

<b>Minaya v Smittel Sponsor, LLC</b>
2020 NY Slip Op 32330(U)
July 15, 2020
Supreme Court, New York County
Docket Number: 161422/2018
Judge: Barbara Jaffe
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. BARBARA JAFFE PART IAS MOTION 12EFM

*Justice*

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JESUS MINAYA and CAROL CUAREZMA,

Plaintiffs,

- v -

INDEX NO. 161422/2018

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 001

SMITTEL SPONSOR, LLC,  
LENDLEASE (US) CONSTRUCTION INC.,

Defendants.

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 12-16 were read on this motion to consolidate/join for trial.

By notice of motion, submitted on default, plaintiffs move pursuant to CPLR 602 (a) for an order consolidating this action with one they filed against nonparties Smitell LLC and Smitell Retail LLC, pending in this court under index number 161745/2019.

I. BACKGROUND

By summons and complaint dated December 6, 2018 plaintiffs commenced this action against defendants alleging that on November 21, 2018, plaintiff Jesus Minaya suffered injuries when he fell from a ladder while working at a construction site at 217 West 57th Street in Manhattan. (NYSCEF 14). Minaya advances causes of action for negligence and violations of the Labor Law and Industrial Code. His wife advances a cause of action for loss of his services and society.

By summons and complaint dated December 5, 2019, plaintiffs commenced an action against nonparties Smitell LLC and Smitell Retail LLC, alleging the same facts and advancing

the same causes of action as those set forth in the earlier complaint. (NYSCEF 15).

## II. CONTENTIONS

Plaintiffs contend that both actions arise from the same accident and give rise to the same causes of action, and that the resolution of identical questions of law and fact will be required. Consequently, they assert, consolidation of the two actions will save time and avoid unnecessary expense, and that none of the parties will be prejudiced. (NYSCEF 13).

## III. ANALYSIS

When multiple actions raise common questions of law or fact, they may be consolidated to avoid unnecessary costs or delay, absent a showing of prejudice. (CPLR 602[a]; *Progressive Ins. Co. v Vasquez*, 10 AD3d 518, 519 [1st Dept 2004]). Here, the two actions arise from the same accident and the same causes of action are pleaded. Consolidation is thus warranted as the actions require the resolution of the same questions of law and fact. (*Geneva Temps, Inc. v New World Communities, Inc.*, 24 AD3d 332, 335 [1st Dept 2005]).

Given defendants' default on the motion, there is no showing of prejudice resulting from the consolidation

Accordingly, it is hereby

ORDERED, that the motion is granted and the above-captioned action is consolidated in this court with *Jesus Minaya and Carol Cuarezma v Smitell LLC and Smitell Retail LLC*, Index No. 161745/2019, pending in this court; it is further

ORDERED, that the consolidation shall take place under Index No. 161422/2018, and the consolidated action shall bear the following caption:

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JESUS MINAYA and CAROL CUAREZMA,

Plaintiffs,

- v -

SMITTEL SPONSOR, LLC, LENDLEASE (US)  
CONSTRUCTION INC., SMITELL LLC, SMITELL  
RETAIL LLC,

Defendants.

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It is further

ORDERED, that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; it is further

ORDERED, that, within 30 days from entry of this order, movants 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; it is further

ORDERED, that counsel for the movants shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed; it is further

ORDERED, that service of this order upon the Clerk of the Court shall be made in hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, 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](http://www.nycourts.gov/supctmanh)); it is further

ORDERED, that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents being consolidated in the consolidated case file under the 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; it is further

ORDERED, that, within 30 days from entry of this order, movants 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; it is further

ORDERED, that such service upon the Clerk of the General Clerk's Office shall be made in hard-copy format if this action is a hard-copy matter or, if it 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 the parties submit a proposed discovery stipulation in the consolidated matter on or before August 1, 2020, pursuant to the notice posted to the action on June 22, 2020. (NYSCEF 20).

7/15/2020

DATE

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BARBARA JAFFE, 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