

Maggio v Consolidated Edison Co. of N.Y., Inc.

2019 NY Slip Op 30551(U)

March 5, 2019

Supreme Court, New York County

Docket Number: 155456/2017

Judge: Frank P. Nervo

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This opinion is uncorrected and not selected for official publication.

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

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MIRIAM MAGGIO,

Plaintiff,

-against-

CONSOLIDATED EDISON COMPANY OF NEW
YORK, INC.,

Defendant.

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CONSOLIDATED EDISON COMPANY OF NEW
YORK, INC.,

Third-Party Plaintiff,

-against-

PETRILLO CONTRACTING, INC., and POSILLICO
CIVIL INC., d/b/a SPAR CONSTRUCTION
COMPANY

Third-Party Defendants.

-----X

FRANK P. NERVO, J.S.C.

Third-Party Defendant Petrillo Contracting, Inc. (“Petrillo”) moves to consolidate the New York County action (Index No. 155456/2017) with the Westchester County action (Index No. 58287/2017). Petrillo contends that the actions arose from the same set of facts, namely a slip-and-fall injury allegedly suffered by plaintiff, and that judicial economy is best served by consolidating the two actions. Plaintiff alleges, in both actions, that she was caused to fall due to a cut in the roadway caused by excavation work. No opposition has been submitted, and Posillico Civil Inc. supports Petrillo’s motion.

Consolidation rests within the discretion of the Court and is appropriate where two actions involve “a common question of law or fact” (CPLR § 602[a]); the burden is on a party resisting consolidation to show that consolidation would be prejudicial (*Vigo S. S. Corp. v. Marship Cop.*, 26 NY2d 157 [1970]). Where the two actions are pending in different counties, the consolidated action must be tried in the appropriate venue (*Padilla v. Greyhound Lines, Inc.*, 29 AD2d 495 [1st Dept 1968]). Generally, the proper venue will be the place the first action was commenced (*Weiss v. City of New York*, 29 AD2d 709 [1st Dept 1967]).

DECISION AND ORDER

Index Number

155456/2017

Movant has established the actions represent a common issue of law and fact, as they stem from a single slip-and-fall allegedly caused by excavation/construction work. Additionally, the two actions involve the same parties. Therefore, judicial economy is served by consolidating the two actions and, notably, no party has appeared in opposition. The Court, in its discretion, finds complete consolidation is appropriate. Venue in New York County is proper, as the New York action was filed 11 months before the Westchester action.

Accordingly, it is

ORDERED that the motion is granted; and the above-captioned action is consolidated in this Court with MIRIAM MAGGIO vs. SPAR CONSTRUCTION CO., INC. and PETRILLO CONTRACTING, INC., Index no. 58287/2018 (Westchester County) under New York County Index No. 155456/2017 and the consolidated action shall bear the following caption:

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

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MIRIAM MAGGIO,
Plaintiff,

Index Number
155456/2017

-against-

CONSOLIDATED EDISON COMPANY OF NEW
YORK, INC., SPAR CONSTRUCTION COMPANY,
INC., and PETRILLO CONTRACTING, INC.,
Defendants.

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CONSOLIDATED EDISON COMPANY OF NEW
YORK, INC.,
Third-Party Plaintiff,

-against-

PETRILLO CONTRACTING, INC., and POSILLICO
CIVIL INC., d/b/a SPAR CONSTRUCTION
COMPANY
Third-Party Defendants.

-----X

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, Westchester 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, Westchester 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, Westchester 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 regards 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 actions; and it is further

ORDERED that within 30 days from the 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 141B) who shall consolidate the documents in the actions hereby consolidated and shall mark his record to reflect the consolidation; 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, www.nycourts.gov/supctmanh); and it is further

ORDERED that as applicable and insofar as is practical, the Clerk of the Court shall file the documents transferred from the Supreme Court, Westchester 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 the parties are directed to appear for a preliminary conference in this Part, Room 327, 80 Centre Street at 10:00am on May 31, 2019.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated March 5, 2019

ENTER:



J.S.C.

HON. FRANK P. NERVO