

McGown v Hudson Meridian Constr. Group, LLC

2019 NY Slip Op 30593(U)

March 7, 2019

Supreme Court, New York County

Docket Number: 159616/2018

Judge: John J. Kelley

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

PRESENT: HON. JOHN J. KELLEY PART IAS MOTION 56EFM

Justice

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SCOTT MCGOWN,

Plaintiff,

- v -

HUDSON MERIDIAN CONSTRUCTION GROUP, LLC, LRC
CONSTRUCTION, LLC, MILL CREEK CONSTRUCTION CORP.

Defendant.

-----X

INDEX NO. 159616/2018

MOTION DATE 12/17/2018

MOTION SEQ. NO. 001

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10 were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

In this action to recover damages for personal injuries, the plaintiff moves pursuant to CPLR 602 to consolidate this action with another action, entitled *McGown v RXR Soyo Exalta Owner, LLC*, that was commenced in the Supreme Court, Bronx County, under Index No. 24303/18, and was thereafter transferred to Supreme Court, New York County, under Index No. 451563/18. No party opposes the motion. The motion is granted, and the consolidated action shall proceed under Index No. 451563/18 before Justice Francis Kahn in I.A.S. Part 14.

On April 12, 2018, the plaintiff commenced an action in the Supreme Court, Bronx County, against RXR Soyo Exalta Owner, LLC, Rising Development Co., LLC, and Rising Development-Nepperhan, LLC, alleging that he was injured on February 8, 2018, when he fell through a manhole while working on a construction and demolition project. On June 26, 2018, the parties stipulated to transfer venue to New York County. On August 1, 2018, the Bronx County Clerk transferred the matter to New York County, and it was assigned a New York County Index number on August 14, 2018. On December 4, 2018, the plaintiff filed a request for judicial intervention (RJI) and a request for a preliminary conference in connection with that action. The preliminary conference was scheduled to be conducted on February 26, 2019.

On October 17, 2018, the plaintiff commenced the instant action against Hudson Meridian Construction Group, LLC, LRC Construction, LLC, and Mill Creek Construction Corp., seeking to recover for personal injuries arising from the February 8, 2018, accident. On December 11, 2018, the plaintiff filed an RJL in this action, along with the notice of motion and supporting papers in connection with the instant consolidation motion. In response to the motion, the defendant submitted an affirmation in which they consented to the consolidation.

“Consolidation is generally favored in the interest of judicial economy and ease of decision-making where cases present common questions of law and fact, ‘unless the party opposing the motion demonstrates that a consolidation will prejudice a substantial right’” (*Raboy v McCrory Corp.*, 210 AD2d 145 [1st Dept 1994], quoting *Amtorg Trading Corp. v Broadway & 56th St. Assoc.*, 191 AD2d 212, 213 [1st Dept 1993]). The plaintiff correctly argues that the two actions, which arise from the same February 8, 2018, accident, present common questions of law and fact (see CPLR 602; *DeSilva v Plot Realty, LLC*, 85 AD3d 422 [1st Dept 2011]; *Badillo v 400 E. 51st St. Realty LLC*, 74 AD3d 619 [1st Dept 2010]; *Kern v Shandell, Blitz, Blitz & Bookson*, 58 AD3d 487 [1st Dept 2009]). Moreover, there is no indication that consolidation will prejudice any substantial right of any party (see *Amcan Holdings, Inc. v Torgys LLP*, 32 AD3d 337 [1st Dept 2006]). Discovery has only just commenced in the first-filed action; thus, both actions are at approximately the same juncture with respect to pre-trial proceedings. Indeed, in declining to oppose the motion, the nonmoving parties essentially concede that consolidation will not prejudice a substantial right of any party (see *id.*; *Gadelov v Shure*, 274 AD2d at 375 [2d Dept 2000]).

Because the action pending before Justice Francis Kahn was commenced before the instant action, and the RJL in that action was filed before the RJL in the instant action, it is appropriate to transfer the consolidated action to Justice Kahn (see *DLJ Mtge. Capital, Inc. v Kontogiannis*, 110 AD3d 522 [1st Dept 2013]).

Therefore, and upon the foregoing papers, it is

ORDERED that the plaintiff's motion to consolidate this action with the action entitled *McGown v RXR Soyo Exalta Owner, LLC*, pending in the Supreme Court, New York County, under Index No. 451563/18, is granted, without opposition; and it is further,

ORDERED that the two actions are hereby consolidated under Index No. 451563/18, and shall bear the caption as indicated:

SCOTT MCGOWN,

Plaintiff,

-v-

Index No. 451563/18

RXR SOYO EXALTA OWNER, LLC, RISING
DEVELOPMENT CO., LLC, RISING
DEVELOPMENT-NEPPERHAN, LLC,
HUDSON MERIDIAN CONSTRUCTION GROUP,
LLC, LRC CONSTRUCTION, LLC, and MILL
CREEK CONSTRUCTION CORP.,

Defendants

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,

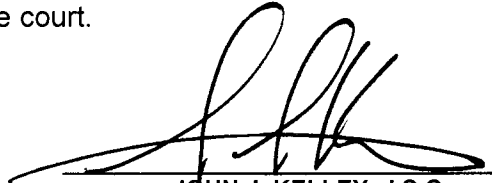
ORDERED that the plaintiff shall serve upon the Clerk of the Court of a copy of this order with notice of entry and, upon such service, the Clerk shall consolidate the papers in the actions hereby consolidated and shall mark his files and records to reflect the consolidation; and it is further,

ORDERED that the plaintiff shall serve a copy of this order with notice of entry upon the Clerk of the Trial Support Office (60 Centre St, Room 158), who is hereby directed to mark the court's records to reflect the consolidation; and it is further,

ORDERED that this action is referred to referred to the Trial Support Office for reassignment to Justice Francis Kahn in I.A.S. Part 14 of this court.

This constitutes the Decision and Order of the court.

3/7/2019
DATE



JOHN J. KELLEY, J.S.C.

HON. JOHN J. KELLEY
J.S.C.

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