

Lewis v Cabrera

2019 NY Slip Op 30189(U)

January 23, 2019

Supreme Court, New York County

Docket Number: 158822/2017

Judge: Adam Silvera

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This opinion is uncorrected and not selected for official publication.

**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. 158822/2017

JOSEPH LEWIS,

MOTION DATE 01/18/2019

Plaintiff,

MOTION SEQ. NO. 002

- v -

ERNESTO CABRERA, GOYA ENTERPRISES CORP., GOYA
FOODS, INC.,GOYA MARKETING INC.,MELISSA WALKER

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85

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

Upon the foregoing documents, it is ordered that this motion for consolidation by plaintiff Joseph Lewis is granted. Plaintiff moves to consolidate this personal injury action with three other actions, two of which are currently pending in this Court (Melissa Walker, Individually and as Administrator of the Estate of Henry Walker, deceased v Ernesto Cabrera, Goya Enterprises Corp., Goya Foods, Inc., Goya Marketing, Inc., Paul Donaghy, and Eastern Freight Ways, Inc., index no. 152317/17, and Melissa Walker, Individually and as Administrator of the Estate of Khalil Walker, deceased v Ernesto Cabrera, Goya Enterprises Corp., Goya Foods, Inc., Goya Marketing, Inc., Paul Donaghy, and Eastern Freight Ways, Inc., index no. 154688/18) and one pending in the Supreme Court, Nassau County (Oscar Valiente v Ernesto Cabrera, Goya Foods, Inc., Penske Truck Leasing, Co., LP, Paul Donaghy, and Eastern Freight Ways Inc., index no. 610650/18), arguing that the four 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”. It is

undisputed that the actions arise out of the same motor vehicle accident and involve many of the same parties.

In opposition, defendants Ernesto Cabrera and Goya Foods, Inc. argue that plaintiff's motion must be denied as the action that was filed first in time is the action currently pending in Nassau County, and, thus, the actions should not be consolidated in New York County, rather, they should be heard in Nassau County. However, the Court notes that by Decision and Order dated January 3, 2019, Honorable Jerome C. Murphy denied the motion to consolidate in the Nassau County action. The court in Nassau County specifically stated that the action pending in Nassau County was transferred from Bronx County such that Nassau County did not have jurisdiction of the action until October 2017. The Nassau County court further stated that although such action was filed in January 2017, in Bronx County, jurisdiction was not established as Bronx County was an improper venue. According to Hon. Murphy's January 3, 2019 Decision and Order, the action filed first in time was the action filed in New York County on March 10, 2017. Thus, the motion to consolidate these 4 actions has already been denied in Nassau County. Here, as stated above, it is undisputed that 4 actions arise out of the same motor vehicle accident and involve many of the same parties. In the Court's discretion, to avoid inconsistent rulings or verdicts, the instant motion is hereby 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 Oscar Valiente v Ernesto Cabrera, Goya Foods, Inc., Penske Truck Leasing Co., LP, Paul Donaghy, and Eastern Freight Ways, Inc., index no. 610650/18, pending in the Supreme Court, Nassau County, shall be consolidated in this

Court with the following three actions: (1) Joseph Lewis v Ernesto Cabrera, Goya Enterprises Corp., Goya Foods, Inc., Goya Marketing Inc., Paul Donaghy, Eastern Freight Ways, Inc., and Melissa Walker, Individually and as Administrator of the Estate of Henry Walker, deceased, index no. 158822/17; (2) Melissa Walker, Individually and as Administrator of the Estate of Henry Walker, deceased v Ernesto Cabrera, Goya Enterprises Corp., Goya Foods, Inc., Goya Marketing Inc., Paul Donaghy, and Eastern Freight Ways, Inc., index no. 152317/17; and (3) Melissa Walker, Individually and as Administrator of the Estate of Khalil Walker, deceased v Ernesto Cabrera, Goya Enterprises Corp., Goya Foods, Inc., Goya Marketing Inc., Paul Donaghy, and Eastern Freight Ways, Inc., index no. 154688/18; and it is further

ORDERED that a separate index number be given to the action Oscar Valiente v Ernesto Cabrera, Goya Foods, Inc., Penske Truck Leasing Co., LP, Paul Donaghy, and Eastern Freight Ways, Inc., being transferred from the Supreme Court, Nassau 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, Nassau 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, Nassau 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, Nassau County, shall transfer the documents on file under Index No. 610650/18 to the Clerk of this Court for the purpose of consolidation; and it is further

ORDERED that the Clerk of the Supreme Court, Nassau 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, Nassau 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 such service upon the Clerk of the General Clerk's Office shall be made in hard-copy format if the case pending in this county is a hard-copy case or, if the case pending here is an e-filed one, 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 previously scheduled compliance conference in Room 103 of 80 Centre Street, New York, New York, on February 15, 2019 at 9:30am.

This constitutes the Decision/Order of the Court.

1/23/2019
DATE

ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: