

Picozzi v Powell

2019 NY Slip Op 34599(U)

March 11, 2019

Supreme Court, Suffolk County

Docket Number: Index No. 609754/2017E

Judge: William B. Rebolini

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This opinion is uncorrected and not selected for official publication.

Short Form Order

SUPREME COURT - STATE OF NEW YORK

I.A.S. PART 7 - SUFFOLK COUNTY

PRESENT:

WILLIAM B. REBOLINI
Justice

Ashley Picozzi,

Plaintiff,

-against-

Pamela J. Powell, as Administratrix of the
Estate of Zachary P. Powell, deceased,

Defendant.

Motion Sequence No.: 002; MDMotion Date: 11/30/19Submitted: 1/9/19Index No.: 609754/2017EAttorneys [See Rider Annexed]:

Upon the **E-filed document list** numbered 29 to 44 under index number 609754/2017 and the **E-filed document number** 29 under index number 614997/2017 read on the application of defendant Pamela J. Powell, as Administratrix of the Estate of Zachary P. Powell, deceased, for an order pursuant to CPLR 603 [a] consolidating the action under index number 609754/2017 with the action under index number 614997/2017, or in the alternative, directing a joint trial of the two actions; it is

ORDERED that the motion by defendant Pamela J. Powell, as Administratrix of the Estate of Zachary P. Powell, deceased, for an order pursuant to CPLR 603 [a] consolidating the action under index number 609754/2017 with the action under index number 614997/2017, or in the alternative directing a joint trial of the two actions, is denied.

The first action under index number 609754/2017 (the "first action") brought by plaintiff Ashley Picozzi is for personal injuries allegedly sustained by her on October 18, 2016, while she was a passenger in a motor vehicle operated by the deceased, Zachary Powell. The first action was commenced by the filing of a summons and verified complaint on May 23, 2017. Issue was joined on July 7, 2017. On September 25, 2017 a preliminary conference was held and all discovery has been completed. Plaintiff Ashley Picozzi moved for summary judgment on liability, which

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application was granted by order of this Court dated August 21, 2018. On June 28, 2018, plaintiff Ashley Picozzi filed a note of issue and certificate of readiness thereby placing the first action on the trial calendar on the issue of damages only. Plaintiff Ashley Picozzi is currently awaiting a trial date. The second action under index number 614997/2017 (the "second action") was brought by the Administrator of the Estate of Christian Emery Goody, deceased, Matthew David Goody and Lisa Goody. The decedent, Christian Emery Goody, also was a passenger in the motor vehicle being operated by the deceased, Zachary Powell. The second action seeks damages against defendant Pamela J. Powell, as Administratrix of the Estate of Zachary Powell, deceased, and also asserts claims against Bryan P. Picozzi, as Administratrix of the Estate of Stephen P. Picozzi, deceased, and Elizabeth Picozzi. In the second action, a preliminary conference has not been held and discovery has not been completed. Defendant Pamela J. Powell, as Administratrix of the Estate of Zachary P. Powell, deceased, now moves for an order pursuant to CPLR 603 [a] consolidating the action under index number 609754/2017 with the action under index number 614997/2017. Plaintiffs in the second action support the application to consolidate and plaintiff Ashley Picozzi opposes the motion.

CPLR § 602[a] provides that "[w]hen actions involving a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all of the matters in issue, may order the actions consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." A motion to consolidate or for a joint trial pursuant to CPLR 602 [a] rests in the sound discretion of the trial court (*Mattia v. Food Emporium, Inc.*, 259 AD2d 527, 686 NYS2d 473 [2d Dept. 1999]). Consolidation or joint trials are "favored by the courts in serving the interests of justice and judicial economy" (*Flaherty v. RCP Assoc.*, 208 A.D.2d 496, 498, 616 N.Y.S.2d 801[2nd Dept., 1994]; see also *Shanley v. Callanan Indus.*, 54 N.Y.2d 52, 57, 444 N.Y.S.2d 585, 429 N.E.2d 104 [1981]; *Mideal Homes Corp. v. L & C Concrete Work*, 90 A.D.2d 789, 455 N.Y.S.2d 394 [2nd Dept. 1982]). When the two actions involve different plaintiffs, a joint trial rather than consolidation is appropriate (*Mas-Edwards v. Ultimate Services, Inc.*, 45 AD3d 540 845 NYS2d 414 [2d Dept. 2007]; see also *Cola-Rugg Enterprises, Inc., v. Consolidated Edison Company of New York, Inc.*, 109 AD2d 726, 486 NYS2d 43 [2d Dept. 1985]). Indeed, the Second Department prefers joint trials over consolidations (*Megyesi v. Automotive Rentals, Inc.*, 115 AD2d 596, 496 NYS2d 473 [2d Dept. 1985]).

The stated goal of CPLR 602 [a] is to avoid the unnecessary costs and delays associated with a duplication of trials (*Skelly v. Sachem Cent. School Dist.*, 309 AD2d 917, 766 NYS2d 108 [2d Dept. 2003]). However, where the opposing party has shown that consolidating or joining the actions for trial will prejudice a substantial right, denial of the motion is warranted, even where there are common questions of law or fact (see *Skelly v. Sachem Cent. School Dist.*, 309 AD2d 917, 766 NYS2d 108 [2d Dept. 2003]). For example, where there is a "disparity between the stages of litigation to which each case has progressed," it has been determined that for reasons of judicial economy, it is proper to deny a motion for consolidation or a joint trial (*Gouldsbury v. Dan's Supreme Supermarket*, 138 AD2d 675, 526 NYS2d 779 [2d Dept. 1988]; see also *Rennert Diana & Co. v. Kin Chevrolet*, 137 AD2d 589, 524 NYS2d 481 [2d Dept. 1988] citing *Steerman v. Broughton*, 123 AD2d 681, 507 NYS2d 50 [2d Dept. 1986]; *Rodway v. Halpern*, 3 AD2d 941, 163 NYS2d 806 [2d Dept. 1957]).

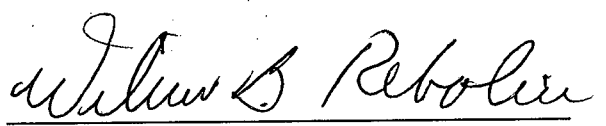
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Here, the plaintiffs in these two actions are different and thus, the court will consider this motion as one seeking a joint trial rather than consolidation (*Mas-Edwards v. Ultimate Services, Inc.*, 45 AD3d 540 845 NYS2d 414 [2d Dept. 2007]). The delay inherent in joining these two actions for trial would prejudice a substantial right of plaintiff Ashley Picozzi inasmuch as the first action is ready for trial and discovery is not completed nor has a preliminary conference been held in the second action (*Mulligan v. Farmingdale Union Free School Dist. No. 22*, 133 AD2d 617, 519 NYS2d 725 [2d Dept. 1987]; see also *Pena v. City of New York*, 222 AD2d 233, 635 NYS2d 10 [1st Dept. 1995]; *Jones v. New York City Health & Hospitals Corp.*, 2017 WL 4101867 [Bronx Cty. 2017]).

Moreover, while the two actions arise from the same motor vehicle accident, the only issues to be tried in the first action concern the damages to be awarded plaintiff Ashley Picozzi, as liability has already been established. This determination concerns the specific injuries alleged to have been sustained by plaintiff Ashley Picozzi. Even though both actions arise from the same accident, there clearly is no overlap of the proof at the trial of each action (*Beerman v. Morhaim*, 17 AD3d 302, 791 NYS2d 854 [2d Dept. 2005]). Indeed, the witnesses and evidence to be adduced at the trial of the first action would differ from those at the trial of the second action, especially in light of the fact that liability has not been established and there are claims against other defendants in the second action. Based upon the foregoing, joining these two actions for trial is unwarranted (*Weiss & Biheller, MDSE, Corp. v. Preciosa USA, Inc.*, 127 AD3d 1176, 5 NYS3d 909 [2d Dept. 2015]).

Accordingly, the motion by defendant Pamela J. Powell, as Administratrix of the Estate of Zachary P. Powell, deceased, for an order pursuant to CPLR 603 [a] consolidating the action under index number 609754/2017 with the action under index number 614997/2017, or in the alternative, directing a joint trial of the two actions, is denied.

Dated: 3/11/2019


HON. WILLIAM B. REBOLINI, J.S.C.

_____ FINAL DISPOSITION NON-FINAL DISPOSITION

RIDER

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(Under Index No.: 609754/2017)

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