

<b>Philadelphia Indem. Ins. Co. v Par Plumbing, Co., Inc.</b>
2019 NY Slip Op 33691(U)
December 17, 2019
Supreme Court, New York County
Docket Number: 157983/2016
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

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INDEX NO. 157983/2016

PHILADELPHIA INDEMNITY INSURANCE COMPANY,

MOTION SEQ. NO. 003

Plaintiff,

- v -

PAR PLUMBING, CO., INC.,

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 50, 51, 52, 53, 54, 55, 56, 57, 58

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

In this action seeking to recover for property damage allegedly sustained by plaintiff Philadelphia Indemnity Insurance Company ("Philadelphia Indemnity"), as subrogee of nonparty 7 MetroTech, LLC (7 MetroTech), defendant Par Plumbing, Co., Inc. ("Par Plumbing") moves, pursuant to CPLR 602 (a) and (b), to join the captioned action for discovery and trial with another action pending in the Civil Court of the City of New York, Kings County, bearing Index Number 2959/18 and styled Homesite Insurance Company a/s/o Kathryn Casper and John Casper v 7 Metrotech, LLC d/b/a The 7 Metrotech Condominium and Par Plumbing, Co., Inc. ("the related action") (Doc. 50). Par Plumbing requests, inter alia, that the related action be transferred to this Court and that a discovery conference be set as soon as practicable (Doc. 50). After a review of the motion papers, as well as the relevant statutes and case law, the motion, which is unopposed, is granted.

“[W]here an action is pending in . . . Supreme Court, the Court may, upon motion, remove to itself an action pending in another court and consolidate the actions or have them tried together” (*Yottoy Prods., Inc. v Majestic Realty Assoc.*, 2016 NY Slip Op 30586[U], 2016 NY Misc Lexis 1206, \*4-5 [Sup Ct, NY County 2016] [internal brackets omitted], quoting CPLR 602 [b]). Moreover, “[a] motion for removal and joinder should be granted where an action in Supreme Court and a proceeding in Civil Court ‘share a substantial common question of law or fact’” (*Yottoy Prods., Inc. v Majestic Realty Assoc.*, 2016 NY Slip Op 30586[U] at 4-5, quoting *Rogin v Rogin*, 90 AD3d 507, 508 [1st Dept 2011]). “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” (*Amcan Holdings, Inc. v Torys LLP*, 32 AD3d 337, 339-340 [1st Dept 2006] [internal quotation marks and citation omitted]).

Here, Par Plumbing asserts, to this Court’s satisfaction, that both matters concern common issues of fact and law. Par Plumbing is a defendant in both actions, in which identical allegations are made that its negligence caused the property damage to the premises at 365 Bridge Street, Brooklyn, New York on February 18, 2015 (Doc. 55). Under these circumstances, joint discovery and trial would “avoid unnecessary duplication of proceedings, save unnecessary costs and expenses, and prevent the injustice that would result from divergent decisions based on the same facts” (*Obuku v New York City Tr. Auth.*, 141 AD3d 708, 709 [2d Dept 2016]; see CPLR 602 [a]; *Mas-Edwards v Ultimate Servs., Inc.*, 45 AD3d 540, 540-541 [2d Dept 2007]; *Amcan Holdings, Inc. v Torys LLP*, 32 AD3d at 339-340; *Matter of Progressive Ins. Co. (Vasquez-Countrywide Ins. Co.)*, 10 AD3d 518, 519 [1st Dept 2004]; *Chinatown Apts., Inc. v New York City Tr. Auth.*, 100 AD2d 824, 825 [1st Dept 1984]). Joint discovery and trial are also

warranted since both actions are in similar stages of discovery (*see Williams v Rockefeller Ctr. Props.*, 282 AD2d 285, 286 [1st Dept 2001] *compare Abrams v Port Auth. Trans-Hudson Corp.*, 1 AD3d 118, 119 [1st Dept 2003]).

Further, Philadelphia Indemnity and the parties in the related action will be not prejudiced by this Court's determination and, even if any prejudice exists, by failing to oppose the motion, they have failed to substantiate the denial thereof (*see Obuku v New York City Tr. Auth.*, 141 AD3d at 709-710; *Drammeh v Valdez*, 2016 NY Slip Op 32582[U], 2016 NY Misc Lexis 4842, \*4-5 [Sup Ct, NY County 2016]).<sup>1</sup> Thus, the motion is granted.

Therefore, in accordance with the foregoing, it is hereby:

**ORDERED** that defendant Par Plumbing, Co., Inc.'s motion seeking consolidation of the captioned action with the matter styled *Homesite Insurance Company a/s/o Kathryn Casper and John Casper v 7 Metrotech, LLC. d/b/a The 7 Metrotech Condominium and Par Plumbing, Co., Inc.*, pending in Kings County, Civil Court, under Index Number 2959/18, is granted and hereby consolidated in this Court for the purposes of joint discovery and trial; and it is further

**ORDERED** that within 30 days of entry of this order, defendant Par Plumbing, Co., Inc. shall serve a certified copy of this order upon the Clerk of the Civil Court, Kings County, and

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<sup>1</sup> Par Plumbing provided an affidavit of service reflecting that all parties, both in the captioned action and the related action, were served with the notice of motion, affidavit of good faith and affidavit in support of the motion to consolidate (Doc. 58).

shall contact the Clerk to arrange for the effectuation of this transfer in an efficient manner; and it is further

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

**ORDERED** that the Clerk of the Civil Court, Kings County, shall transfer to the Clerk of the Supreme Court, New York County, all of the papers on file in the action styled *Homesite Insurance Company a/s/o Kathryn Casper and John Casper v 7 Metrotech, LLC. d/b/a The 7 Metrotech Condominium and Par Plumbing, Co., Inc.*, pending in Civil Court, Kings County, under Index Number 2959/18; and it is further

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

**ORDERED** that within 30 days of entry of this order, defendant Par Plumbing, Co., Inc. shall serve a copy of this order with notice of entry upon the Clerk of the Supreme Court, New York County (60 Centre Street, Room 141 B) and the Clerk of the Trial Support Office (60 Centre Street, Room 158), 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)), and the Clerks are to mark their records accordingly; and it is further

**ORDERED** that, upon receipt of the case file from the Clerk of the Civil Court, Kings County, the Clerk of this Court shall, without further fee, assign a New York County index number to the matter transferred pursuant to this order and shall file under the new index number the documents transferred; and it is further

**ORDERED** that as applicable and insofar as is practical, the Clerk of this Court shall file the documents transferred to this Court pursuant to this order under the New York County index number assigned to the transferred matter 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 transferred documents; and it is further

**ORDERED**, that within 30 days of entry of this order, defendant Par Plumbing, Co., Inc. 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), together with a Request for Judicial Intervention ("RJI") in the action that is transferred to this county pursuant to this order or, if an RJI had already been filed in that action, with a copy of that RJI (in which event, no further fee shall be imposed); and it is further

**ORDERED** that the Clerk of the General Clerk's Office shall assign the transferred action to the undersigned; and it is further


ORDERED that, when the payment of the appropriate calendar fees and the filing of notes of issue and certificates of readiness in each of the above actions is filed, the filer shall annex a copy of this order with notice of entry and the Clerk of the General Clerk's Office shall place the aforesaid actions upon the trial calendar for a joint trial of both matters before the undersigned or another Justice of this Court; and it is further

ORDERED that 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 in both actions are directed to appear for a status conference in Room 280, 80 Centre Street, New York, New York, on February 25, 2020, at 2:15 PM; and it is further

ORDERED that this constitutes the decision and order of the Court.

12/17/2019  
DATE

  
KATHRYN E. FREED, J.S.C.

CHECK ONE:  CASE DISPOSED  NON-FINAL DISPOSITION

APPLICATION:  GRANTED  DENIED  GRANTED IN PART  OTHER

CHECK IF APPROPRIATE:  SETTLE ORDER  SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE