

<b>Hedian v MTLR Corp</b>
2019 NY Slip Op 32480(U)
August 22, 2019
Supreme Court, New York County
Docket Number: 155473/2017
Judge: Adam Silvera
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. ADAM SILVERA PART IAS MOTION 22

*Justice*

-----X

<p>WENDELL HEDIAN,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> <p>MTLR CORP, TAJ CHAPMAN, JACK L SPRAKER D/B/A GLOVE CITY TRANSPORTATION, RANDY PARESE, LOVE FARMS LLC,</p> <p style="text-align: center;">Defendant.</p> <p>-----X</p>	<p>INDEX NO. <u>155473/2017</u></p> <p>MOTION DATE <u>06/04/2019</u></p> <p>MOTION SEQ. NO. <u>005</u></p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 99, 100, 101, 102, 103, 104, 105, 106, 107, 109, 110, 111, 112, 113, 117

were read on this motion to/for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents, it is ordered that defendants Randy L. Parese and Jack L. Spraker d/b/a Glove City Transportation's motion to reargue, pursuant to CPLR 2221(d)(2), is granted. CPLR 2221(d)(2) permits a party to move for leave to reargue a decision upon a showing that the court misapprehended the law or facts in rendering its initial decision. "A motion for leave to reargue pursuant to CPLR 2221 is addressed to the sound discretion of the court and may be granted only upon a showing that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision." *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 (1<sup>st</sup> Dep't 1992), *appeal denied in part, dismissed in part* 80 NY2d 1005 (1992) (internal quotations omitted).

Here, moving defendants seek to re-argue this Court's November 13, 2018 decision (hereinafter referred to as the "Prior Decision") on a motion to consolidate, arguing that a decision by this Court dated February 28, 2018, which granted liability as to defendants, was currently on appeal. In opposition, plaintiff argues that the instant motion must be denied as this

Court did not misapprehend the law or the facts in that, as liability was previously established by Decision/Order dated February 28, 2018, the sole remaining issue in this action was one of damages such that the instant action did not have any common issues of law or fact with the other actions in which defendants sought to have consolidated. While such holding was this Court's rationale for the Prior Decision, the Appellate Division, First Department, has now modified this Court's February 28, 2018 Decision/Order. According to the Appellate Division's Decision and Order dated February 28, 2019, an issue of fact exists as to defendants' liability. As liability is no longer established herein, this Court's prior determination that the instant action has no issues of fact or law in common with two other pending personal injury actions arising out of the same motor vehicle accident is no longer true.

CPLR §602(a) states that “[w]hen actions involving a common question of law or fact are pending before a court, the court, upon motion ... may order the actions consolidated”. Here, it is undisputed that the two other actions (Randy Parese v MTLR Corp., Taj M. Chapman and Love Farms LLC index no. 154133/18 and Emmanuel Liontas v Jack L. Spraker, Glove City Transport, Randy L. Parese, Taj M. Chapman, and Love Farms LLC index no. 03970/18) commenced by different plaintiffs, one of which is pending in Fulton County, arise out of the same accident and involve many of the same parties. As all three actions now clearly have common questions of law, namely which party or parties are liable for the injuries of the plaintiffs in all three actions, there is a risk of inconsistent verdicts if the three actions are not consolidated. Thus, moving defendants' motion to reargue is granted, and upon reargument, the motion to consolidate is granted to the extent that these three actions are joined for discovery and trial. Each action shall maintain separate pleadings, captions, and index numbers, with separate certificates of readiness and notes of issue.

Accordingly, it is

ORDERED that defendants Randy L. Parese and Jack L. Spraker d/b/a Glove City Transportation's motion to reargue is granted and, upon reargument, the Court vacates its prior order, dated November 13, 2018; and it is further

ORDERED that the motion to consolidate is granted and the action Randy Parese v MTLR Corp., Taj M. Chapman and Love Farms LLC, Index No. 154133/18, pending in this Court shall be consolidated with Wendell Hedian v MTLR Corp., Taj M. Chapman, Jack L. Spraker d/b/a Glove City Transportation, Randy L. Parese, and Love Farms, LLC, Index No. 155473/17, New York County; and it is further

ORDERED that the motion to consolidate is granted and the action Emmanuel Liontas v Jack L. Spraker, Glove City Transport, Randy L. Parese, Taj M. Chapman, and Love Farms LLC, Index No. 03970/18, pending in the Supreme Court, Fulton County, shall be consolidated in this Court with Wendell Hedian v MTLR Corp., Taj M. Chapman, Jack L. Spraker d/b/a Glove City Transportation, Randy L. Parese, and Love Farms, LLC, Index No. 155473/17, New York County; and it is further

ORDERED that a separate index number be given to the action Emmanuel Liontas v Jack L. Spraker, Glove City Transport, Randy L. Parese, Taj M. Chapman, and Love Farms LLC, being transferred from the Supreme Court, Fulton County, to this Court upon payment of the appropriate fees, if any, and it is further

ORDERED that, within 30 days from entry of this order, counsel for the movant shall serve a certified copy of this order upon the Clerk of the Supreme Court, Fulton County, and shall pay the appropriate fee, if any, for such transfer and shall contact the staff of said Clerk to arrange for the effectuation of the transfer in an efficient manner; and it is further

ORDERED that service upon the Clerk of the Supreme Court, Fulton County shall be made in accordance with any applicable protocol or other procedures of said county; and it is further

ORDERED that the Clerk of the Supreme Court, Fulton County, shall transfer the documents on file under Index No. 03970/18 to the Clerk of this Court for the purpose of consolidation; and it is further

ORDERED that the Clerk of the Supreme Court, Fulton County and the Clerk of this court shall coordinate the transfer of the documents being transferred so as to ensure an efficient transfer and to minimize insofar as practical the reproduction of such documents, including with regard to any documents that may be in digital format; 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 for joint discovery and trial; and it is further

ORDERED that such service upon the Clerk of the Court shall be made in hard-copy format if the case pending in this county is a hard-copy case or, if this case is an e-filed one, 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 this court's website at the address [www.nycourts.gov/supctmanh](http://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 transferred from the Supreme Court, Fulton County in the consolidated case file

under the New York County 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 upon 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 discovery shall proceed expeditiously; and it is further

ORDERED that within 14 days of obtaining a separate index number in the action Emmanuel Liontas v Jack L. Spraker, Glove City Transport, Randy L. Parese, Taj M. Chapman, and Love Farms LLC, movant shall file a request for judicial intervention; and it is further

ORDERED that all parties shall appear for a previously scheduled compliance conference on September 23, 2019 at 9:30am in room 106 of 80 Centre Street, New York, NY.

This constitutes the Decision/Order of the Court.

<u>8/22/2019</u> DATE					<u>ADAM SILVERA, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE