

Balkaran v Policarpio

2020 NY Slip Op 35483(U)

October 15, 2020

Supreme Court, Queens County

Docket Number: Index No. 708978/2019

Judge: Maurice E. Muir

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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT – QUEENS COUNTY

FILED

**10/16/2020
12:21 PM**

Present: HONORABLE MAURICE E. MUIR
Justice

**COUNTY CLERK
QUEENS COUNTY**

RYAN BALKARAN,

IAS Part - 42

Plaintiff,

Index No.: 708978/2019

-against-

Motion Date: 10/15/20

JOSEPH T. POLICARPIO and DERRICK R. TENN,

Motion Cal. No. 1

Defendants.

Motion Seq. No. 1

The following electronically filed documents read on this motion by Joseph T. Policarpio (“Mr. Policarpio” or “defendant”) for an order: a) directing transfer of the related action from Supreme Court, New York County to Supreme Court, Queens County; and b) consolidating the within action (“Action No. 1”) with Supreme Court, New York County, action entitled *Derrick R. Tenn v. Joseph T. Policarpio*, Index No. 155579/2019 (“Action No. 2”), pursuant to CPLR § 602.

Notice of Motion - Affirmation- Exhibits-Service..... Papers
Numbered
EF 16 - 21

Upon the foregoing papers, it is ordered that this motion is determined as follows:

This is an action to recover damages for personal injuries, which allegedly occurred in a motor vehicle collision at or near Central Park West and West 70th Street, in the County of New York, city and state of New York. The plaintiff, Ryan Balkaran (“Mr. Balkaran” or “plaintiff”), alleges that on January 13, 2018, while he was a passenger in a vehicle driven by Derrick R. Tenn (“Mr. Tenn”), he was in motor vehicle collision with Mr. Policarpio’s motor vehicle. As a result, on May 16, 2019, the plaintiff commenced the instant action against Mr. Tenn and Mr. Policarpio (“co-defendants”). (At the time that this action was commenced, the plaintiff was a resident of Queens County, city and state of New York.) On August 22, 2019, issue was joined

wherein, Mr. Policarpio interposed an answer; and on August 30, 2019, Mr. Tenn interposed an answer. Moreover, on June 4, 2019, Mr. Tenn commenced a separate action (“Action #2) in the Supreme Court, New York County, under Index No. 155579/2019, against Mr. Policarpio. (At the time Mr. Tenn commenced Action #2, he was also a resident of Queens County, city and state of New York.) In particular, Mr. Tenn alleges that on January 12, 2018, while operating a passenger vehicle, Mr. Policarpio crossed over the double yellow lines to make an illegal U-Turn, which caused the subject accident. Now, Mr. Policarpio moves for an order directing transfer of Action #2 from Supreme Court, New York County, to Supreme Court, Queens County and consolidating the within action (“Action No. 1”) with Action No. 2, pursuant to CPLR § 602.

“In order to prevail on a motion pursuant to CPLR § 510(1) to change venue, a defendant must show that the plaintiff’s choice of venue is improper, and also that the defendant’s choice of venue is proper” (*Marrero v. Mamkin*, 170 AD3d 1159 [2d Dept 2019]; *Deas v. Ahmed*, 120 AD3d 750 [2 Dept 2014]; see CPLR § 511[b]; *Pomerantsev v. Kodinsky*, 156 AD3d 655 [2d Dept 2017]). “Only if a defendant meets this burden is the plaintiff required to establish, in opposition, that the venue selected was proper” (*Young Sun Chung v. Kwah*, 122 AD3d 729 [2d Dept 2014]). As amended in 2017, CPLR § 503 provides, in pertinent part, that “[e]xcept where otherwise prescribed by law, the place of trial shall be in the county in which one of the parties resided when it was commenced; the county in which a substantial part of the events or omissions giving rise to the claim occurred; or, if none of the parties then resided in the state, in any county designated by the plaintiff” CPLR § 503[a], as amended by L 2017, ch 366.” Although the subject accident occurred in New York County, both Mr. Balkaran and Mr. Tenn reside in Queens County. Moreover, the latter failed to oppose the instant motion.

Furthermore, pursuant to CPLR § 602, consolidation or a joint trial is appropriate to avoid unnecessary duplication of trials, save unnecessary costs and expenses, and prevent an injustice, which would result from divergent decisions based on the same facts. (see *Robinson v. 47 Thames Realty, LLC*, 158 AD3d 780, 781 [2d Dept 2018]; *Wang v. Wang*, 96 AD3d 1005 [2d Dept 2012]; *Barkagan v. S&L Star Realty, LLC*, 185 AD3d 643 [2d Dept 2020]). Additionally, a motion for consolidation or a joint trial rests within the sound discretion of the trial court. (*Rhoe v. Reid*, 166 AD3d 919 [2d Dept 2018]; *Matter of Long Is. Indus. Group v. Board of Assessors*, 72 AD3d 1090, 1091 [2d Dept 2010]; *Mattia v. Food Emporium, Inc.*, 259 AD2d 527 [2d Dept 1999]). Absent prejudice to a substantial right of the opposing party, consolidation or a

joint trial is proper, where common questions of law and fact exist. (*Longo v. Fogg*, 150 AD3d 724 [2d Dept 2017]; *D'Abreau v. American Bankers Ins. Co. of Fla.*, 261 AD2d 501 [2d Dept 1999]; *Cromwell v. CRP 482 Riverdale Ave., LLC*, 163 AD3d 626 [2d Dept 2018]).

Moreover, “[w]here actions commenced in different counties have been consolidated [or joined for trial] pursuant to CPLR 602, the venue should be placed in the county where the first action was commenced, unless special circumstances are present, which decision is also addressed to the sound discretion of the court” (*Tieshamaker v. EMB Contracting Corp.*, 143 AD3d 886 [2d Dept 2016] citing *Mattia v. Food Emporium*, 259 AD2d 527 [2d Dept 1999]; *Castro v. Durban*, 129 AD3d 652 [2d Dept 2015]; *Fitzsimons v. Brennan*, 128 AD3d 636 [2d Dept 2015]). Here, Mr. Tenn failed to establish the existence of “special circumstances” that would warrant a departure from the general rule.

Lastly, the court finds that the evidence in Action No. 2 and this action involves the same essential facts, and transactions between the parties, and will require the determination of common issues. Furthermore, it has not been demonstrated that any prejudice might result from a joint trial. (*Hae Sheng Wang v. Pao-Mei Wang*, 96 AD3d 1005, 1009 [2d Dept 2012]; *Moses v. B & E Lorge Family Trust*, 147 AD3d 427 [2d Dept 2017]). In the interest of justice and judicial economy, and to avoid inconsistent verdicts, both actions should be consolidated for joint trial, especially in light of the fact that the plaintiff(s) has not demonstrated that consolidation would prejudice any substantial right.

Accordingly, it is hereby

ORDERED, that defendant’s motion, pursuant to CPLR § 602, is granted, without opposition, and Action No. 1 shall be tried jointly in this court with Action No. 2; and it is further,

ORDERED, that the captions in the actions shall retain their separate identities and read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

RYAN BALKARAN,

Plaintiff,

Index No.: 708978/2019
(Action No. 1)

-against-

JOSEPH T. POLICARPIO and DERRICK R. TENN,

Defendants.

DERRICK R. TENN,

Plaintiff,

Index No.: 155579/2019
(Action No. 2)

-against-

JOSEPH T. POLICARPIO

Defendant.

;and it is further,

ORDERED that upon payment of the appropriate calendar fees, the filing of notes of issue and certificates of readiness for trial in each of the above actions, and upon service of a copy of this order with notice of entry on the clerk of this court, said clerk shall place the aforesaid actions upon the trial calendar for joint trial; and it is further,

ORDERED that defendant's motion to change of venue from Supreme Court, New York County, to Supreme Court, Queens County, is granted; and it is further,

ORDERED that upon service upon all parties, and the respective county clerks of a certified copy of this order with notice of entry, and upon the payment of any applicable fees, the Clerk of the Supreme Court, New York County, is directed to deliver to the Clerk of the Supreme Court, Queens County, all papers filed in this action and in the action entitled *Derrick R. Tenn v. Joseph T. Policarpio*, commenced in the Supreme Court, New York County, under Index No. 155579/2019, and certified copies of all minutes and entries (*see* CPLR § 511[d]); and it is further,

ORDERED, that a copy of this order with notice of entry shall be served by the movant upon all parties and the clerk of this court on or before December 15, 2020.

The foregoing constitutes the decision and order of this court.

Dated: October 15, 2020
Long Island City, New York

FILED

**10/16/2020
12:21 PM**

**COUNTY CLERK
QUEENS COUNTY**



MAURICE E. MUIR, J.S.C.