

Buscema v Anam

2020 NY Slip Op 30646(U)

March 3, 2020

Supreme Court, New York County

Docket Number: 450131/2018

Judge: Dakota D. Ramseur

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. DAKOTA D. RAMSEUR PART 5

Justice

-----X

JOSEPH BUSCEMA,
Plaintiff,

- v -

HADI ANAM, METROPOLITAN HOSPITAL CENTER, THE
CITY OF NEW YORK, THE HEALTH AND HOSPITALS
CORPORATION, JORGE FIGUEROA, DAWSHAWN
MORGAN, V. R. RIZZO-NIKOU,
Defendants.

-----X

**CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS**

-----X

ALLSTATE PROPERTY AND CASUALTY INSURANCE
COMPANY a/s/o VICTORIA A. RIZZO-NIKOU,
Plaintiff,

-against-

DASHAWN MORGAN, JORGE FIGUEROA,
METROPOLITAN HOSPITAL CENTER and HADI S. ANAM,
Defendants.

-----X

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

-----X

TROY CORNELIUS,
Plaintiff,

-against-

JOSEPH BUSCEMA, VICTORIA R. RIZZO-NIKOU,
DASHAWN C. MORGAN and HADI S. ANAM,
Defendants.

-----X

HADI S. ANAM,
Third-Party Plaintiff,

-against-

METROPOLITAN HOSPITAL CENTER,
METROPOLITAN HOSPITAL CENTER ASSOCIATION, INC.
and JORGE L. FIGUEROA,
Defendants.

-----X

INDEX NO. 450131/2018
MOTION DATE 2/11/20
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

Index No. 005560/2017
(Action #2)

Index No. 503047/ 2019
(Action #3)

The following e-filed documents, listed by NYSCEF document number (Motion 002) 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55

were read on this motion to/for

CONSOLIDATE/JOIN FOR TRIAL

This personal injury action, Action 1, stemming from an automobile accident on the FDR Drive in Manhattan on September 27, 2016, was commenced on August 24, 2017 in Supreme Court, Kings County (Index No. 516492/2017), then transferred, upon co-defendants' motion to change venue, to this Court (*NYSCEF 46-48*). By amended order dated June 5, 2018, the Honorable Adam Silvera granted Co-defendant Hadi S. Anam's motion to join Action 1 with Action 2, a subrogation action in Civil Court, Kings County arising out of the same automobile accident and sharing common parties (*NYSCEF 49*). Plaintiff in Action 3, Troy Cornelius, commenced Action 3 by filing a Summons and Complaint on February 11, 2019.

Defendant in Actions 1 and 3 Victoria R. Rizzo-Nikou now moves, pursuant to CPLR § 602(a), to consolidate all three actions for the purposes of joint trial. Cornelius, opposes, arguing that: (1) Cornelius is not named in Actions 1 or 2; (2) Cornelius is an "innocent passenger" without any possible liability; and (3) Kings County is the proper venue based on the location of witnesses and parties. For the reasons below, the motion is granted.

When 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 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 unless the consolidation will prejudice a substantial right (*see CPLR 602[a]; Amtorg Trading Co. v Broadway & 56th St. Assoc.*, 191 AD2d 212, 213 [1st Dept 1993]). "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" (*id.*). In the absence of any demonstration of material inconvenience or prejudice, the venue of the first-commenced proceeding is generally appropriate, particularly if the venue is the location of the underlying incident (*Am. Tr. Ins. Co. v Diaz*, 251 AD2d 143, 143 [1st Dept 1998]).

Here, Cornelius concedes that Action 1 was the first action filed, and does not dispute that the actions are related, or that they all arise from the same motor vehicle accident in New York County. To the extent that Cornelius argues that "Plaintiff, two of the four defendants, and Cornelius's treating medical professionals/experts reside or have their business in Brooklyn," Cornelius does not specifically identify which of the defendants reside in Brooklyn, or which experts Cornelius intends to rely upon. In any event, however, that statement implicitly concedes that the other parties and witnesses in this action *do not* reside in Brooklyn. Accordingly, the motion is granted and the actions shall be consolidated for joint trial. It is therefore

ORDERED that the motion of Victoria R. Rizzo-Nikou for a joint trial is granted and the above-captioned action shall be jointly tried in this county with Troy Cornelius v Joseph Buscema, et al., Index No. 503047/2019, Supreme Court, Kings County; 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, Kings County, and shall pay

the appropriate fee, if any, for the transfer of the file in that action 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, Kings 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, Kings County, shall transfer to the Clerk of the Supreme Court, New York County, all of the papers on file in the action Troy Cornelius v Joseph Buscema, et al., Index No. 503047/2019; and it is further

ORDERED that the Clerk of the Supreme Court, Kings 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 documents, including with regard to any documents that may be in digital format; 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 Supreme Court, New York County (60 Centre Street, Room 141B); and it is further

ORDERED that such service upon the Clerk of this court shall be made in hard-copy format if this is a hard-copy case or, if this is an e-filed matter, 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, upon receipt of the case file from the Clerk of the Supreme 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 this 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 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), 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, upon payment of the appropriate calendar fees and the filing of notes of issue and certificates of readiness in each of the above actions, to each of which the filer shall

annex a copy of this order with notice of entry, 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 hard-copy format if this is a hard-copy action or, if this is an e-filed case, shall be made in accordance with the procedures set forth in the aforesaid *Protocol*; and it is further

ORDERED that discovery shall proceed expeditiously.

This constitutes the decision and order of the Court.



3/3/2020
DATE

Dakota D. Ramseur, 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