

Poncet v Patel

2020 NY Slip Op 32971(U)

September 8, 2020

Supreme Court, Kings County

Docket Number: 526278/2019

Judge: Debra Silber

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9**

X

LYNN PONCET,

Plaintiff,

-against-

DECISION/ORDER

Index No. 526278/2019

Motion Seq. No. 001

Date Submitted: 08/20/2020

RASHWIKANT PATEL and NAITIK PATEL,

Defendants.

X

Recitation, as required by CPLR 2219(a), of the papers considered in the review of defendants' motion to consolidate

Papers	NYSCEF Doc.
Notice of Motion, Affirmations, Affidavits, and Exhibits Annexed.....	<u>3-6</u>
Affirmation in Opposition, Affidavits, and Exhibits Annexed.....	<u>9,10</u>
Reply Affirmation.....	<u> </u>

Upon the foregoing cited papers, the Decision/Order on this application is as follows:

Defendants move to consolidate this action with another action commenced following the same motor vehicle accident, Susan Cutrone v Rashwikant Patel and Naitik Patel, Supreme Court, Suffolk County Ind. 625118/2019. Defendants also seek to transfer this action to Suffolk County in order to effectuate the consolidation.

In this action, plaintiff Poncet was the driver of a car which was allegedly rear-ended by defendants' car. In the Suffolk County action, the plaintiff was a passenger in Poncet's car. At the time of the accident, the car was on the Verrazzano Bridge, going to Brooklyn. Poncet placed her action in Brooklyn, claiming Kings County is the "place of the occurrence." Plaintiff Cutrone placed her action in Suffolk County, her county of residence, and claims the accident took place in Richmond County, not Kings County,

as the car was still on the Richmond County side of the bridge.

Plaintiff in this action opposes consolidation, and requests a joint trial order, and argues that since this action was commenced first, the Suffolk County action should be transferred to Kings County. Plaintiff in action #2, Cutrone, does not oppose the motion, which seeks to transfer this action to Suffolk County.

None of the parties served a demand to change venue, and the time to do so has expired. Thus, the determination of this motion and the placing of venue is within the court's discretion. Defendants herein reside in North Carolina, so their place of residence has no bearing on the issue of venue. Plaintiff Cutrone lives in Suffolk County, and plaintiff Poncet has failed to state her place of residence, only stating that it is not in Suffolk County. It is unlikely to be in Kings County, as she would have placed venue in Kings County based on her residence instead of basing it on the place of the accident, which Cutrone claims was in Richmond County. The court has no way to know where on the bridge the accident took place. This action was commenced first, however, and the RJI was purchased for this motion. In the Suffolk County action, an RJI has not been filed as yet. Thus, both actions are new, having been commenced shortly before the courts shut down in March 2020.

Where common questions of law or fact exist, a motion to consolidate or for a joint trial pursuant to CPLR 602 (a) should be granted absent a showing of prejudice to a substantial right of the party opposing the motion (*see Longo v Fogg*, 150 AD3d 724, 725 [2d Dept 2017], citing *Brown v Cope Bestway Express, Inc.*, 99 AD3d 746, 952 NYS2d 220 [2012]; *Alizio v Perpignano*, 78 AD3d 1087, 1088, 912 NYS2d 132 [2010]; *Mas-Edwards v Ultimate Servs., Inc.*, 45 AD3d 540, 845 NYS2d 414 [2007]).

Here, plaintiff does not allege that she would be prejudiced if the actions were joined for trial, but argues that since her action was commenced first, albeit by a few weeks, venue should be in Kings County. She does not claim she would suffer any prejudice if it were transferred, however.

When consolidation or joint trials are ordered under CPLR 602 (a), venue should generally be placed in the county where the first action was commenced (see *Nigro v Pickett*, 39 AD3d 720, 722, 833 NYS2d 655 [2007]). Special circumstances, however, may warrant the court, in its discretion, to place venue elsewhere (see *Brown v Cope Bestway Express, Inc.*, 99 AD3d 746, 748 [2d Dept 2012], citing *Gomez v Jersey Coast Egg Producers*, 186 AD2d 629, 630, 588 NYS2d 589 [1992]). It is undisputed that these two actions arose out of the same incident and involve common questions of law and fact. The interests of justice and judicial economy warrant relief under CPLR 602 (a).

Because the two actions involve different plaintiffs, a joint trial, rather than consolidation, is the appropriate method of achieving the goal of avoiding the unnecessary duplication of proceedings (see *Mas-Edwards v Ultimate Servs., Inc.*, 45 AD3d at 541; *Perini Corp. v WDF, Inc.*, 33 AD3d at 606-607; *T T Enters. v Gralnick*, 127 AD2d 651, 652, 511 NYS2d 878 [1987]). A joint trial of Action No. 1 and Action No. 2 will not prejudice any of Poncet's substantial rights (see *Whiteman v Parsons Transp. Group of N.Y., Inc.*, 72 AD3d 677, 678, 900 NYS2d 87 [2010]).

Turning to the issue of venue, generally, where actions commenced in different counties have been joined for purposes of trial pursuant to CPLR 602, the venue should be placed in the county where the first action was commenced, unless special circumstances are present (see, *Deutsch v Wegh*, 269 AD2d 487, 487 [2d Dept 2000]).


Special circumstances include the residences of the parties, the residence of the witnesses, including the police officer who responded, the doctors who treated the plaintiffs, and eyewitnesses to the accident (see *T T Enters. v Gralnick*, 127 AD2d 651 [2d Dept 1987]). Movants herein cite no special circumstances to support their request that this action, commenced first, be transferred to Suffolk County. Further, plaintiff Cutrone's attorney, in his "Affirmation of No Opposition" fails to set forth any reason or special circumstances to support the transfer of plaintiff Poncet's case to Suffolk County, nor does he state any reason that his client's action should not be transferred to Kings County, only arguing (incorrectly) that Cutrone's action was commenced first.

Accordingly, it is **ORDERED** that defendants' motion is granted to the extent that the two actions shall be joined for joint trial and discovery, in Kings County, pursuant to a Joint Trial Order issued simultaneously herewith.

This constitutes the decision and order of the court.

Dated: September 8, 2020

ENTER:



Hon. Debra Silber, J.S.C.

HON. DEBRA SILBER
JSC