

Bennici v Roseland Dev. Assoc., LLC
2018 NY Slip Op 33216(U)
December 13, 2018
Supreme Court, New York County
Docket Number: 160530/2017
Judge: William Franc Perry
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NYSCEF DOC. NO. 38

RECEIVED NYSCEF: 12/13/2018

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

PRESENT: HON. W. FRANC PERRY

PART

IAS MOTION 23EFM

Justice

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PAOLO BENNICI, ANNALISA BENNICI,

Plaintiff,

- v -

ROSELAND DEVELOPMENT ASSOCIATES, LLC, ALGIN
MANAGEMENT CO., LLC, DIFAMA CONCRETE, INC.,

Defendant.

INDEX NO. 160530/2017

MOTION DATE December 13,
2018

MOTION SEQ. NO. 001

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37

were read on this motion to/for

CONSOLIDATE/JOIN FOR TRIAL

Upon the foregoing documents, and after oral argument, the motion is granted.

Plaintiff commenced this action by filing a Summons and Complaint on November 28, 2017 against the defendants asserting violations of Labor Law sections 240(1), 241(6) and 200 for an accident alleged to have occurred on July 6, 2018 ("Action 1"). Plaintiff alleged, inter alia, that he was injured when he was caused to fall from a height. (NYSCEF Doc. No. 1).

Plaintiff filed a second action on May 30, 2018 under index number 155046/2018 allegation violations of Labor Law sections 241(6) and 200 only for an accident he claims occurred on July 5, 2016 ("Action 2"), one day prior to the accident alleged in Action 1. (NYCEF Doc. No. 1). In Action 2, plaintiff alleges that he was caused to suffer injuries after a slip and fall on the job site.

Both actions are alleged to have occurred at the same project location, 242 West 53N Street. New York, New York, with accident dates of July 5, 2016 and July 6, 2016. Each of the

actions have common questions of fact and law in that they occurred at the same alleged location, alleged construction project and involve the same parties. Defendants Roseland Development Associates, LLC, and Align Management Co., move pursuant to CPLR §602, for an order consolidating the actions for joint trial and discovery with the companion action, Paolo T. Bennici and Annalisa Bennici v. Roseland Development Associates, LLC, Align Management Co., LLC, and DiFama Concrete, inc. (Index No.: 155046/2018).

Consolidation of cases is authorized by CPLR 602 (a), which provides: "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 the 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." As the statutory language suggests, joining cases together is designed to "reduce the cost of litigation, make more economical use of the trial court's time, and speed the disposition of cases" (*Matter of New York City Asbestos Litig. [Brooklyn Nav. Shipyard Cases]*, 188 AD2d 214, 225, 593 NYS2d 43 [1st Dept. 1993], affd 82 NY2d 821, 625 NE2d 588, 605 NYS2d 3 [1993]). Further, "great deference is to be accorded to the motion court's discretion" in joining cases together (*Matter of Progressive Ins. Co. [Vasquez—Countrywide Ins. Co.]*, 10 AD3d 518, 519, 782 NYS2d 21 [1st Dept. 2004]).

Accordingly, it is,

ORDERED that the motion is granted and the above-captioned action is consolidated in this Court with Paolo Bennici, et.al., vs. Roseland Development Associates, LLC, et.al., Index No. 155046/2018, pending in this Court; and it is further

ORDERED that the consolidation shall take place under Index No. 160530/2017 and the consolidated action shall bear the following caption:

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

PAOLO T. BENNICI AND ANNALISA BENNICI

Index No.: 160530/2017

Plaintiffs,

-against-

ROSELAND DEVELOPMENT ASSOCIATES, LLC, ALGIN
MANAGEMENT CO., LLC, and DIFAMA CONCRETE, INC.,

Defendants

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ROSELAND DEVELOPMENT ASSOCIATES, LLC,
and ALGIN MANAGEMENT CO., LLC,

Third-Party Index No.:

Third-Party Plaintiff,

-against-

DFC STRUCTURES LLC,

Third-Party Defendant.

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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; and it is further

ORDERED that counsel for the movant shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed; and it is further

ORDERED that service of this order upon the Clerk of the Court shall be made in hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, 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 the 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 being consolidated in the consolidated case file under the 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 on 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 such service upon the Clerk of the General Clerk’s Office shall be made in hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, shall be made in accordance with the procedures set forth in the aforesaid *Protocol*; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 307, 80 Centre Street, New York, New York, on March 5, 2019, at 9:30 AM.

<u>12/13/2018</u> DATE		 W. FRANC PERRY, J.S.C.	
CHECK ONE:	☒ CASE DISPOSED	☒ NON-FINAL DISPOSITION	
	☒ GRANTED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE