

Cawley v Ovalesveras
2019 NY Slip Op 30496(U)
February 28, 2019
Supreme Court, New York County
Docket Number: 156873/2018
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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LEONARD CAWLEY,
Plaintiff,

INDEX NO. 156873/2018

MOTION DATE 01/28/2019

MOTION SEQ. NO. 002

- v -

ANTOLIN OVALEESVERAS, DIANE RIVELA, GEICO
INSURANCE COMPANY,

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

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 Leonard Cawley is granted. Plaintiff Cawley moves to consolidate this personal injury action with another action currently pending in the Supreme Court of Bronx County (Wilfredo Rosario and Dionisia Rosario v Diane C. Rivela and Antolin Ovalesveras, index no. 26954/16), arguing that the two actions arise out of the same accident and have common parties. Plaintiff Cawley also seeks to have the consolidated actions heard in Bronx County.

Defendant Antolin Ovalesveras cross-moves to transfer the consolidated actions to New York County, Richmond County, or Rockland County, arguing that although consolidated cases are usually tried where the first action was commenced, this is only the case where there are no circumstances compelling the trial in another county. Defendant Ovalesveras argues that the instant action has no connection with Bronx County. The cross-motion does not oppose the consolidation. Plaintiffs in the Bronx County action, Wilfredo Rosario and Dionisia Rosario, oppose defendant Ovalesveras' cross-motion to transfer venue, arguing that the action filed first

in time, namely the action currently pending in Bronx County, was properly venued as plaintiffs Rosario and Rosario reside in Bronx County. Plaintiff Cawley replies.

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”. Here, it is undisputed that the actions arise out of the same motor vehicle accident and involve many of the same parties. No opposition has been filed regarding to the consolidation of the two actions. Thus, plaintiff Cawley’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.

Plaintiff Cawley’s motion also seeks to change venue of this action to Bronx County, as the action currently pending in Bronx County was filed first in time. The Appellate Division, First Department, has held that “[w]here two actions involving identical issues are pending in separate counties, the actions should be consolidated pursuant to CPLR 602 in the county where the first action was commenced absent special circumstances”. *Harrison v Harrison*, 16 AD3d 206, 207 (1st Dep’t 2005). Here, no special circumstances have been established. It is undisputed that the motor vehicle accident occurred in New York County. It is further undisputed that plaintiff Cawley in the instant action resides in Rockland County, defendant Ovalesveras resides in Massachusetts, defendant Diane C. Rivela resides in Richmond County, and plaintiffs Rosario and Rosario in the Bronx County action reside in Bronx County. Here, in support of the cross-motion, defendant Ovalesveras argues that a compelling reason exists to transfer venue to New York County, Rockland County, or Richmond County as none of the parties in this action reside in Bronx County. However, it is undisputed that plaintiffs Rosario and Rosario, in the Bronx action, reside in the Bronx and properly commenced an action there. Defendant

Ovaleesveras has failed to demonstrate that the residences of the parties in this action are more compelling than the residence of the parties in the action to be consolidated. Thus, plaintiff Cawley's motion to consolidate is granted. The consolidated action shall be heard in the Supreme Court of Bronx County as the action in Bronx County was filed first in time. As such, defendant Ovalesveras' cross-motion is denied.

Accordingly, it is

ORDERED that plaintiff Leonard Cawley's motion to consolidate is granted as indicated above; and it is further

ORDERED that defendant Antolin Ovalesveras' cross-motion to change venue to New York County, Rockland County, or Richmond County is denied in its entirety; and it is further

ORDERED that the venue of this action is changed from this Court to the Supreme Court, County of Bronx, and upon service by plaintiff Leonard Cawley of this order with notice of entry and payment of appropriate fees, if any, the Clerk of this Court is directed to transfer the papers on file in this action under Index No. 156873/18 to the Clerk of the Supreme Court, County of Bronx; 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 plaintiff Leonard Cawley is directed to serve a copy of this order with notice of entry on the County Clerk of the Supreme Court, Bronx County, who shall consolidate the papers in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that plaintiff Leonard Cawley is directed to serve a copy of this order with

notice of entry upon the Clerk of the Trial Support Office of the Supreme Court, Bronx County, who is directed to mark the court's records to reflect the consolidation.

This constitutes the Decision/Order of the Court.

ADAM SILVERA, J.S.C.

2/28/2019

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED DENIED

GRANTED IN PART OTHER

APPLICATION: SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE