

Heard v McGovern & Co. LLC
2019 NY Slip Op 32400(U)
August 9, 2019
Supreme Court, New York County
Docket Number: 160113/2016
Judge: W. Franc Perry
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
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

-----X

INDEX NO. 160113/2016

PAUL HEARD,

MOTION DATE June 10, 2019

Plaintiff,

MOTION SEQ. NO. 001

- v -

MCGOVERN & COMPANY LLC, SL GREEN REALTY CORP., EQUINOX EAST 53RD STREET, INC., EQUINOX HOLDINGS LLC, 10E53 OWNER LLC, TRISTATE PLUMBING SERVICES CORP.,

DECISION AND ORDER

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58

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

In this personal injury action alleging violations of the Labor Law, plaintiff claims that he was injured on June 10, 2015 during the course of his employment. In motion sequence number 001, defendant Tristate Plumbing Services Corp., ("Tristate") seeks an order pursuant to CPLR §602(a), consolidating this action (Action 1) with another action pending in this court under index number 155429/2018, (Action 2), involving the same plaintiff and additional defendants, CT Construction Consultants, LLC and Eclipse Development Inc., who are not defendants in Action 1. Plaintiff and defendant Equinox East 53rd Street, Inc. in action 1 and defendant Eclipse Development Inc., in action 2, join in the motion seeking to consolidate the actions for all purposes, as the actions arise out of the same incident, involve the same parties and involve common questions of law and fact. Defendant CT Construction Consultants, LLC in action 2 has moved for summary judgment and on that basis, opposes consolidation.

Both actions arise out of the same incident on June 10, 2015 at the premises and

both actions were filed to recover for alleged injuries to the plaintiff resulting from the same alleged incident. (NYSCEF Doc. Nos. 26-31). "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 Corp. v. Broadway & 56th Street Associates*, 191 A.D.2d 212, 213 [1st Dep't 1993]; see also *Firequench, Inc. v. Saul Kaplan et. al.*, 256 A.D.2d 213, 214 [1st Dep't 1998]).

Based on a review of the parties' submissions the court finds that consolidating these actions will not prejudice or affect a substantial right of any party. On the contrary, consolidation of these actions will promote judicial economy and convenience to all parties, consistent with the legislative intent of CPLR section 602(a). The actions involve common questions of law and fact such that consolidation is proper. (See, *Progressive Ins. Co. v. Vasquez*, 10 A.D.3d 518 [1st Dep't 2004]; see also *Ryckman v. Schlessinger-Levie-Polatsch-Tydings*, 225 A.D.2d 603 [2d Dep't 1996]). Accordingly, it is hereby

ORDERED that the motion is granted and the above-captioned action is consolidated in this Court with Paul Heard vs. CT CONSTRUCTION CONSULTANTS LLC, ECLIPSE DEVELOPMENT, INC., Index No. 155429/2018, pending in this Court; and it is further

ORDERED that the consolidation shall take place under Index No. 160113/2016 and the consolidated action shall bear the following caption:

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

-----X
PAUL HEARD,

Index No. 160113/2016

Plaintiffs,

-against-

MCGOVERN & COMPANY, L.L.C., SL GREEN
REALTY CORP., EQUINOX EAST 53RD STREET,
EQUINOX HOLDINGS LLC, 10E53 OWNER LLC,
TRISTATE PLUMBING SERVICES CORP., CT
CONSTRUCTION CONSULTANTS LLC, and ECLIPSE
DEVELOPMENT, INC.

Defendants.
-----X

And it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings 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 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; 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 October 15, 2019, at 10:00 AM.

Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the Court.

8/9/2019

DATE

W. FRANC PERRY, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: