

Lefavre v 568 Broadway Holding LLC

2019 NY Slip Op 32312(U)

August 1, 2019

Supreme Court, New York County

Docket Number: 161241/2017

Judge: W. Franc Perry

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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. W. FRANC PERRY PART IAS MOTION 23EFM

Justice

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KATHERINE LEFAVRE,

Plaintiff,

- v -

568 BROADWAY HOLDING LLC, 568 BROADWAY
PROPERTY LLC, AURORA CAPITAL ASSOCIATES, LLC,
A & H ACQUISITIONS CORP., SCF MANAGEMENT LLC,
ROCK GROUP NY CORP., SIMRANPAL SINGH, ROCK
GROUP ENTERPRISES CORP., RHG MANPOWER
INC., DANIEL ODIGIE, DAN ENGINEERING SERVICES,
SATO CONSTRUCTION CO., INC., SATO
CONSTRUCTION CO. INC., D/B/A FLAG
WATERPROOFING AND RESTORATION CO., FLAG
WATERPROOFING AND RESTORATION, LLC, MUGHAL
GENERAL CONSTRUCTION, INC.,

Defendant.

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INDEX NO. 161241/2017
MOTION DATE 6/3/19, 07/24/2019
MOTION SEQ. NO. 003 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 93, 94, 113, 114, 115, 116, 117, 118, 119, 126, 127, 130, 131

were read on this motion to/for MODIFY

The following e-filed documents, listed by NYSCEF document number (Motion 003) 93, 94, 113, 114, 115, 116, 117, 118, 119, 126, 127, 130, 131

were read on this motion to/for VACATE - DECISION/ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 004) 96, 97, 98, 99, 100, 120, 121, 122, 123, 124, 125, 128, 129, 132, 133

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

In this personal injury action involving a collapsed sidewalk shed, in motion sequence number 003, defendants SATO CONSTRUCTION CO., INC, SATO CONSTRUCTION CO. INC. d/b/a FLAG WATERPROOFING AND RESTORATION, LLC, FLAG WATERPROOFING AND RESTORATION, LLC, for the matter under Index Number 161241/2017 and defendants SATO CONSTRUCTION CO., INC. and FLAG

WATERPROOFING AND RESTORATION, LLC, for the matter under Index Number 150787/2018, and defendant RHG MANPOWER INC., seek an order, pursuant to CPLR § 2221: 1) vacating the Court's Amended Decision and Order, dated April 10, 2019 (NYSCEF Doc. No. 73), and the Second Amended Decision and Order, dated April 18, 2019 (NYSCEF Doc. No. 92); and 2) modifying the Court's Decision and Order, dated February 5, 2019 (NYSCEF Doc. No. 52) to affirmatively state that the consolidation of the matter of Katherine Lefavre v. 568 Broadway Holding LLC, et al., under Index Number 161241/2017, with the matter of Claire Bevan v. 568 Broadway Property LLC, et al., under Index Number 150787/2018, is for the purposes of joint discovery only.

In motion sequence number 004, defendants SATO CONSTRUCTION CO., INC, SATO CONSTRUCTION CO. INC. d/b/a FLAG WATERPROOFING AND RESTORATION, LLC, FLAG WATERPROOFING AND RESTORATION, LLC, for the matter under Index Number 161241/2017 and defendants SATO CONSTRUCTION CO., INC. and FLAG WATERPROOFING AND RESTORATION, LLC, for the matter under Index Number 150787/2018, and defendant RHG MANPOWER INC., seek an order, pursuant to CPLR § 602, consolidating the matter of Katherine Lefavre v. 568 Broadway Holding LLC, et al., under Index Number 161241/2017, with the matter of Harsha Laxman v. 568 Broadway Property LLC, et al., under Index Number 154078/2019, for the purposes of joint discovery only. Plaintiff Laxman opposes the motion to consolidate the actions for joint discovery only but has not cross-moved for the actions to be joined for the purposes of trial, nor has any other party to any of the three pending actions arising out of the same alleged November 19, 2017 incident. The motions are consolidated for disposition.

BACKGROUND

This matter involves three separate plaintiffs' that have alleged damages related to personal injuries sustained on November 19, 2017 in connection with a sidewalk shed collapse. On December 19, 2017, the action under Index Number 161241/2017 was commenced by plaintiff Katherine Lefavre. On January 25, 2018, the action, under Index Number 150787/2018, was commenced by plaintiff Claire Bevan. On April 19, 2019, the action under Index Number 154078/2019, was commenced by plaintiff Harsha Laxman. As noted, the Sato defendants and defendant RHG, seek an order vacating and modifying this court's previous orders which consolidated the actions for joint discovery and joint trial, and seek to consolidate all three actions for joint discovery only as they contend that each plaintiff sustained separate injuries, underwent separate and distinct medical care and treatment, and have distinct medical histories. Further, there are defendants, that have been sued by plaintiff Lefavre, that have not been sued by plaintiffs Bevan and Laxman. As such, moving defendants contend that a joint trial will result in juror confusion and prejudice.

This court has presided over several discovery conferences in this action and agrees that the actions share common issues of law and fact as each action arises out of the same sidewalk shed collapse, such that joint discovery will promote judicial economy. Nevertheless, "individual issues predominate, concerning particular circumstances applicable to each plaintiff" (*Bender v Underwood*, 93 AD2d 747, 748, 461 NYS2d 301 [1983]; see also *Gittino v LCA Vision*, 301 AD2d 847, 753 NYS2d 579 [2003]; *DeAngelis v New York Univ. Med. Ctr.*, 292 AD2d 237, 237-238, 738 NYS2d 671 [2002]), including their respective illnesses, histories, treatments, and the extent of their injuries. Additionally, the plaintiff Lefavre has named additional defendants that plaintiffs Bevan and Laxman have not named, and there are

also different causes of action alleged in each of the three complaints. Given these undeniable facts, where some but not all of the defendants are defendants in both actions, and some of the defendants are being sued for causes of action that others are not, the actions are not properly capable of true consolidation and consolidation for trial. (see *Bender* 93 AD2d at 748).

CONCLUSION

Accordingly, this court's prior decisions dated April 10, 2019 (NYSCEF Doc. No. 73), and the Second Amended Decision and Order, dated April 18, 2019 (NYSCEF Doc. No. 92) are vacated and this court's prior decision dated February 5, 2019 (NYSCEF Doc. No. 52) is modified to affirmatively state that the consolidation of the matter of Katherine Lefavre v. 568 Broadway Holding LLC, et al., under Index Number 161241/2017, with the matter of Claire Bevan v. 568 Broadway Property LLC, et al., under Index Number 150787/2018, is for the purposes of joint discovery only. Additionally, the motion seeking to consolidate the action under Index Number 154078/2019 into the action under Index Number 161241/2017 for joint discovery only, as both actions pertain to the same alleged November 19, 2017 incident, is granted in the exercise of this court's discretion. Accordingly, it is hereby,

ORDERED that the motion sequences 003 and 004 are granted and the above-captioned actions are consolidated, for joint discovery only; and it is further

ORDERED that the consolidation shall take place under Index No. 161241/2017 and the consolidated action shall bear the following caption:

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

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KATHERINE LEFAVRE

Index No.161241/2017

Plaintiffs,

-against-

568 BROADWAY HOLDING LLC, 568 BROADWAY
PROPERTY LLC, AURORA CAPITAL ASSOCIATES, LLC, A
& H ACQUISITIONS CORP., SCF MANAGEMENT LLC,
ROCK GROUP NY CORP., SIMRANPAL SINGH, ROCK
GROUP ENTERPRISES CORP., RHG MANPOWER INC,
DANIEL ODIGIE, DAN ENGINEERING SERVICES, SATO
CONSTRUCTION CO., INC., SATO CONSTRUCTION CO.
INC, d/b/a FLAG WATERPROOFING AND RESTORATION,
LLC, FLAG WATERPROOFING AND RESTORATION, LLC,
and MUGHAL GENERAL CONSTRUCTION, INC.

Defendants.

-----X
CLAIRE BEVAN,

Plaintiff,

-against-

568 BROADWAY PROPERTY LLC, SCF MANAGEMENT
LLC, ACHS MANAGEMENT CORP., SATO
CONSTRUCTION CO., INC., FLAG WATERPROOFING
AND RESTORATION, LLC and
ROCK GROUP NY CORP.,

Defendants.

-----X
HARSHA LAXMAN,

Plaintiff,

-against-

568 BROADWAY PROPERTY LLC, SCF MANAGEMENT
LLC, ACHS MANAGEMENT CORP., SATO
CONSTRUCTION CO., INC. d/b/a FLAG WATERPROOFING
AND RESTORATION CO. and
ROCK GROUP NY CORP.,

Defendants.

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 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 for joint discovery only; and 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; and it is further

ORDERED that service of this order upon the Clerk of the 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/supctmanh); and 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; 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 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 accordance with the procedures set forth in the aforesaid *Protocol*; and it is further

ORDERED that counsel are directed to appear for a status conference in Room 307, 80 Centre Street, New York, New York, on August 13, 2019, at 9:30 AM.

8/1/2019

DATE

W. FRANC PERRY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE