

State Farm Mut. Auto. Ins. Co. v Jean-Francois

2020 NY Slip Op 35487(U)

May 12, 2020

Supreme Court, Queens County

Docket Number: Index No. 710869/19

Judge: Leonard Livote

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

5/14/2020

9:58 AM

SHORT FORM ORDER

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: Honorable Leonard Livote
Acting Supreme Court Justice

IAS TERM, PART 33

**COUNTY CLERK
QUEENS COUNTY**

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State Farm Mutual Automobile
Insurance Company as Subrogee
of Cesar Saldana,
Plaintiff,

Index No: 710869/19

-- against --

Motion Date: 12/17/19

JR Jean-Francois, Carl Antoine
and Sherly Saintcloud,
Defendants.

Seq. No: 1

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The following papers numbered 1 to 4 read on this motion by
defendants for an Order consolidating the below actions for the
purpose of a joint trial.

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State Farm Mutual Automobile
Insurance Company as Subrogee
of Cesar Saldana,
Plaintiff,

Index No: 710869/19

-- against --

Action No. 1

JR Jean-Francois, Carl Antoine
and Sherly Saintcloud,
Defendants.

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State Farm Mutual Automobile
Insurance Company as Subrogee
of Cesar Saldana,
Plaintiff,

Index No: 019000/19

-- against --

Action No. 2

JR Jean-Francois, and Carl Antoine
Defendants.

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PAPERS
NUMBERED

Notice of Motion, Affirmation, Affidavits
and Exhibits..... 1 - 4

Upon the foregoing papers, it is ordered that the motion by defendants JR Jean-Francois, Carl Antoine, and Sherly Saintcloud to consolidate this action with *State Farm Mutual Automobile Insurance Company as Subrogee of Cesar Saldana v JR Jean-Francois and Carl Antoine*, Index No. 019000/19 is granted without opposition.

An action was commenced on May 25, 2019 in the Civil Court of the City of New York, County of Queens (Index No. 019000/2019) on behalf of plaintiff *State Farm Mutual Automobile Insurance Company as Subrogee of Cesar Saldana* against defendants *JR Jean-Francois and Carl Antoine*. On June 25, 2019 another action was commenced by plaintiff *State Farm Mutual Automobile Insurance Company as Subrogee of Cesar Saldana* (Index No. 713029/2019) in the Supreme Court of the State of New York, Queens County, against defendants *JR Jean-Francois, Carl Antoine and Sherly Saintcloud*. Both of these actions arise out of the same motor vehicle accident that occurred at May 4, 2018 on Jerome Avenue and East 199th Street, County of Bronx, State of New York. In both actions, plaintiffs seek recovery for damages sustained by its subrogor as a result defendants' alleged negligence in ownership, operation, and control of its motor vehicle. In both actions, as a result of the alleged negligence plaintiff, an insurance company, had to issue a payment to or on behalf of the subroger. In the Civil Court action, Plaintiff claims damages of \$23,825.59 and in the Supreme Court, Plaintiff claims damages of \$50,279.34.

Under CPLR § 602(a), "actions involving a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all the matters in issue, may order the actions consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay," (CPLR § 602[a]). Furthermore under CPLR § 602(b), "where an action is pending in the county court, it may, upon motion, remove to itself an action pending in a city, municipal, district or justice court in the county and consolidate it or have it tried together with that in the county court." (CPLR § 602[b]).

Courts have held that "[w]here 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 by the party opposing the motion," (*Perini Corp. v. WDF, Inc.*, 33 A.D.3d 605, at 606 [2d Dept. 2006]). The purpose of consolidating is to "avoid unnecessary duplication of proceedings, save unnecessary cost and expense and prevent any injustice that may result from divergent decisions based on same facts," (*Mas-Edwards v. Ultimate Servs., Inc.*, 45 A.D.3d 540, at 540 [2d Dept. 2007]).

Here, both cases present a common issue of law and fact that arise from the same accident that occurred on May 4, 2018, (*Cf. Kanhai v Molloy Bros Trucking, Inc.*, 2018 WL 2065326, at *1 [N.Y. Sup. Ct.]) (granting consolidation for a joint trial since there were common questions of law and fact that arose from a motor vehicle accident that occurred on September 8, 2019)). Therefore, consolidation will "avoid unnecessary duplication of proceedings, save unnecessary cost and expense and prevent any injustice that may result from divergent decisions based on same facts" (*Id.*). No opposition to the Motion to Consolidate was submitted by any other parties to show prejudice to a substantial right.

Accordingly, upon the foregoing papers the motion is granted without opposition and it is,

Ordered, that the Clerk of the Civil Court, Queens County, upon being served with a certified copy of this Order with Notice of Entry, affidavit of service, and payment of any required fees, is directed to transfer all papers filed in its office in Action No. 2 to the Clerk of Supreme Court, Queens County; and it is further

Ordered, that the motion is granted to the extent that actions with Index No. 710869-2019 and Index No. 019000-2019 are consolidated for all purposes; and it is further,

Ordered, that the Clerk of Queens County is directed to consolidate the file of Index No. 019000-2019 into Index No. 710869-2019; and it is further,

Ordered, that the pleadings in each action shall stand as the pleadings in the consolidated action; and it is further,

Ordered, that a copy of this Order with notice of entry be served upon all parties in the action; and it is further,

Ordered, that the caption shall read as follows:

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

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State Farm Mutual Automobile
Insurance Company as Subrogee
of Cesar Saldana

Index No: 710869/19

Plaintiff,

-- against --

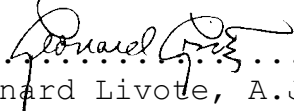
JR Jean-Francois, Carl Antoine
and Sherly Saintcloud

Defendants.

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This constitutes the Order of the Court.

Dated: May 12, 2020


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Leonard Livote, A.J.S.C.

FILED

5/14/2020

9:58 AM

**COUNTY CLERK
QUEENS COUNTY**