

**Sukenik v City of New York**

2019 NY Slip Op 30636(U)

March 13, 2019

Supreme Court, New York County

Docket Number: 452642/2017

Judge: Frank P. Nervo

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

-----X  
SUSAN SUKENIK and DAVID RAPHAEL,

Plaintiffs,

-against-

THE CITY OF NEW YORK, CONSOLIDATED  
EDISON COMPANY OF NEW YORK, INC.,  
606 WEST 57, LLC, and TFC WEST 57 GC, LLC,

Defendants.

-----X  
CONSOLIDATED EDISON COMPANY OF NEW  
YORK INC.,

Third-Party Plaintiff,

-against-

CITYWIDE PAVING, INC., a/k/a NICO ASPHALT  
PAVING, INC., and MECC CONTRACTING, INC.  
Third-Party Defendants.

-----X

FRANK P. NERVO, J.S.C.

Third-Party Defendant MECC Contracting seeks renewal of this Courts January 18, 2019 decision denying consolidation of the instant matter with a second action pending in Kings County under Index No. 502872/17. MECC contends that this Court misapprehended which Kings County matter was to be consolidated and mistakenly referenced Index No. 502872/17, a disposed case, instead of Index No. 520515/2018, an active case.

As an initial matter, the Court notes that it did not misapprehend the index number of the Kings County matter MECC sought to consolidate. MECC's initial motion for consolidation referenced the Kings County matter by inconsistent index numbers (Notice of Motion at p. 1 "100509/12"; Affirmation in Support at p. 4 "502872/2017"). Of the two index numbers MECC provided in its moving papers for the Kings County matter, only 502872/2017 referred to a matter involving plaintiffs and defendants. Notably, index number 520515/2018 did not appear in MECC's initial motion to consolidate.

Notwithstanding, 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

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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]).

MECC has established that the two actions arise out of the same set of common facts, namely a trip and fall by Plaintiff Sukenik, and that judicial economy is best served by consolidating the two actions. No opposition has been submitted. Venue is proper in New York County, as the first action was commenced in this county.

Accordingly, it is

ORDERED that the motion is granted; and the above-captioned action is consolidated in this Court with SUSAN SUKENIK et al vs. CITYWIDE PAVING INC. et al, Index no. 520515/2018 (Kings County) under New York County Index No. 452642/2017 and the consolidated action shall bear the following caption:

SUSAN SUKENIK and DAVID RAPHAEL,

Plaintiffs,

Index Number

-against-

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THE CITY OF NEW YORK, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., 606 WEST 57, LLC, TFC WEST 57 GC, LLC, CITYWIDE PAVING INC., NICO ASPHALT PAVING, INC., and MECC CONTRACTING, INC.,

Defendants.

-----X  
CONSOLIDATED EDISON COMPANY OF NEW YORK INC.,

Third-Party Plaintiff,

-against-

CITYWIDE PAVING, INC., a/k/a NICO ASPHALT PAVING, INC., and MECC CONTRACTING, INC.

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, Kings 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, Kings 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, Kings 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](http://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, Kings 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*.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated March 13, 2019

ENTER:



J.S.C.

**HON. FRANK P. NERVO**