the need for surgery, which [he] performed in order to ameliorate the damage as much as possible. It is [his] opinion, with a reasonable degree of medical certainty, that the two accidents proximately caused pain, impairment, disability, a loss of earning ability and a need for medical treatment, in the past and in the future. [He] cannot quantify or apportion causal relationship and cannot say to what particular degree each accident proximately caused the plaintiff's injuries and damages." (see Affidavit Dr. Gerling, M.D., Exhibit A).

Plaintiff moves for an order bifurcating this action in order to try liability only, and if plaintiff is successful in the liability phase of the bifurcated trial, to consolidate (or join) the damages trial of this case with the damages trial of the case pending in Civil Court. Plaintiff argues that a joined damages trial with the case Pending in Civil Court will prevent inconsistent verdicts, which is a very important factor warranting joining the damages trial. A joined trial will also save the parties , their attorneys, their experts and the courts substantial amount of time and expense, and conserve judicial resources.

The defendants in this case do not oppose the motion. They join with plaintiff in requesting bifurcation and joinder. The defendants in the automobile accident case do oppose the motion. They argue that this court has no subject matter jurisdiction over the Civil Court action. They also argue that the jury will be confused if it has to decide which of the defendants is responsible for the damages plaintiff sustained, and that this will substantially prejudice the automobile accident defendants.

According to Uniform Rules for the New York State Trial Courts §202.42 (a) " Judges are encouraged to order bifurcated trial of the issues of liability and damages in any action for personal injury where it appears that bifurcation may assist in a clarification or simplification of issues and a fair more expeditious resolution of the action."

It appears to this court that bifurcation will assist in a clarification and simplification of the issues to be tried, and will lead to a more fair and expeditious resolution of the action. The jury in a bifurcated trial will only have to decide whether or not the defendants in this case are liable to the plaintiff. If the jury finds that the defendants are not liable to the plaintiff, then this case ends and proceeds no further. Only if the jury finds that the defendants are liable to the plaintiff will a trial on damages, and joinder with the case pending in the Civil Court, be necessary.

Pursuant to CPLR §602 consolidation lies within the discretion of the Court, but is generally favored where there are common questions of law or fact, unless the party opposing the motion demonstrates prejudice of a substantial right. The burden is on the party opposing the motion to demonstrate prejudice. *Amcan Holdings, Inc. v. Torys LLP*, 32 A.D. 3d 337, 821 N.Y.S. 2d 162 (N.Y.A.D. 1st Dept. 2006).

CPLR Section 602(b) allows for the supreme court to “remove to itself an action pending in another court and consolidate it or have it tried together with [an action pending] in the supreme court,” (See *Curry v. Earll*, 209 A.D. 205, 203 N.Y.S. 750 [4th Dept. 1924]; *Strauss v. Long Island Sports, Inc.* 60 A.D. 2d 501, 401 N.Y.S. 2d 233 [2nd. Dept. 1978]).

CPLR Section 325 (d) allows the Supreme Court to remove without consent an action pending in the supreme court to a court of limited jurisdiction, such as the Civil Court of the City of New York.

Defendant in the automobile accident case has not shown that consolidation of the damages trial of these cases would prejudice a substantial right. The extent of the injuries sustained are common questions of fact of both cases. Removing this case to the Civil Court and joining it with that action for a damages trial does not prejudice the right of any party, promotes judicial economy and avoids inconsistent results.

Plaintiff sustained injuries in both accidents that his orthopedic surgeon says contributed to his condition. All of his damages arise from both incidents. A review of the record indicates that judicial economy would be served by joining these actions for a damages trial. It would avoid impaneling separate juries, having plaintiff produce experts for multiple trials and avoid inconsistent results. Consolidation is favored by the courts in serving the interests of justice and judicial economy(*Flaherty v. RCP Assocs.*, 208 A.D. 2d 496 (N.Y. App. Div. 2d Dep’t 1994), to avoid inconsistent verdicts and to avoid prejudicing a substantial right of any of the parties in these actions (see *Federal Insurance Company v. Arthur Andersen & Co.*, 75 N.Y.2d 366, 553 N.Y.S.2d 291, 552 N.E.2d 870 [1990]; *Winkelman v. Excelsior Insurance Co.*, 85 N.Y.2d 577, 626 N.Y.S.2d 994, 650 N.E.2d 841 [1995]).

Accordingly, It is ORDERED that the motion to bifurcate this action is granted, and it is further

liability portion of this action in the Supreme Court of the State of New York, County of New York, and it is further

ORDERED that in the event the jury returns a verdict finding the defendants in this action liable to plaintiff, this action shall be removed to the Civil Court of the City of New York, County of New York, to join with the action now pending there Titled: DARRIUS BROWN v. CHRIS BENTON and CLEAN VENTURE, INC., for a joined damages trial, and it is further

ORDERED that in the event the jury returns a verdict finding the defendants in this action liable to plaintiff, plaintiff is directed to serve a certified copy of this order with notice of entry upon the clerk of the Court, who shall, upon such service and the payment of any fees, transfer to the Civil Court City of New York, County of New York all the papers heretofore filed in this action to be joined for a damages trial with the action now pending in the Civil Court City of New York County of New York, titled DARRIUS BROWN v. CHRIS BENTON and CLEAN VENTURE, INC., and it is further

ORDERED that in the event the jury returns a verdict finding defendants in this action liable to plaintiff, plaintiff shall serve a copy of this order with notice of entry on the County Clerk (Room 141B) and the Clerk of the Trial Support Office who is located in the General Clerk's Office (Room 119), who shall mark their records to reflect the bifurcation of the trial in this action pending in the Supreme Court and the joinder of the damages trial with the action pending in the Civil Court.

ENTER:

MANUEL J. MENDEZ
J.S.C.

Dated: November 15, 2018



MANUEL J. MENDEZ
J.S.C.

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE