

Jimenez-Canario v Pipul

2020 NY Slip Op 35609(U)

February 10, 2020

Supreme Court, Bronx County

Docket Number: Index No. 30691/2019E

Judge: John R. Higgitt

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

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JOSE JIMENEZ-CANARIO,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 30691/2019E

MD U. PIPUL, WALLACE CRUZ and JIYOUNG J.
NOH,

Defendants.
-----X

John R. Higgitt, J.

Upon defendant Noh’s October 9, 2019 notice of motion and the affirmation and exhibits submitted in support thereof; the October 25, 2019 affirmation in opposition of plaintiff in the action entitled *Noh v Cruz*, Index No. 719044/2018E (Supreme Court, Queens County), and the exhibits submitted therewith; plaintiff’s December 17, 2019 affirmation in opposition and the exhibits submitted therewith; and due deliberation; defendant Noh’s motion to join this action for discovery and trial in Queens County with the *Noh* action is granted.

These actions arise from a November 3, 2018 motor vehicle accident occurring on the lower level of the Queensboro Bridge in Queens County.

Plaintiff Jimenez-Canario alleges that he was the driver of a motor vehicle that was rear-ended by the vehicle driven by Noh, that there was also contact between the vehicles driven by defendants Pipul and Cruz and between the vehicles driven by defendants Cruz and Noh, and that all defendants were negligent in contributing to plaintiff’s injuries. Plaintiff is a resident of Bronx County and defendants Pipul, Cruz and Noh are residents of Queens County.

Plaintiff Noh alleges that the vehicle he was driving was involved in a collision with the vehicles driven by defendants Cruz and Pipul, resulting in injury. All parties in the *Noh* action are Queens County residents. By decision and order dated September 17, 2019 (Livote, J.) in the

Noh action, defendant Cruz was granted summary judgment on the ground that his stopped vehicle was struck in the rear by defendant Pipul's vehicle, propelling defendant Cruz's vehicle forward into Noh's vehicle. Judge Livote also granted Noh's motion for partial summary judgment on the issue of defendant Pipul's liability.

Plaintiffs oppose, asserting that joinder would be prejudicial because the actions are in differing procedural stages. While depositions in the *Noh* action were to be conducted in January 2020, discovery conferences in the Jimenez-Canario action have been adjourned because of defendant Cruz's motion for summary judgment (not deemed submitted until two weeks ago) and the parties' stipulation adjourning this motion.¹ Additionally, plaintiff Jimenez-Canario asserts that, given defendant Cruz's pending summary judgment motion, inconsistent liability decisions would be confusing and distracting to a jury, and that the potential for inconsistent verdicts in a joint trial is dramatically increased. Given the obviously interrelated liability issues, however, the court finds that both of these arguments militate *in favor of* joinder (*see Amcan Holdings, Inc. v Torys LLP*, 32 AD3d 337 [1st Dept 2006]).

"There is a preference to join cases for discovery and trial in the interests 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 joint trial will prejudice a substantial right" (*Lema v 1148 Corp.*, 176 AD3d 653, 654 [1st Dept 2019]). Despite plaintiffs' protestations, discovery in the two actions is not so disparately situated as to constitute prejudice of a substantial right,² and the court may make such orders as are appropriate to expedite discovery, if

¹ Plaintiff Noh opposes consolidation, but it is apparent that, despite movant's conflation of consolidation and joinder, joinder is the more appropriate remedy, and the court may enter any order as is appropriate under the circumstances (*see CPLR 602[a]*).

² Pursuant to the case scheduling order in the *Jimenez-Canario* action, depositions are to be completed by the end of March.

needed.

Given the clear predominance of common questions of fact and law in the two actions, any differences in the plaintiffs' injuries do not warrant the duplication of judicial efforts by conducting multiple proceedings and trials, and joinder is appropriate (*see Matter of N.Y.C. Asbestos Litig.*, 111 AD3d 574 [1st Dept 2013]). While the court is not unmindful of the potential for prejudice despite such commonality (*see Christensen v Weeks*, 15 AD3d 330 [2d Dept 2005]; *Schorr Bros. Dev. Corp. v Continental Ins. Co.*, 174 AD2d 722 [2d Dept 1991]), a single unified trial will serve the interests of judicial economy and consistency (*see Bentoria Holdings, Inc. v Travelers Indem. Co.*, 84 AD3d 1135 [2d Dept 2011]). The divergence of proof is not such as would distort the jury's focus in each individual claim (*cf. C.K.S. Ice Cream Co. v Frusen Gladje Franchise, Inc.*, 172 AD2d 206 [1st Dept 1991]). Appropriate trial structure and jury instructions will serve to minimize confusion. The court notes that the actions are not being consolidated; each will retain its original integrity with separate decision or verdicts, judgments and costs (*see Padilla v Greyhound Lines, Inc.*, 29 AD2d 495 [1st Dept 1968]).

The general rule is that venue upon joinder should be that of the first-commenced action (*see Ferolito v Vultaggio*, 115 AD3d 541 [1st Dept 2014]; *Amcan Holdings, Inc.*, *supra*), and the parties' arguments do not present special circumstances warranting disregard of the rule (and, in any event, no party cross-moved to retain venue in Bronx County). Fixing venue upon joinder invariably involves subordinating the venue designation in at least one of the actions, even where such designations were proper (*see Pittman v Maher*, 202 AD2d 172 [1st Dept 1994]; *Siegel v Greenberg*, 85 AD2d 516 [1st Dept 1981]).

Accordingly, it is

ORDERED, that the aspects of the motion of defendant Noh to join this action with the

action entitled *Noh v Cruz*, Index No. 719044/2018E (Supreme Court, Queens County) in Queens County for discovery and trial is granted; and it is further

ORDERED, that the motion is otherwise denied; and it is further

ORDERED, that upon being served with a copy of this order with written notice of its entry, the Clerk of Bronx County shall transfer to the Clerk of Queens County all of the papers in the action entitled *Jimenez-Canario v Pipul*, Index No. 30691/201E (Supreme Court, Bronx County).

This constitutes the decision and order of the court.

Dated: February 10, 2020



John R. Higgitt, J.S.C.