

Dominguez v Santana
2020 NY Slip Op 30288(U)
February 3, 2020
Supreme Court, New York County
Docket Number: 157996/2018
Judge: Adam Silvera
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

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RICARDO DOMINGUEZ,

Plaintiff,

- v -

MARCIO SANTANA, JOSE SANTIAGO, ADVANTAGE
VEHICLES LLC.

Defendant.

-----X

INDEX NO. 157996/2018

MOTION DATE 01/23/2020

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 52, 53, 54, 55, 56, 58, 59, 60, 61, 62, 63, 64, 65, 66

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

Upon the foregoing documents, it is ordered that this motion for consolidation, by defendant Marcio Santana is granted. Defendant Santana moves to consolidate this personal injury action with another action currently pending in the Supreme Court of Bronx County (Jose Luis Delgado-Santiago v Marcio B. Silvestre Santana, index no. 23518/19), arguing that the two actions arise out of the same accident and have common parties. Defendant Santana also seeks to have the consolidated actions heard in New York County. Plaintiff in the action currently pending in Bronx County opposes the instant motion and argues that his action should remain in Bronx County. Defendant Santana replies.

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 actions arise out of the same motor vehicle accident and involve many of the same parties. In opposition, Jose Santiago, as plaintiff in the Bronx County action, argues that consolidation should be denied as such action is properly venued in Bronx County where the

accident occurred and where plaintiff Santiago was hospitalized. However, the actions clearly have common questions of law, namely which party or parties are liable for the injuries of both plaintiffs. Here, there is a risk of inconsistent verdicts if the actions are not consolidated. Moreover, it is undisputed that there are common parties. In fact, plaintiff Santiago, who opposes consolidation, is a defendant in the instant action. Thus, defendant Santana's motion to consolidate is granted to the extent that these 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.

Defendant Santana's motion also seeks to have the consolidated action heard in New York County, as the action currently pending herein was filed first in time. The Appellate Division, First Department, has held that "[w]here two actions involving identical issues are pending in separate counties, the actions should be consolidated pursuant to CPLR 602 in the county where the first action was commenced absent special circumstances". *Harrison v Harrison*, 16 AD3d 206, 207 (1st Dep't 2005). Here, plaintiff Santiago argues that special circumstances exist in that the accident occurred in Bronx County, there are witnesses in Bronx County, and plaintiff Santiago was hospitalized there. However, it is undisputed that the instant action pending in this Court was properly venued. Plaintiff Santiago has failed to demonstrate any hardship or prejudice for any party or witness to travel from Bronx County to New York County. Thus, defendant Santana's motion to consolidate is granted. The consolidated action shall be heard in the Supreme Court of New York County as such action was filed first in time.

Accordingly, it is

ORDERED that the motion is granted and the action Jose Luis Delgado-Santiago v Marcio B. Silvestre Santana, index no. 23518/19, pending in the Supreme Court, Bronx County,

shall be consolidated in this Court with *Richardo Dominguez v Marcio Santana, Jose Santiago, Advantage Vehicles, LLC*, Index No. 157996/18, New York County; and it is further

ORDERED that a separate index number be given to the action *Jose Luis Delgado-Santiago v Marcio B. Silvestre Santana*, being transferred from the Supreme Court, Bronx 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, Bronx 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, Bronx 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, Bronx County, shall transfer the documents on file under Index No. 23518/19 to the Clerk of this Court for the purpose of consolidation; and it is further

ORDERED that the Clerk of the Supreme Court, Bronx 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/suptmanh); 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, Bronx 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 all parties, or counsel, shall appear for a previously scheduled compliance conference in room 106 of 80 Centre Street, New York, NY on February 24, 2020 at 9:30am; and it is further

ORDERED that within 14 days of obtaining a separate index number in the action Jose

Luis Delgado-Santiago v Marcio B. Silvestre Santana, movant shall file a request for judicial intervention.

This constitutes the Decision/Order of the Court.

2/3/2020

DATE

ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE