

Lucente v USTA Natl. Tennis Ctr. Inc.

2019 NY Slip Op 30960(U)

April 3, 2019

Supreme Court, New York County

Docket Number: 157825/2018

Judge: Alexander M. Tisch

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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. ALEXANDER M. TISCH PART IAS MOTION 18EFM

Justice

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INDEX NO. 157825/2018

ALBERT LUCENTE,

MOTION DATE 12/07/2018

Plaintiff,

MOTION SEQ. NO. 001

- v -

USTA NATIONAL TENNIS CENTER INCORPORATED, UNITED STATES TENNIS ASSOCIATION, HUNT CONSTRUCTION GROUP, INC., RUTTURA & SONS CONSTRUCTION CO., INC., LEGACY YARDS TENANT, LLC, TUTOR PERINI BUILDING CORP.

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21, 22, 23, 24, 25, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 42

were read on this motion to/for SEVER

Upon the foregoing papers, defendants USTA National Tennis Center Incorporated, United States Tennis Association, Hunt Construction Group, Inc., and Ruttura & Sons Construction Co., Inc., (Tennis defendants) move pursuant to CPLR § 603 to sever the action in so far as asserted against them and move pursuant to CPLR § 510 to change venue to Richmond County. For the reasons set forth below, the motion is denied.

Tennis defendants contend that the case should be severed because it arises out of two separate incidents and therefore, shares no common nucleus of operative facts. Tennis defendants also argue that they will be prejudiced because they will incur unnecessary expenses in having to litigate issues of fact pertaining to the second incident and the potential for jury confusion as it relates to liability.

In opposition, plaintiff and defendants Legacy Yards Tenant LP f/k/a Legacy Yards Tenant, LLC and Tutor Perini Building Corp. (HY defendants) argue that the two cases share a common nucleus of operative facts regarding causation and the exacerbation of inter-related injuries. Even though the injuries arise from two separate incidents, the allegations regarding those injuries are substantially similar. Plaintiff and HY defendants also argue that if the cases were severed, parties would incur unnecessary expenses and a jury could award the same amount of damages, including future lost wages, medical expenses, and pain and suffering as against both defendants.

“It is well settled that consolidation is generally favored by the courts in the interest of judicial economy and ease of decision making where there are common questions of law and fact, unless the party opposing the motion demonstrates that consolidation will prejudice a substantial right” (Amtorg Trading Co. v Broadway & 56th St. Assoc., 191 AD2d 212, 213 [1st Dept 1993]). It is not required that all “questions of law or fact be common to the various actions” (Thayer v Collett, 41 AD2d 581, 581 [3d Dept 1973]). In cases where the commonality involves two interrelated injuries and the issue of exacerbation, “if the cases are tried separately each defendant will try to place the blame on the other for all or most of the injuries, and the plaintiffs might not be as completely protected as if they were tried together” (Potter v Clark, 19 AD2d 585, 585 [4th Dept 1963]; see Gage v Travel Time & Tide, Inc., 161 AD2d 276 [1st Dept 1990]). “Fairness to the defendants would require the same approach. One jury hearing all of the evidence can better determine the extent to which each defendant caused plaintiff’s injuries and should eliminate the possibility of inconsistent verdicts which might result

from separate trials” (Thayer, 41 AD3d at 581; see Richardson v Uess Leasing Corp., 191 AD2d 394, 395-96 [1st Dept 1993]; Kupferschmid v Hennessy, 221 AD2d 225, 226-27 [1st Dept 1995]).


Here, even though the incidents were at different locations and at different times, they do share a common nucleus of operative facts as it relates to proximate causation and the exacerbation of injuries from the first incident and severance is improper (Melendez v Presto Leasing, 161 AD2d 501 [1st Dept 1990] [“Although plaintiff’s injuries arose from two separate accidents at separate locations and at different times, in these two actions, respectively, consolidation or joint trial is appropriate, since she had alleged similar injuries in each action”]; see Gage, 161 AD2d 276; Thayer, 41 Ad3d 581; Hennessy, 221 AD2d 225). Plaintiff alleges that as a result of the first incident, he sustained traumatic injuries to his lower extremities, traumatic derangement to his cervical, thoracic, and lumbar spine and associated discs and an aggravation and exacerbation of prior asymptomatic pathology in his knees. He alleges nearly identical injuries as a result of the second incident (see NYSCEF Doc. No. 1, ¶134, ¶159).

Tennis defendants contend that they will suffer prejudice in the form of expenses incurred in having to litigate questions of fact relating to the second incident and that it would confuse a jury. However, the same could be said if the cases were severed and tried separately. In a case involving the alleged exacerbation of injuries, each defendant will try and shift the blame on the other (see Potter, 19 AD2d). It would be more efficient if one jury were to hear the case and apportion liability and damages that would also eliminate the possibility of two inconsistent and identical verdicts (see id.).

With respect to the change of venue, plaintiff properly commenced this action in New York County. CPLR § 503 (a) states that the place of trial shall be a county in which one of the parties resides when the action was commenced, or a county in which a substantial part of the events of omissions giving rise to the claim occurred. Here, HY defendants are residents of New York County and the second incident occurred in New York County. Thus, there is a basis under CPLR § 503 for venue in New York County. Additionally, Tennis defendants have not shown how the parties or proposed witnesses, would be inconvenienced based on the venue (see O'Brien v Vassar Bros. Hosp., 207 AD2d 169 [2d Dept 1995]).

Accordingly, it is hereby ORDERED that the motion is denied.

This constitutes the decision and order of the Court.


HON. ALEXANDER M. TISCH

4/3/2019

DATE

ALEXANDER M. TISCH, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	