

Saravia v Jahoda

2018 NY Slip Op 34359(U)

August 28, 2018

Supreme Court, Suffolk County

Docket Number: Index No. 608209/2016E

Judge: William B. Rebolini

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This opinion is uncorrected and not selected for official publication.

Short Form Order

SUPREME COURT - STATE OF NEW YORK

I.A.S. PART 7 - SUFFOLK COUNTY

PRESENT:

WILLIAM B. REBOLINI
Justice

Redani Saravia,

Plaintiff,

Action No.1

-against-

Index No.: 608209/2016E

Robert J. Jahoda,

Defendant.

Motion Sequence No.: 003; MG

Motion Date: 8/21/18

Submitted: 8/22/18

Robert J. Jahoda,

Third-Party Plaintiff,

Attorneys [See Rider Annexed]

-against-

North Fork Drywall & Insulation, Inc.,

Third-Party Defendant.

Redani Saravia,

Plaintiff,

Action No. 2

-against-

Index No.: 623093/2017E

Anthony Specia Construction Inc. and
North Fork Drywall & Insulation, Inc.,

Defendants.

Upon the E-file document list numbered 52 to 64 read on this application by defendant Robert J. Jahoda for an order pursuant to CPLR 602 consolidating Action No. 1 under index number 608209/2016 and Action No. 2 under index number 623093/2017 for joint trial and joint discovery is granted, without opposition; and it is further

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ORDERED that the defendant's application for a joint trial and joint discovery of Action No. 1 bearing Index Number 608209/2016 and Action No. 2 bearing Index Number 623093/2017 is granted, without opposition; and it is further

ORDERED that each action joined for trial and discovery shall retain a separate caption and separate court costs shall be paid in each action, including those costs attendant with the filing of Notes of Issue; and it is further

ORDERED that all motions interposed in each joined action shall bear a single caption reflecting the action in which said motion is made; however, all motions shall be served upon counsel for all parties appearing in each joined action; and it is further

ORDERED that a compliance conference in each joined action shall be held on **Wednesday December 5, 2018 at 9:30 a.m., Part 7**, located at One Court Street, Riverhead, NY 11901. Counsel for the respective parties in each joined action are directed to appear.

New York CPLR § 602(a) provides that "[w]hen 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 of 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." A motion to consolidate or for a joint trial pursuant to CPLR 602 (a) rests in the sound discretion of the trial court (*Mattia v. Food Emporium, Inc.*, 259 AD2d 527, 686 NYS2d 473 [2d Dept. 1999]). Consolidation or joint trials are "favored by the courts in serving the interests of justice and judicial economy" (*Flaherty v. RCP Assoc.*, 208 A.D.2d 496, 498, 616 N.Y.S.2d 801[2nd Dept., 1994]; see also *Shanley v. Callanan Indus.*, 54 N.Y.2d 52, 57, 444 N.Y.S.2d 585, 429 N.E.2d 104 [1981]; *Mideal Homes Corp. v. L & C Concrete Work*, 90 A.D.2d 789, 455 N.Y.S.2d 394 [2nd Dept. 1982]). The Court notes that the attorneys for the parties have executed a stipulated dated August 22, 2018 consenting to a consolidation of these actions.

Here, these two negligence actions seek to recover damages for personal injuries allegedly sustained by the plaintiff Redani Saravia as result of a fall from a height that allegedly occurred on June 4, 2015 at approximately 12:00 p.m. at the premises located at 6 Beach Avenue, Sag Harbor, New York. Being that both actions involve the same incident and common questions of law and fact exist, a joint trial and joint discovery is warranted. However, a joint trial rather than a consolidation of the actions is appropriate, inasmuch as one of the defendants in the second action has alleged laches and the statute of limitations as defenses (see *Vojtech Blau, Inc. v. Sara*, 160 Misc.2d 431, 609 NYS2d 515 [NY Cty. 1994]; see also *Whiteman v. Parsons Transportation Group of New York, Inc.*, 72 AD3d 677, 900 NYS2d 87 [2d Dept. 2010]; *Mas-Edwards v. Ultimate Services, Inc.*, 45 AD3d 540, 845 NYS2d 414 [2d Dept. 2007] citing *Perini Corp. v. WDF, Inc.*, 33 AD3d 605, 822 NYS2d 295 [2d Dept. 2006]; *Cola-Rugg Enterprises, Inc., v. Consolidated Edison Company of New York, Inc.*, 109 AD2d 726, 486 NYS2d 43 [2d Dept. 1985]). Moreover, the Second Department prefers joint trials over consolidations in the interest of justice and judicial economy (*Megyesi v. Automotive Rentals, Inc.*, 115 AD2d 596, 496 NYS2d 473 [2d Dept. 1985]).

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Accordingly, the defendants' motion seeking an order for a joint trial and joint discovery pursuant to CPLR 602 is granted, without opposition.

A compliance conference in these joined actions will be held on **Wednesday, December 5, 2018.**

The foregoing constitutes the *Decision* and *Order* of the Court.

Dated: *August 28, 2018*


HON. WILLIAM B. REBOLINI, J.S.C.

_____ **FINAL DISPOSITION** **NON-FINAL DISPOSITION**

RIDER

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Clerk of the Court

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