

Xu Dong Xia v Okoli

2020 NY Slip Op 35625(U)

September 22, 2020

Supreme Court, Queens County

Docket Number: Index No. 704064/18

Judge: Janice A. Taylor

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.

Short Form Order

FILED

NEW YORK SUPREME COURT - QUEENS COUNTY

9/25/2020

8:53 AM

Present: HONORABLE JANICE A. TAYLOR IAS Part 15
Justice

**COUNTY CLERK
QUEENS COUNTY**

-----x
XU DONG XIA,

Index No.:704064/18

Plaintiff(s),

Motion Date:8/4/20

- and -

Motion Cal. No.: 63

CHIKE OKOLI, COMPAS CAR SERVICE INC. and
FELIPE T. MARMOLNUNEZ,

Motion Seq. No: 3

Defendant(s).
-----x

The following papers numbered 1 - 4 read on this motion by defendants for an order of consolidation.

Papers
Numbered

Notice of Motion-Affirmation-Exhibits-Service..... 1 - 4

Upon the foregoing papers it is **ORDERED** that the motion is decided as follows:

This is an action for personal injuries allegedly sustained by the plaintiff on September 7, 2017 when the parties were involved in a motor vehicle accident on the eastbound Grand Central Parkway near its intersection with Roosevelt Avenue in the County of Queens, City and State of New York.

This action was commenced on December 5, 2018 by the filing of a summons and complaint ("Action #1"). On or about June 19, 2019, Felipe T. Marmol Nunez and Marleny Iglesias-Diaz commenced a related action against the defendants in the Supreme Court of the State of New York, Kings County ("Action #2"). That action is currently pending pursuant to index number 508826/19. On August 26, 2018, State Farm Mutual Automobile Insurance Company, as subrogee of Felipe T. Marmol Nunez, commenced a property damage action against the defendants ("Action #3"). Finally, on February 27, 2019, Geico General Insurance Company, as subrogee of Jinhua Xia and Xu Dong Xia, commenced a separate property damage action against the defendants ("Action #4"). Both Actions #3 and #4 were commenced in the Civil Court of the City of New York, Queens County.

Defendants now move for an order, pursuant to CPLR §602, for an order granting leave to consolidate the instant action, for purposes of joint trial, with Actions #2, #3 and #4 and to move

these actions to this court.

Those portions of the instant application which seeks consolidation of Actions #3 and #4 are denied. It is well-settled that even where common issues exist, it is prejudicial to have the issue of insurance coverage before the same jury that considers the underlying issues of liability (see, *Schorr Brothers Development v. Continental Insurance Co.*, 174 A.D. 2d 722 [2d Dept. 1991]; *Medick v. Millers Livestock Inc.*, et al. 248, A.D.2d 264, [3d Dept. 1998]). Thus, Actions 3 and 4 will remain separate actions pending in the Civil Court of the City of New York, Queens County.

That portion of the instant motion which seeks consolidation, for purposes of joint trial, of this action with Action #2 is granted. The defendants have amply demonstrated that there are common issues of fact and law that should be determined at the same time. In balancing the various interests, the court finds that judicial economy coupled with avoiding the risk of inconsistent verdicts outweighs any disadvantage and inconvenience to the parties (see *Sarrads v Dove Demolition*, 71 AD 2d 1001 [2d Dept 1979]; *Boyman v Bryant*, 133 AD2d 802 [2d Dept 1987]).

The cases shall remain separate and distinct for all other purposes. Separate index numbers, requests for judicial intervention, notes of issue, calendar numbers, judgments, discovery and bills of cost are required. The caption for the actions to be tried jointly is as follows: Upon consolidation, the caption shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----x
XU DONG XIA,

Plaintiff(s),

Index No.:704064/18

- and -

CHIKE OKOLI, COMPAS CAR SERVICE INC. and
FELIPE T. MARMOLNUNEZ,

Defendant(s).

-----x
FELIPE T. MARMOL NUNEZ and MARLENY
IGLESIAS-DIAZ,

Plaintiff(s),

Index No.:
To Be Assigned
Action #2

- and -

CHIKE OKOLI and COMPAS CAR SERVICE,

Defendant(s).

-----x
A copy of this order with notice of entry shall be served on all parties to the jointly tried actions and filed with the Clerk of the Supreme Court, Kings County, who upon receipt of any required fees shall transfer all papers filed in Action 2 (to the Clerk of the Supreme Court, Queens County. Upon such transfer, an index number will be assigned. A copy of this order with notice of entry shall also be affixed to the notes of issue at the time of filing.

Dated: September 22, 2020



JANICE A. TAYLOR, J.S.C.

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FILED

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**COUNTY CLERK
QUEENS COUNTY**