Yanes v City of New York
2019 NY Slip Op 31286(U)
May 6, 2019
Supreme Court, New York County
Docket Number: 161066/2014
Judge: George J. Silver

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

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YVONNE YANES and CLAUDIO YANES, individually and as parents and natural guardians of ALONZO YANES, an infant,

Plaintiffs

DECISION & ORDER

-against-

Index No. 161066/2014

THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF EDUCATION, THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, and ANNA POOLE,

Defendants.

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JULIA SALTONSTALL, an infant by her father and natural guardian, DAVID SALTONSTALL,

Plaintiffs,

-against-

Index No. 162805/2014

THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF EDUCATION, THE BOARD OF EDUCATION OF THE CITY OF NEW YORK and ANNA POOLE

Defendants

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S.S. an infant by her parents and natural guardians, STEPHEN SALITAN and VALERIE SALITAN and STEPHEN SALITAN and VALERIE SALITAN, individually,

Plaintiffs,

-against-

Index No. 162806/2014

THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF EDUCATION, THE BOARD OF EDUCATION OF THE CITY OF NEW YORK and ANNA POOLE,

Defendants

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GEORGE J. SILVER, J.S.C.:

The instant motion derives its foundation from a fire that occurred in a chemistry class at Beacon High School on January 2, 2014. The named plaintiffs were students in the chemistry class who were injured during a demonstration performed by their teacher, defendant ANNA POOLE ("Poole"). Two of the plaintiffs, ALONZO YANES ("Yanes") and JULIA SALTONSTALL ("Saltonstall"), allege physical injuries. Plaintiff SARA SALITAN ("Salitan") claims psychological injuries only. THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF EDUCATION, THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, and ANNA POOLE ("defendants") claim that there is commonality in the parties sued and in the allegations of negligence in all three cases. As such, defendants move, by Order to Show Cause, for an order joining all three actions for trial. In addition, defendants seek an adjournment of the trial date for at least 60-days to permit defendants to timely serve expert disclosures, and for such other relief as the court may deem just and proper.

Saltonstall and Salitan do not oppose the branch of defendants' motion seeking a joint trial on the issue of liability, and additional time for service of expert disclosures.[1] Rather, Saltonstall and Salitan contend that there should not be a joint trial on the issue of damages, because the

[1] Notably, the branch of defendants' motion seeking time to permit defendants to timely serve expert disclosures was resolved by an order dated March 11, 2019. Pursuant to that same order, the trial date in this matter is presently set for May 13, 2019.

damages sustained by Yanes are significantly worse than those sustained by Saltonstall and Salitan. Indeed, Yanes sustained third degree burns to 31 percent of his total body, including to his face, neck, ears, back, upper extremities and chest, with extensive scarring. Conversely, Saltonstall's most significant injury was a burn to her right arm, and attendant emotional trauma. Salitan's damages are purely emotional and psychological in nature, including post-traumatic stress disorder and depression. As such, Saltonstall and Salitan aver that a joint trial on damages would substantially prejudice a jury's assessment of their claims relative to those of Yanes. In opposition, Yanes argues that Saltonstall and Salitan's contention that their injuries "could seem insignificant when compared to the severe and persuasive burns sustained by Alonzo Yanes" is speculative and does not rise to the level of "substantial prejudice." For the reasons discussed below, the court agrees.

DISCUSSION

According to CPLR §602, "When actions involving a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all the matters in issue. Indeed, cases involving common questions of law and fact arising from the same accident and involving the same parties are presumptively unified for liability and damages, unless one of the parties demonstrates "undue prejudice" which would "defeat substantial fairness" (*Toscani v. One Bryant Park. LLC*, 139 AD3d 644 [1st Dept 2016]).

Here, the shared factual scenario and procedural posture of the cases at issue does not resemble the claims of prejudice that were advanced in *Toscani* or that other cases cited by Saltonstall and Salitan. In *Toscani*, for example, liability had already been established, rendering separate damage awards the only task left for the court. As such, the issue of a unified versus

bifurcated trial did not. Thus, Saltonstall and Salitan's primary reliance on that case in support of their plea to bifurcate trials of liability and damages herein is inapposite. In fact, holding separate trials to determine liability and damages here could arguably result in conflicting and absurd results. Indeed, one of the cases cited by Saltonstall and Salitan in support of bifurcation actually stands for opposite proposition. Indeed, in *Geneva Temps. Inc. v. New World Communities. Inc.*, 24 AD3d 332, 334 (1st Dept 2005), in reversing denial of a motion for consolidation, the Appellate Division, First Department, held as follows: "Although great deference is to be accorded to the motion court's discretion, it is well settled that there is a preference for consolidation in the interest of judicial economy where there are common questions of law and fact, unless the party opposing the motion demonstrates that consolidation will prejudice a substantial right."

Further, in *Fisher 40th and 3rd Co. v. Welsbach Elec. Corp.*, 266 A.D.2d 169 (1st Dept 1999), a case also cited by Saltonstall and Salitan, the specific concern underlying the decision to bifurcate was jury confusion resulting from the variety of legal issues presented together, and differences in damages theories. That concern does not exist in this action, and the court is unpersuaded by Saltonstall and Salitan's arguments to the contrary.

Indeed, bifurcation of liability and damages here would significantly prejudice the timely and efficient resolution of this case, and result in the depletion of already scarce judicial resources. To be sure, Yanes, Saltonstall and Salitan would be tasked with the dauting ordeal of recounting their harrowing experiences on two separate occasions, once during the liability phase of the trial, and then again after another jury has been empaneled in the damages phase. As Yanes' counsel highlights, "[r]ather than a single jury determining the outcome of the case, co-plaintiffs suggestion would require three juries to accomplish the same task; one for liability and two separate juries, one

for [Saltonstall and Salitan], and one for Alonzo Yanes." The applicable case law and practicality do not countenance such an exercise.

Accordingly, it is hereby

ORDERED that defendants' motion for an order joining all three of the referenced actions for trial, is granted ; and it is further

ORDERED that defendants' motion for 60-days to permit defendants to timely serve expert disclosures is moot, as that application was resolved by a prior directive of this court issued on March 11, 2019; and it is further

ORDERED that the parties are directed to appear for trial on Monday May 13, 2019, at 9:30 AM at the courthouse located at 60 Centre Street, Room 422, as previously scheduled.

This constitutes the decision and order of the court.

Dated: May 6, 2019

HON. GEORGE J. SILVER