

Parker v Johns

2019 NY Slip Op 34758(U)

September 3, 2019

Supreme Court, Nassau County

Docket Number: Index No. 607679/16

Judge: Jeffrey S. Brown

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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.

SHORT FORM ORDER

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

**P R E S E N T : HON. JEFFREY S. BROWN
JUSTICE**

-----X
CLIVE A. PARKER and CLOVER GHANY,

Plaintiff(s),

-against-

**JOSEPH JOHNS, LEE C. JOHNS, RACHEL K. WARREN
and RICHARD J. WARREN,**

Defendant(s).

-----X
**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

-----X
CLIVE A. PARKER and CLOVER GHANY,

Plaintiff(s),

-against-

KAYLA M. RAKOWER,

Defendant.

-----X

TRIAL/IAS PART 11

**INDEX # 607679/16
Motion Seq. 4
Motion Date 7.29.19
Submit Date 8.15.19**

ACTION NO. 1

INDEX # 22497/17E

ACTION NO. 2

=====
The following papers were read on this motion:

Documents Numbered

Notice of Motion, Affidavits (Affirmations), Exhibits Annexed.....	61
Answering Affidavit	84

=====

Plaintiffs move pursuant to CPLR 602 for an order consolidating for all purposes the instant action with an action presently pending in Bronx County under Index Number 22497/2017E.

CPLR § 602 (a) provides that consolidation among actions should be granted where there

are common questions of law and/or fact. However, consolidation of actions should not be granted if doing so would prejudice a substantial right of the opposing party. *Perini Corp. v WDF, Inc.*, 33 AD3d 605, 606 [2d Dept 2006], *Best Price Jewelers.Com, Inc. v Internet Data Storage and Systems, Inc.*, 51 AD3d 839 [2d Dept 2008]). A court may order that two actions be consolidated in the interest of justice and judicial economy when two actions arise out of the same incident and where it is highly probable that the same witnesses and evidence will be presented at trial.

Plaintiff contends that the two actions arise out of a chain reaction motor vehicle accident that occurred on February 13, 2015. By its prior motion, the court noted that the accident involved four vehicles. The complaint in the Bronx County action indicates that the Kayla M. Rakower was the operator of the fourth vehicle. However, Action No. 1 already appears on the calendar for a pretrial conference and Action No. 2 remains in discovery. Accordingly, the court will join the actions for trial under both captions.

Plaintiffs contend that transfer under the Bronx County index number is appropriate and necessary for the convenience of the parties and witnesses but identifies no facts to support that contention. In fact, although Clive A. Parker is now identified as a Bronx resident, with an address at a Post Office Box, Clover Ghany is identified as a resident of Westchester County, Kayla Rakower is a resident of Suffolk County, and both the Johns and the Warrens are residents of Nassau County. The accident did not occur in the Bronx, but rather on the Cross Island Parkway. The Warren defendants oppose consolidation in Bronx County and, instead, advocate consolidation in this county. The action was first commenced in this county and, absent any special circumstances, it ought to remain here. (*See Moor v Moor*, 39 AD3d 507 [2d Dept 2007]).

For the foregoing reasons, it is hereby

ORDERED, that the two pending actions, Nassau County Index No. 607670/2016 (Action No.1) and Bronx County Index No. 22497/2017E (Action No. 2) shall be joined for *trial only* under both captions in Nassau County and it is further

ORDERED that Action No. 2 is removed to Nassau County and joined for trial with Action No. 1; and it is further

ORDERED, that the Clerk of Supreme Court, Bronx County is directed to transfer its file to the Clerk of Supreme Court, Nassau County, and upon transfer the Clerk shall assign it a Nassau County index number.

ORDERED, that the joined actions shall bear the caption:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
CLIVE A. PARKER and CLOVER GHANY,

Index No. 607679/16

Plaintiffs,

-against-

Action No. 1

JOSEPH JOHNS, LEE C. JOHNS, RACHEL K. WARREN
and RICHARD J. WARREN,

Defendants.

-----X
CLIVE A. PARKER and CLOVER GHANY,

Index No. (to be assigned)

Plaintiffs,

-against-

Action No. 2

KAYLA M. RAKOWER,

Defendant.

-----X

ORDERED, that all matters of trial practice, including the right to open and close, are reserved to the justice presiding at the joint trial, and it is further,

ORDERED, that all papers shall reflect the joint status of these actions, and it is further,

ORDERED, upon completion of discovery, the parties shall file separate notes of issue and certificates of readiness, as to each action and its further,

ORDERED, that each party shall be entitled to enter separate judgments and bill of costs and disbursements, in each action respectively, if costs are allowed, and it is further,

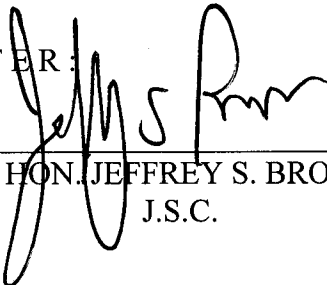
ORDERED, that the court may direct separate trials in the event that an index number, RJI, note of issue and statement of readiness is not filed in either action.

This constitutes the decision and order of this Court. All applications not specifically addressed herein are denied.

Dated: Mineola, New York
September 3, 2019

ENTER:

ENTERED
SEP 12 2019
NASSAU COUNTY
COUNTY CLERK'S OFFICE



HON. JEFFREY S. BROWN
J.S.C.

Attorneys for Plaintiff
Dell & Dean, PLLC
1225 Franklin Avenue, Ste. 450
Garden City, NY 11530
516-880-9700
5168809707@fax.nycourts.gov

Attorneys for Defendants Johns
Martyn & Martyn, Esqs.
330 Old Country Road, Ste. 211
Mineola, NY 11501
516-739-0000
5167390329@fax.nycourts.gov

Attorneys for Defendants Warren
Perez & Cariello, Esqs.
333 Earle Ovington Boulevard
Uniondale NY 11553-3644
516-745-8310
5167458259@fax.nycourts.gov

Attorneys for Defendant Rakower
Varvaro Cotter & Bender
133 Westchester Avenue, Ste. 5-325
White Plains, NY 10604
914-989-6650