

Calel v Simon Prop. Group, Inc.
2019 NY Slip Op 31214(U)
May 3, 2019
Supreme Court, New York County
Docket Number: 160602/2016
Judge: Barbara Jaffe
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. BARBARA JAFFE **PART** **IAS MOTION 12EFM**

Justice

-----X

JUANA CALEL,

Plaintiff,

- v -

INDEX NO. 160602/2016

MOTION DATE _____

MOTION SEQ. NO. 002

SIMON PROPERTY GROUP, INC. SIMON
PROPERTY GROUP, L.P., SIMON PROPERTY
GROUP ADMINISTRATIVE SERVICES
PARTNERSHIP, L.P., "ABC CORPORATION" and
"ABC PARTNERSHIP" (the aforesaid names being
fictious and their true names being unknown),

Defendants.

-----X

MALL AT SMITH HAVEN, LLC i/s/h as SIMON
PROPERTY GROUP, INC., SIMON PROPERTY
GROUP, L.P., and SIMON PROPERTY GROUP
ADMINISTRATIVE SERVICES PARTNERSHIP,
L.P.,

Third-Party Plaintiffs,

- v -

COLLINS BUILDING SERVICES, INC.,

Third-Party Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 57, 58, 59, 60, 61,
62, 63, 64, 65, 66, 67, 68, 69

were read on this motion to consolidate and change venue.

Third-party defendant Collins Building Services, Inc. moves pursuant to CPLR 510 for
an order changing the venue of this action from New York County to Suffolk County, and
pursuant to CPLR 602(a) for an order consolidating this action with *Juana Calel v Collins*

Building Services, Inc., pending in Supreme Court, Suffolk County, under index number 000059/2019. Plaintiff and third-party plaintiffs do not oppose.

On December 16, 2016, plaintiff filed her summons and complaint in this action, alleging to have suffered injuries when she slipped and fell at the Smith Haven Mall on December 14, 2015. (NYSCEF 1, 59). On April 17, 2018, third-party plaintiffs filed their third-party summons and complaint, demanding judgment for contribution, indemnification, damages, and/or an apportionment of liability from Collins. (NYSCEF 19, 62).

By summons and complaint dated June 22, 2018, plaintiff initiated an action in this court against Collins, arising from the same accident (index no. 155888/18). (NYSCEF 64). By decision and order dated December 18, 2018, Collin's motion to change venue from this court to Supreme Court, Suffolk County, was granted. (NYSCEF 68).

Collins contends that venue of the instant action should also be in Suffolk County as the alleged accident occurred there, plaintiff resides in Suffolk County and received medical treatment there, and Collins allegedly performed cleaning services there, whereas the New York County connection is that one or more third-party defendants are registered to do business here. Moreover, the two actions arise from the same occurrence and involve similar claims, parties, and witnesses. (NYSCEF 58).

When multiple actions raise common questions of law or fact, they may be consolidated to avoid unnecessary costs or delay, absent a showing of prejudice. (CPLR 602(a); *Progressive Ins. Co. v Vasquez*, 10 AD3d 518, 519 [1st Dept 2004]).

Here, the two actions concern the same questions of law and fact, and no party demonstrates that consolidation will prejudice a substantial right. (*Geneva Temps, Inc. v New World Communities, Inc.*, 24 AD3d 332, 334 [1st Dept 2005]).

Where actions to be consolidated are commenced in different counties, absent special circumstances, the proper venue is in the county where the first action was commenced. (*TT Enter. v Gralnick*, 127 AD2d 651, 652–653 [2d Dept 1987]). Here, as plaintiff resides in Suffolk County, the alleged accident occurred there, and plaintiff received medical treatment there, special circumstances warrant that venue be transferred to Suffolk. (*Id.* [transferring consolidated action to venue of later-filed action as plaintiff resided, was injured, and received medical treatment there, and witnesses there]).

Accordingly, it is hereby

ORDERED, that the motion is granted and the action *Juana Calel v Simon Property Group, Inc., et al.*, Index No. 160602/16, pending in this court, shall be consolidated with *Juana Calel v Collins Building Services, Inc.*, Index No. 000059/2019, pending in the Supreme Court, Suffolk County; it is further

ORDERED, that the consolidation shall take place under Suffolk County Index No. 000059/2019 and the consolidated action shall bear the following caption:

JUANA CALEL,

Plaintiff,

- v -

MALL AT SMITH HAVEN, LLC i/s/h as SIMON PROPERTY GROUP, INC., SIMON PROPERTY GROUP, L.P., SIMON PROPERTY GROUP ADMINISTRATIVE SERVICES PARTNERSHIP, L.P., COLLINS BUILDING SERVICES, INC., “ABC CORPORATION” and “ABC PARTNERSHIP” (the aforesaid names being fictitious and their true names being unknown),

Defendants.

It is further

ORDERED, that the motion for a change of venue is granted and venue of this action is changed from this Court to the Supreme Court, County of Suffolk; it is further

ORDERED, that the Clerk of this Court shall transfer the file in this action to the Clerk of the Supreme Court, County of Suffolk and shall mark his records to reflect such transfer; it is further

ORDERED, that within 30 days from entry of this order, counsel for movant shall serve a copy of this order with notice of entry upon the Clerk of this Court, shall pay the appropriate transfer fee, if any, and shall contact the staff of the Clerk of this Court and cooperate in effectuating the transfer; it is further

ORDERED, that the Clerk of the Court shall coordinate the transfer of the file in this action with the Clerk of the Supreme Court, Suffolk County, so as to ensure an efficient transfer and minimize insofar as practical the reproduction of documents, including with regard to any documents that may be in digital format; and it is further

ORDERED, that such service upon the Clerk of this Court 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 the court's website at the address www.nycourts.gov/suptctmanh).

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BARBARA JAFFE, J.S.C.

5/3/2019
DATE

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED
<input type="checkbox"/>	SETTLE ORDER	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	

APPLICATION:

CHECK IF APPROPRIATE:

<input type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
<input type="checkbox"/>	SUBMIT ORDER	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE