

<b>Miller v Sauberman</b>
2020 NY Slip Op 33008(U)
September 9, 2020
Supreme Court, New York County
Docket Number: 805270/2016
Judge: Eileen A. Rakower
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**SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY**

**PRESENT: Hon. EILEEN A. RAKOWER**  
*Justice*

**PART 6**

**SPENCER MILLER,**  
  
**Plaintiff,**

**Index No: 805270/2016**  
**MOTION DATE**  
**MOTION SEQ. NO. 3**  
**MOTION CAL. NO.**

**-against-**

**BETH SAUBERMAN, NP, JOHN DELLOSO, M.D., WEST SIDE MEDICAL GROUP, P.C., EDWARD MENDELSON, M.D., EDWARD MENDELSON, M.D., PLLC, VILLAGECARE REHABILITATION & NURSING CENTER and VILLAGE CARE OF NEW YORK, INC.,**

**Defendant(s).**

The following papers, numbered 1 to \_\_\_\_ were read on this motion for/to

PAPERS

NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answer — Affidavits — Exhibits

Replying Affidavits

**Cross-Motion:    Yes    X No**

Counsel on behalf of Plaintiff Arthur Miller (“Mr. Miller”) moves pursuant to CPLR § 602(a) for an Order consolidating the above captioned action “with a subsequently filed action against the same defendants acknowledging AMY STEINGBERG as the Executrix of the Estate of plaintiff, SPENCER MILLER, now deceased, and adding a wrongful death action.”

Defendants John Delloso, M.D., s/h/a John Delloso, M.D., West Side Medical Group, P.C., Edward Mendelsohn, M.D., and Edward Mendelsohn, M.D., PLLC (collectively, “Defendants”) submit partial opposition to the motion to consolidate. Defendants contend, “While we do not oppose the consolidation, we request the matters be consolidated under the Index Number of the companion action, that is, New York County Index Number 805052/2020.”

The defendants in the instant action (“Action No. 1”) were served with a Summons, Verified Complaint and Certificate of Merit on or about July 5, 2016. Discovery proceeded in the action. Mr. Miller died on May 19, 2019, and the case was stayed. On October 31, 2019, the Surrogate’s Court, New York County, issued Letters Testamentary to Amy Steinberg.

On February 13, 2020, Plaintiff Amy Steinberg, as Executrix of the Estate of Spencer Miller, filed a second action under Index No.: 805052/2020 (“Action No. 2”) against the same defendants based on the same allegations of negligence. Action No. 2 added a cause of action for wrongful death. Both Actions No. 1 and No. 2 involve allegations of negligence and medical malpractice concerning the care and treatment rendered to Mr. Miller by the defendants in 2014. The Summons, Verified Complaint, and Certificate of Merit in Action No. 2 were served on the defendants.

CPLR § 602(a) gives the trial court discretion to consolidate actions involving common questions of law or fact. “[C]onsolidation 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.” (*Amtorg Trading Corp. v Broadway & 56th St. Assoc.*, 191 AD2d 212, 213, [1993])(citations omitted).

As Actions No. 1 and No. 2 are medical malpractice actions that arise out of the facts, consolidation is granted. Contrary to Defendants’ limited opposition, consolidation is properly made under the earliest filed index number. (*Regina v Khadem, M.D.*, 2018 WL 6594398, \*1, Docket No. 805282/2016 [N.Y. Sup Ct, New York County 2018][citations omitted]).

Wherefore, it is hereby

ORDERED that the motion is granted. Having supplied the necessary documents (letters testamentary), Action No. 1 is restored and the caption shall be amended to reflect the substitution of Amy Steinberg, as Executrix of the Estate of Spencer Miller, Deceased, in the place and stead of Spencer Miller. The caption in Action No 1 shall be amended to read:

X-----X  
SUPREME COURT OF THE STATE OF NEW YORK  
— NEW YORK COUNTY

AMY STEINBERG, AS EXECUTRIX OF THE ESTATE  
OF SPENCER MILLER, DECEASED,

Plaintiff,

-against-

BETH SAUBERMAN, NP, JOHN DELLOSO,  
M.D., WEST SIDE MEDICAL GROUP, P.C.,  
EDWARD MENDELSON, M.D., EDWARD  
MENDELSON, M.D., PLLC, VILLAGECARE  
REHABILITATION & NURSING CENTER and  
VILLAGE CARE OF NEW YORK, INC.,

Defendant(s),

X-----X

; and it is further

ORDERED that Plaintiff’s counsel shall serve a notice of this Order on the Clerk’s Office who is directed to amend the caption accordingly; and it is further

ORDERED that the above-captioned action (Action No. 1) is consolidated for all purposes with Action No. 2 (Index No. 805052/2020), under the Index Number for Action No. 1 (Index No. 805270/2016), and the consolidated action shall bear the following caption:

X-----X  
SUPREME COURT OF THE STATE OF NEW YORK  
— NEW YORK COUNTY

AMY STEINBERG, AS EXECUTRIX OF THE ESTATE  
OF SPENCER MILLER, DECEASED,

Index No: 805270/2016

Plaintiff,

-against-

BETH SAUBERMAN, NP, JOHN DELLOSO,  
M.D., WEST SIDE MEDICAL GROUP, P.C.,  
EDWARD MENDELSON, M.D., EDWARD  
MENDELSON, M.D., PLLC, VILLAGECARE  
REHABILITATION & NURSING CENTER and  
VILLAGE CARE OF NEW YORK, INC.,

Defendant(s).

X-----X

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 movant is directed to serve a copy of this order with notice of entry on the County Clerk (Room 141 B), who shall consolidate the papers in the actions is hereby consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that movant is directed to serve copy of this order with notice of entry on the Clerk of the Trial Support Office (Room 158), who is hereby directed to mark the court's records to reflect the consolidation; and it is further

ORDERED that the parties are directed to appear for a status conference remotely on October 6, 2020 at 11:00 AM.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

ENTER:   
J.S.C.

**HON. EILEEN A. RAKOWER**

**Dated: SEPTEMBER 9, 2020**

**Check one: FINAL DISPOSITION  NON-FINAL DISPOSITION**