

Brantley v Oates

2020 NY Slip Op 30957(U)

April 15, 2020

Supreme Court, New York County

Docket Number: 161790/2018

Judge: Adam Silvera

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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**

<p>PRESENT: <u>HON. ADAM SILVERA</u> <i>Justice</i></p> <p>-----X</p> <p>STEVEN BRANTLEY, Plaintiff, - v - EUGENE OATES and HAMPTON JITNEY INC, Defendant.</p> <p>-----X</p>	<p>PART <u>IAS MOTION 22</u></p> <p>INDEX NO. <u>161790/2018</u></p> <p>MOTION DATE <u>3/11/2020</u></p> <p>MOTION SEQ. NO. <u>001</u></p> <p>DECISION + ORDER ON MOTION</p>
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The following e-filed documents, listed by NYSCEF document number (Motion 002) 29, 30, 31, 32, 33 were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

Upon the foregoing documents, it is ORDERED that defendants’ motion for consolidation is granted. Here, defendants move to consolidate this action, Index No. 161790/2018 (“action #1”) for joint trial and discovery with a motor vehicle accident case, in Supreme Court, Queens County, Khadija Humphrey v Hampton Jitney, Inc. and Eugene Oates, Index No: 720202/2019.

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.” The First Department has found that in instances of separate motor vehicle accident cases which involve injuries to same/similar parts of the body “one jury hearing all the evidence can better determine the extent to which each defendant caused plaintiff’s injuries and should eliminate the possibility of inconsistent verdicts which might result from separate trials” (Richardson v Uess Leasing Corp., 191 AD2d 394 [1st Dept 1993]).

Defendants argue that consolidation of actions #1 and #2 is proper because the facts and allegations contained in each of the complaints deal with the same motor vehicle accident, which occurred on July 29, 2018 at or near the intersection of 86th Street and 3rd Avenue in the County,

City, and State of New York. In opposition plaintiff argues that consolidation will delay action #1 and cause prejudice to plaintiff. However, the Court notes that the mere delay of action #1 does not constitute a reason to deny the present motion. Deposition of defendants have yet to be held in this matter and defendants note that defendant Oates lives out of state and would be prejudiced by having to travel to New York on different occasions for two separate actions. As the actions arise out of the same accident, and judicial economy will be served by consolidation, defendants' motion to consolidate the actions for joint trial and discovery is granted. Each action shall maintain separate pleadings, captions, and index numbers, with separate certificates of readiness and notes of issue.

Accordingly, it is

ORDERED the motion is granted and the above captioned action is joined for trial in this Court with Khadija Humphrey v Hampton Jitney, Inc. and Eugene Oates, Index No: 720202/2019, Supreme Court, Queens County; and it is further

ORDERED that the motion of defendants to change the venue of action #2 from the Supreme Court, County of Queens, to this Court is granted; and it is further

ORDERED that within 30 days from entry of this order, counsel for the movants shall serve a certified copy of this order on the Clerk of the Supreme Court, Queens County shall pay the appropriate transfer fee, if any, and shall contact the staff of said Clerk and cooperate in arranging the transfer of the file; and it is further

ORDERED that the Clerk of the Supreme Court, Queens County shall transfer to the Clerk of the Supreme Court, New York County the file in the action venued in that court; and it is further

ORDERED that service upon the Clerk of the Supreme Court, Queens 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, Queens County and the Clerk of this Court shall coordinate the transfer of the documents being removed to this court so as to ensure an efficient transfer and to minimize insofar as is 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, counsel for the movant shall serve a copy of this order with notice of entry on the Clerk of this Court (60 Centre Street, Room 141B); and it is further

ORDERED that the Clerk of this Court, upon service of a copy of this order with notice of entry and the transfer of the file to this court, shall without a further fee, assign a New York County Index Number to the transferred action and record such action in the Clerk's records; and it is further

ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents transferred pursuant to this order under the New York County Index Number of the transferred 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; and it is further

ORDERED that, within 30 days from entry of this order, counsel for the 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") for the transferred action or, if an RJI was filed in the action while pending in Supreme Court Queens

County, a copy of that RJJ (in which event no additional fee shall be charged therefore) and indicate on the RJJ the action joined for trial with the index number; and it is further

ORDERED that upon the service of such documents, the Clerk of the General Clerk’s Office shall mark the court’s records to reflect the transfer and assign the transferred action of the undersigned Justice of this court; and it is further

ORDERED that service upon the Clerk of this Court and the Clerk of the General Clerk’s Office shall be made in hard-copy form if the application herein has been made in hard-copy format or, if the application has been electronically filed, shall be made in accordance with the procedures et 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/supctmanh); and it is further

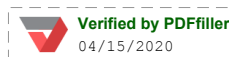
ORDERED that discovery in this action is to proceed expeditiously; and it is further

ORDERED that within 30 days of entry, defendants shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

04/15/2020

DATE



ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: