

<b>Mianti v Structure Tone, LLC</b>
2019 NY Slip Op 31910(U)
June 28, 2019
Supreme Court, New York County
Docket Number: 160122/2017
Judge: Margaret A. Chan
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. MARGARET A. CHAN PART IAS MOTION 33EFM**

*Justice*

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JASON MIANTI,

Plaintiff,

- v -

STRUCTURE TONE, LLC, STRUCTURE TONE, INC.,

Defendants.

**INDEX NO. 160122/2017**

**MOTION DATE 06/03/2019**

**MOTION SEQ. NO. 002**

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 61, 62, 63

were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

Plaintiff, Jason Mianti, was injured at a construction site located at 7 Bryant Park in the city, state, and county of New York on March 28, 2016. Plaintiff commenced three separate actions for damages arising from this accident. Plaintiff's action under Index No. 160122/2017 (Action 1) is against Structure Tone, LLC and Structure Tone, Inc. (collectively, Structure Tone). Plaintiff then brought an action against Turner Construction Company (Turner) and PJ Mechanical Service & Maintenance Corp (PJ Mechanical) under Index No. 159259/2018 (Action 2). By service of a Supplemental Summons and Complaint, Plaintiff added Penguin Air Conditioner Corp. (Penguin) and Penava Mechanical Corp (Penava) as defendants in Action 2. In 2019, Plaintiff commenced an action under Index No. 150819/2019 (Action 3) against Pacolet Milliken Enterprises, Inc. (Pacolet), Hines 1045 Avenue of the Americas Investors LLC (Hines), and 7BP Owner, LLC., the owners/managers of 7 Bryant Park.

Pacolet now moves pursuant to CPLR 602 to consolidate the three actions for joint discovery and trial. Plaintiff supports Pacolet's motion. Structure Tone opposes the motion.

**BACKGROUND**

Plaintiff was employed by Hines as an assistant chief engineer to perform construction, renovation, alteration, rehabilitation and/or demolition work on a building situated at 7 Bryant Park, New York, New York. While Plaintiff was closing a valve on the overhead drainage tank for Structure Tone and Turner, the ladder Plaintiff was on shifted, causing Plaintiff to fall and sustain injuries.

In support of its motion, Pacolet argues that Actions 1, 2 and 3 arise out of the same incident involving common issues of law and fact, and thus, these actions should be consolidated in the interest of judicial economy. Pacolet also argues that the consolidation would not cause prejudice to any party and would even benefit them by avoiding multiplicity of suits.

In opposition, Structure Tone argues that the consolidation would cause Structure Tone a substantial prejudice. Specifically, the depositions are complete in Action 1 and Structure Tone would be forced to engage in duplicative discovery, including multiple days of deposition if Action 1 were consolidated with the other two actions. In the alternative, Structure Tone requests this motion to be adjourned until the resolution of its pending summary judgment motion. Structure Tone adds that the facts in Action 1 are unrelated to Actions 2 and 3.

Plaintiff disagrees with Structure Tone's assertion that the facts in Action 1 are unrelated to the other two actions. Plaintiff favors consolidation so to economize legal and judicial efforts, and further contends that the consolidation would not cause prejudice to any party. Plaintiff adds that Structure Tone's summary judgment motion is unlikely to succeed because the work he performed for the benefit of Structure and Turner.

### DISCUSSION

Under CPLR 602(a), courts have discretion to consolidate actions in the interest of judicial economy where there are common questions of law and fact (*Geneva Teps, Inc. v New World Communities, Inc.* 24 AD3d 332 [1st Dept 2005]). The party opposing the motion must demonstrate that consolidation would prejudice a substantial right (*see Progressive Ins. Co. v Vasquez* 10 AD3d 518 [1st Dept 2004]).

Here, the issues in Actions 1, 2, and 3 concern the negligence and the violation of Labor Law by all the named defendants as related to Plaintiff's accident. The facts surrounding the accident and legal issues presented are the same for all three actions. Moreover, the witnesses and information needed for all these cases are identical.

Structure Tone claims that it would be prejudiced because the consolidation of the three cases would cause an indeterminate delay for Action 1 and Structure Tone would have to engage in duplicative discovery. However, an indeterminate delay is not a sufficient basis to deny consolidation (*Raboy v McCrory Corp.*, 210 AD2d 145 [1st Dept 1994]). As to Structure Tone's complaint of duplicative discovery, Structure Tone fails to demonstrate that no other relevant discovery exists (*see Progressive Ins. Co. v Vasquez* 10 AD3d 518 [1st Dept 2004]).

In any event, courts have denied the consolidation when it would "delay both the resolution of the ... action and the trial of the consolidated action" (*Abrams v Port Authority Trans-Hudson Corp.*, 1 AD3d 118 [1st Dept 2003]) or when the consolidation would cause a "manifest" prejudice to an attorney's clients by forcing them "to become embroiled in a costly trial between two law firm" (*Sokolow, Dunaud, Mercadier & Carreras LLP v Lacher*, 299 AD2d 64 [1st Dept 2002]). Courts also have considered prejudice arising from different procedural stages (*see Zupich v Flushing Hosp. and Medical Center*, 156 AD2d 677 [1st Dept 1989]).

Here, Structure Stone is not prejudiced due to the different procedural stages of the actions. The note of issue has not been filed in Action 1. To the extent that discovery may be duplicative, Structure Tone may furnish the relevant discovery that was already produced to the other parties.

In sum, as the three separate actions arose out of the same accident and the same set of facts and issues of law, consolidation is appropriate.

Accordingly, it is hereby

ORDERED that the motion is granted, and the above-captioned action is consolidated in this Court with both *Jason Mianti v. Turner Construction Company, Pj Mechanical Service & Maintenance Corp., Penguin Air Conditioner Corp., and Penava Mechanical Corp.*, index no. 159259/2018 and *Jason Mianti v. Pacolet Milliken Enterprises, Inc., Hines 1045 Avenue of the Americas Investors LLC, and 7bp Owner, LLC.*, index no. 150819/2019, pending in this Court; it is further

ORDERED that the consolidation shall take place under index no. 160122/2017, and the consolidated action shall bear the following caption:

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JASON MIANTI,

Plaintiff,

-against-

STRUCTURE TONE, LLC, STRUCTURE TONE, INC.,  
TURNER CONSTRUCTION COMPANY,  
PJ MECHANICAL SERVICE & MAINTENANCE CORP.,  
PENGUIN AIR CONDITIONER CORP., PENAVA  
MECHANICAL CORP., PACOLET MILLIKEN  
ENTERPRISES, INC., HINES 1045 AVENUE of the  
AMERICAS INVESTORS LLC, and 7BP OWNER, LLC.

Defendants.

-----X; it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; 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 on the Clerk of the Court (60 Centre Street, Room 141 B), who shall consolidate the documents in the actions hereby consolidated and shall mark his records to reflect the consolidation; it is further

ORDERED that counsel for the movant shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed; it is further

ORDERED that service of this order upon the Clerk of the Court shall be made in hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, 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/supctmanh](http://www.nycourts.gov/supctmanh)); it is further

ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents being consolidated in the consolidated case file under the 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; 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 on 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 this action is a hard-copy matter or, if it is an e-filed case, shall be made in accordance with the procedures set forth in the aforesaid *Protocol*.

This constitutes the order of the court.

6/28/2019  
DATE

  
MARGARET A. CHAN, J.S.C.

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