

**Johnson v 200 Varick St. De LLC**

2020 NY Slip Op 34187(U)

December 17, 2020

Supreme Court, New York County

Docket Number: 159399/2018

Judge: W. Franc Perry

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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. W. FRANC PERRY**

**PART IAS MOTION 23EFM**

*Justice*

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THEODORE EDWARD JOHNSON,  
Plaintiff,

INDEX NO. 159399/2018

MOTION DATE November 10, 2020

- v -

MOTION SEQ. NO. 002

200 VARICK STREET DE LLC, P.S. MARCATO  
ELEVATOR CO., INC.,

**DECISION + ORDER ON  
MOTION**

Defendant.

-----X

200 VARICK STREET DE LLC  
Plaintiff,

Third-Party  
Index No. 595455/2019.

-against-

P.S. MARCATO ELEVATOR CO., INC.

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60

were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL

Upon the foregoing documents, Defendants' 200 Varick Street De LLC and GFP Real Estate in Actions No. 1,3,4, and Defendant/Third-Party Plaintiff 200 Varick Street De LLC, in Action No. 2, motion sequence number 002, to consolidate for discovery and joint trial on liability in New York County Supreme Court, four related actions arising out of an incident that occurred on March 12, 2018, when all four plaintiffs were passengers in elevator 2 located at 200 Varick Street, submitted to the court without opposition<sup>1</sup>, is granted.

<sup>1</sup> Non-parties Newmark & Company Real Estate, Inc., Newmark Group, Inc., and BCG Partners, Inc. (collectively "the Newmark entities"), withdrew its opposition to the motion to consolidate on June 15, 2020. (NYSCEF Doc. No. 60).

## BACKGROUND

Defendants 200 Varick Street De LLC and GFP Real Estate in Actions No. 1,3,4, and Defendant/Third-Party Plaintiff 200 Varick Street De LLC, in Action No. 2, seek an order pursuant to CPLR 602(a) consolidating this action filed under Index No. 159399/2018, for discovery and joint trial on liability only, in New York County Supreme Court, with the actions filed under Index Nos. 714298/2019 (Queens County), 152820/2019, and 157465/2019 upon the grounds that each of the above matters arise from the same occurrence and involve common questions of law and fact.

Moving defendants contend that the pleadings in all four actions indicate that these are lawsuits for personal injuries allegedly sustained on March 12, 2018 arising from an incident on elevator 2 at 200 Varick Street, New York, New York; it is alleged that all of the plaintiffs were passengers in elevator 2 at the aforementioned premises and sustained injuries as a result of the malfunctioning of the elevator. (NYSCEF Doc. Nos. 42 – 46). Review of the pleadings demonstrates that all four actions share common issues of law and fact as to liability, as each action arises out of the same elevator incident, such that joint discovery will promote judicial economy and avoid inconsistent verdicts as to liability. Moreover, moving defendants maintain that counsel for plaintiffs JASON WATSON and DAWN BRAMBLE has consented to the requested consolidation in New York County and the transfer of the file from the Queens County Clerk's Office to the New York County's Office, which was confirmed to the court during the remote conference held on November 10, 2020.

While consolidation of these actions for discovery and joint trial on liability will require the same witnesses, presentation of the same evidence, and evaluation by the jury of the same set of circumstances with respect to liability, the same is not true with respect to damages, as each

plaintiff alleges separate injuries, underwent separate and distinct medical care and treatment, and undoubtedly have distinct medical histories. As such, "individual issues predominate, concerning particular circumstances applicable to each plaintiff" (*Bender v Underwood*, 93 AD2d 747, 748, 461 NYS2d 301 [1<sup>st</sup> Dept 1983]; see also *Addison v New York Presbyt. Hosp./Columbia Univ. Med. Ctr.*, 52 AD3d 269, 270, 860 NYS2d 32 [1st Dept 2008]; *Gittino v LCA Vision*, 301 AD2d 847, 753 NYS2d 579 [3<sup>rd</sup> Dept 2003]; *DeAngelis v New York Univ. Med. Ctr.*, 292 AD2d 237, 237-238, 738 NYS2d 671 [1<sup>st</sup> Dept 2002]), including their respective illnesses, histories, treatments, and the extent of their injuries and thus, consolidation for discovery and joint trial on liability only, in New York County Supreme Court, with each action maintaining its own index number, will promote judicial economy and avoid any potential prejudice to defendants that may arise by trying plaintiffs' damages claims together. (*Marullò v City of New York*, 172 A.D.3d 540, 541, 101 NYS3d 47 [1<sup>st</sup> Dept 2019]). Accordingly, in the exercise of this court's discretion, it is hereby,

ORDERED that motion sequence 002 is granted and the action JASON WATSON and DAWN BRAMBLE vs. 200 VARICK STREET LLC, 200 VARICK STREET ASSOCIATES DE LLC, 200 VARICK STREET ASSOCIATES; LLC, GFP REAL ESTATE LLC and P.S. MARCATO ELEVATOR CO., INC, Index No. 714298/2019, pending in the Supreme Court, Queens County, shall be consolidated in this Court with THEODORE EDWARD JOHNSON vs. 200 VARICK STREET ASSOCIATES DE LLC, and P.S. MARCATO ELEVATOR CO., INC, Index No. 159399/2018, New York County, with the actions filed under Index Nos. 152820/2019, and 157465/2019; and it is further

ORDERED that each action shall maintain its own index number and the consolidated action for discovery and joint trial on liability in New York County Supreme Court, shall take place under New York County Index No. 159399/2018, and shall bear the following caption:

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

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THEODORE EDWARD JOHNSON,

Plaintiff(s),

Index No.: 159399/2018

-against-

(Action 1)

200 VARICK STREET DE LLC and P.S. MARCATO  
ELEVATOR CO., INC.

Defendant(s).

-----X

200 VARICK STREET DE LLC,

Third-Party Plaintiff,

TP Index No.: 59399/2018

-against

P.S. MARCATO ELEVATOR CO., INC.

Third-Party Defendant.

-----X

-----X

JUSTIN MOSS,

Plaintiff(s),

Index No.: 152820/2019

-against-

(Action 2)

200 VARICK STREET DE LLC, GFP REAL ESTATE,

LLC, NEWMARK & COMPANY REAL ESTATE, INC.,  
NEWMARK GROUP, INC., BGC PARTNERS, INC. and  
P.S. MARCATO ELEVATOR CO., INC.,  
Defendant(s).

-----X

-----X

MICHAEL GREEN,

Plaintiff(s),

Index No. 157465/2019

-against-

(Action 3)

PS MARCATO ELEVATOR CO. INC. and GFP REAL  
ESTATE, LLC, and 200 VARICK STREET  
ASSOCIATES LLC (a/k/a 200 VARICK ASSOCIATES),

Defendant(s).

-----X

-----X

JASON WATSON and DAWN BRAMBLE,

Plaintiff(s),

Index No. 714298/2019

-against-

(Action 4)

200 VARICK STREET LLC,  
200 VARICK STREET ASSOCIATES DE LLC,  
200 VARICK STREET ASSOCIATES, LLC,  
GFP REAL ESTATE LLC and  
P.S. MARCATO ELEVATOR CO., INC.,

Defendant(s).

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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, Queens County, and shall pay the appropriate fee, if any, for such transfer 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, 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, shall transfer the documents on file under Index No. 714298/2019 to the Clerk of this Court for the purpose of consolidation in accordance with this Decision and Order; 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 transferred so as to ensure an efficient transfer and to minimize insofar as practical the reproduction of such 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 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 for discovery and joint trial on liability only, in New York County Supreme Court, with each action maintaining its own index number as reflected in the above amended caption; and it is further

ORDERED that such service upon the Clerk of the Court 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 this court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents transferred from the Supreme Court, Queens County in the consolidated case file under the New York County 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; 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 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 as noted in this Decision and Order; and it is further

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

ORDERED that counsel for the parties are directed to confer with one another by telephonic or electronic means, and thereafter send a joint e-mail to the clerk of Part 23 advising whether a status conference is necessary to schedule additional discovery.

12/17/2020

DATE

W. FRANC PERRY, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT