

Lefavre v 568 Broadway Holding LLC

2019 NY Slip Op 35230(U)

September 5, 2019

Supreme Court, New York County

Docket Number: Index No. 161241/2017

Judge: W. Franc Perry

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. W. FRANC PERRY PART IAS MOTION 23EFM

Justice

INDEX NO. 161241/2017
MOTION DATE 6/3/19, 07/24/2019
MOTION SEQ. NO. 003 003 004

KATHERINE LEFAVRE,

Plaintiff,

- v -

568 BROADWAY HOLDING LLC, 568 BROADWAY
PROPERTY LLC, AURORA CAPITAL ASSOCIATES, LLC,
A & H ACQUISITIONS CORP., SCF MANAGEMENT LLC,
ROCK GROUP NY CORP., SIMRANPAL SINGH, ROCK
GROUP ENTERPRISES CORP., RHG MANPOWER
INC., DANIEL ODIGIE, DAN ENGINEERING SERVICES,
SATO CONSTRUCTION CO., INC., SATO
CONSTRUCTION CO. INC., D/B/A FLAG
WATERPROOFING AND RESTORATION CO., FLAG
WATERPROOFING AND RESTORATION, LLC, MUGHAL
GENERAL CONSTRUCTION, INC.,

Defendant.

AMENDED DECISION + ORDER
ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 93, 94, 113, 114,
115, 116, 117, 118, 119, 126, 127, 130, 131

were read on this motion to/for MODIFY

The following e-filed documents, listed by NYSCEF document number (Motion 003) 93, 94, 113, 114,
115, 116, 117, 118, 119, 126, 127, 130, 131

were read on this motion to/for VACATE - DECISION/ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 004) 96, 97, 98, 99, 100,
120, 121, 122, 123, 124, 125, 128, 129, 132, 133

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

In this personal injury action involving a collapsed sidewalk shed, in motion sequence
number 003, defendants SATO CONSTRUCTION CO., INC, SATO CONSTRUCTION CO.
INC. d/b/a FLAG WATERPROOFING AND RESTORATION, LLC, FLAG
WATERPROOFING AND RESTORATION, LLC, for the matter under Index Number
161241/2017 and defendants SATO CONSTRUCTION CO., INC. and FLAG

WATERPROOFING AND RESTORATION, LLC, for the matter under Index Number 150787/2018, and defendant RHG MANPOWER INC., seek an order, pursuant to CPLR § 2221: 1) vacating the Court's Amended Decision and Order, dated April 10, 2019 (NYSCEF Doc. No. 73), and the Second Amended Decision and Order, dated April 18, 2019 (NYSCEF Doc. No. 92); and 2) modifying the Court's Decision and Order, dated February 5, 2019 (NYSCEF Doc. No. 52) to affirmatively state that the consolidation of the matter of Katherine Lefavre v. 568 Broadway Holding LLC, et al., under Index Number 161241/2017, with the matter of Claire Bevan v. 568 Broadway Property LLC, et al., under Index Number 150787/2018, is for the purposes of joint discovery only.

In motion sequence number 004, defendants SATO CONSTRUCTION CO., INC, SATO CONSTRUCTION CO. INC. d/b/a FLAG WATERPROOFING AND RESTORATION, LLC, FLAG WATERPROOFING AND RESTORATION, LLC, for the matter under Index Number 161241/2017 and defendants SATO CONSTRUCTION CO., INC. and FLAG WATERPROOFING AND RESTORATION, LLC, for the matter under Index Number 150787/2018, and defendant RHG MANPOWER INC., seek an order, pursuant to CPLR § 602, consolidating the matter of Katherine Lefavre v. 568 Broadway Holding LLC, et al., under Index Number 161241/2017, with the matter of Harsha Laxman v. 568 Broadway Property LLC, et al., under Index Number 154078/2019, for the purposes of joint discovery only. Plaintiff Laxman opposes the motion to consolidate the actions for joint discovery only but has not cross-moved for the actions to be joined for the purposes of trial, nor has any other party to any of the three pending actions arising out of the same alleged November 19, 2017 incident, opposed the motions. The motions are consolidated for disposition.

BACKGROUND

This matter involves three separate plaintiffs' that have alleged damages related to personal injuries sustained on November 19, 2017 in connection with a sidewalk shed collapse. On December 19, 2017, the action under Index Number 161241/2017 was commenced by plaintiff Katherine Lefavre. On January 25, 2018, the action, under Index Number 150787/2018, was commenced by plaintiff Claire Bevan. On April 19, 2019, the action under Index Number 154078/2019, was commenced by plaintiff Harsha Laxman. As noted, the Sato defendants and defendant RHG, seek an order vacating and modifying this court's previous orders which consolidated the actions for joint discovery and joint trial, and seek to consolidate all three actions for joint discovery only as they contend that each plaintiff sustained separate injuries, underwent separate and distinct medical care and treatment, and have distinct medical histories. Further, there are defendants that have been sued by plaintiff Lefavre, that have not been sued by plaintiffs Bevan and Laxman. As such, moving defendants contend that a joint trial will result in juror confusion and prejudice.

This court has presided over several discovery conferences in this action and agrees that the actions share common issues of law and fact as each action arises out of the same sidewalk shed collapse, such that joint discovery will promote judicial economy. Nevertheless, "individual issues predominate, concerning particular circumstances applicable to each plaintiff" (*Bender v Underwood*, 93 AD2d 747, 748, 461 NYS2d 301 [1983]; see also *Gittino v LCA Vision*, 301 AD2d 847, 753 NYS2d 579 [2003]; *DeAngelis v New York Univ. Med. Ctr.*, 292 AD2d 237, 237-238, 738 NYS2d 671 [2002]), including their respective illnesses, histories, treatments, and the extent of their injuries. Additionally, the plaintiff Lefavre has named additional defendants that plaintiffs Bevan and Laxman have not named, and there are

also different causes of action alleged in each of the three complaints. Given these undeniable facts, where some but not all of the defendants are defendants in both actions, and some of the defendants are being sued for causes of action that others are not, the actions are not properly capable of true consolidation and consolidation for trial. (see *Bender* 93 AD2d at 748). As such, the actions shall maintain its own Index Number and shall be consolidated for joint discovery only. Given this conclusion, this court's prior decision dated August 1, 2019 is amended and modified to reflect this fact.

CONCLUSION

Accordingly, this court's prior decisions dated April 10, 2019 (NYSCEF Doc. No. 73), and the Second Amended Decision and Order, dated April 18, 2019 (NYSCEF Doc. No. 92) are vacated and this court's prior decisions dated February 5, 2019 (NYSCEF Doc. No. 52) and August 1, 2019 (NYSCEF Doc. Nos. 134 and 135) are amended and modified to affirmatively state that the consolidation of these matters are for joint discovery only and each action shall maintain its own index number as follows: Katherine Lefavre v. 568 Broadway Holding LLC, et al., under Index Number 161241/2017; Claire Bevan v. 568 Broadway Property LLC, et al., under Index Number 150787/2018; and Harsha Laxman v. 568 Broadway Property LLC, et al., under Index Number 154078/2019. Additionally, the motions seeking to consolidate the action filed under Index Number 154078/2019 and the action filed under Index Number 161241/2017 is granted, in the exercise of this court's discretion, for joint discovery only, as both actions pertain to the same alleged November 19, 2017 incident, however each action shall maintain its own index number as noted in the amended caption set forth below. Accordingly, it is hereby,

ORDERED that the motion sequences 003 and 004 are granted and the above-captioned actions are consolidated, for joint discovery only and this court's Decision and Order, dated August 1, 2019, is amended; and it is further

ORDERED that each action shall maintain its own index number and the consolidated action, for joint discovery only, shall bear the following caption:

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

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KATHERINE LEFAVRE

Index No.161241/2017

Plaintiffs,

-against-

568 BROADWAY HOLDING LLC, 568 BROADWAY
PROPERTY LLC, AURORA CAPITAL ASSOCIATES, LLC, A
& H ACQUISITIONS CORP., SCF MANAGEMENT LLC,
ROCK GROUP NY CORP., SIMRANPAL SINGH, ROCK
GROUP ENTERPRISES CORP., RHG MANPOWER INC,
DANIEL ODIGIE, DAN ENGINEERING SERVICES, SATO
CONSTRUCTION CO., INC., SATO CONSTRUCTION CO.
INC, d/b/a FLAG WATERPROOFING AND RESTORATION,
LLC, FLAG WATERPROOFING AND RESTORATION, LLC,
and MUGHAL GENERAL CONSTRUCTION, INC.

Defendants.

-----X

CLAIRE BEVAN,

Plaintiff,

Index Number 150787/2018

-against-

568 BROADWAY PROPERTY LLC, SCF MANAGEMENT
LLC, ACHS MANAGEMENT CORP., SATO
CONSTRUCTION CO., INC., FLAG WATERPROOFING
AND RESTORATION, LLC and
ROCK GROUP NY CORP.,

Defendants.

-----X

-----X
 HARSHA LAXMAN,
 Plaintiff, Index Number 154078/2019
 -against-
 568 BROADWAY PROPERTY LLC, SCF MANAGEMENT
 LLC, ACHS MANAGEMENT CORP., SATO
 CONSTRUCTION CO., INC. d/b/a FLAG WATERPROOFING
 AND RESTORATION CO. and
 ROCK GROUP NY CORP.,
 Defendants.

-----X

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 mark his records to reflect the consolidation for joint discovery only, with each action maintaining its own index number as reflected in the above amended caption; 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, 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 as noted in this Amended Decision and Order; 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 8, 2019, at 9:30 AM.

9/5/2019 DATE	 W. FRANC PERRY, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE