

Jones v Hudson Meridian Constr. Group LLC

2021 NY Slip Op 30858(U)

February 3, 2021

Supreme Court, New York County

Docket Number: 152534/2019

Judge: James E. d'Auguste

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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. JAMES EDWARD D'AUGUSTE PART IAS MOTION 55EFM

Justice

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STEVEN JONES,

Plaintiff,

- v -

HUDSON MERIDIAN CONSTRUCTION GROUP LLC,63RD
& 3RD NYC, LLC,63RD & 3RD DEVELOPMENT
LLC,RISING SUN CONSTRUCTION LLC,REAL ESTATE
INVERLAD DEVELOPMENT, LLC,REAL ESTATE
INVERLAD USA MANAGEMENT, LLC,THIRD PALM
LLC,JOHN DOES 1 THROUGH 10,

Defendant.

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INDEX NO. 152534/2019
MOTION SEQ. NO. 002

**DECISION + ORDER
ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 53, 54, 55, 56, 57, 58, 66, 67, 68, 69, 70, 72

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

Upon the foregoing documents, the motion is granted.

Plaintiff Steven Jones moves this Court for or an Order pursuant to CPLR 602 consolidating the instant action for purposes of discovery and all pre-trial purposes, with the following actions: (i) 63rd & 3rd NYC LLC v. RSC Group LLC (Index No.657421/2019) (“the 63rd Action”); (ii) Technology Insurance Company Inc. on its own and on behalf of Digby Management Co. LLC and 63 Company LLC v. Hudson Meridian Construction Group, LLC, et al (Index No. 152882/2020) (“the Technology Action”); and (iii) Ulyana Chuvashева, Neeru Shulze-Singh, and James McKee v. Hudson Meridian Construction Group et al. Company LLC (Index No. 150984/2020) (“the Chuvashева Action”). For the reasons herein the motion is granted in its entirety.

Defendants Hudson Meridian Construction Group and 63rd & 3rd NYC LLC (“opposing defendants”) oppose the consolidation of the 63rd Action but do not oppose the consolidation of the Jones, Chuvasheva, and Technology actions.¹

Background and legal standard

The instant action is a personal injury lawsuit filed by Steven Jones, a tenant of 200 E. 63rd Street Apartment 6D, for injuries sustained when a concrete masonry unit fell from a construction project at 1059 Third Avenue on January 9, 2019. The masonry unit allegedly fell through the roof of 200 E. 63rd Street, and into Apartment 6D causing damage to the property and injuring Mr. Jones who was in the apartment at the time of the incident.

The Chuvasheva Action (Index 150984/2020) is a personal injury lawsuit filed by plaintiffs Ulyana Chuvasheva, Neeru Schulze-Singh, and James McKee for personal injuries and damages resulting from the same incident as in the Jones Action.

The Technology Action (152882/2020) is a subrogation action brought by Technology Insurance Company, on its own behalf and as subrogee of Digby Management Company and 63Company LLC. Plaintiff in the Technology Action alleges that because it insured Digby Management Company and 63 Company LLC against this property damage and loss of rents, it became subrogated to their rights against the defendants and as such, has been damaged in the amount of \$477,140.45.

The 63rd Action is a breach of contract and declaratory judgment action. In part, plaintiff is seeking a declaratory judgment that RSC is obligated to defend, indemnify, and

¹ The Court notes that the Hudson Meridian Construction LLC and 63rd and 3rd NYC LLC also consent to the consolidation of the “Berstler Action”. However, consolidation of this action was not requested by movants. Moreover, the movants represent that they are not aware of such an action and that the opposition papers fail to provide either an index number or Court where the “Berstler Action” is pending. NYSCEF Doc. No. 67.

hold harmless 63rd & 3rd NYC LLC in connection with the Jones Action and to reimburse 63rd & 3rd NYC LLC for all costs incurred arising out of the January 9, 2019 incident.

Under CPLR 602(a) a trial court has discretion to consolidate actions involving common questions of law or fact. “[C]onsolidation is generally favored by the courts in the interest 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 consolidation will prejudice a substantial right.” *Amtorg Trading Corp. v Broadway & 56th St. Assoc.*, 191 A.D.2d 212,213 (1993). A party resisting consolidation has the burden of demonstrating prejudice to a substantial right.” *Sokolow, Dunaud, Mercadier & Carreras v Lacher*, 299 A.D.2d 64, 74, (2002).

Analysis

Each of these actions, including the 63rd Action, arise from common questions of law and fact. Each action stems from a common incident, the concrete block that fell from the construction project at 1059 Third Avenue through the roof of the building at 200 East 63rd Street. Each claim will involve extensive discovery relating to the construction project, the circumstances leading to and causing the accident, including the manufacture, construction, placement, maintenance and installation of the concrete masonry object that caused the damages alleged in each action and the actions or failures to act by each defendant that caused the alleged injuries and costs incurred as a result of the Incident. Moreover, the insurance, contract, indemnification and construction issues that will likely arise in the 63rd Action have considerable bearing on the other proceedings. Furthermore, the Court finds that there is no potential for prejudice of a substantial right of the parties in the 63rd Action. Rather, consolidation would merely avoid the duplication of document production and depositions of

parties and non-parties who are common to all actions and lead to a global mediation of the claims in all actions.

In opposition to the instant motion the opposing defendants argue that the tenant lawsuits (the Chuvasheva, Technology and Jones Actions) should not be consolidated with the 63rd Action for three reasons. First, the relief sought in the 63rd Action is for breach of contract and a declaratory judgment which involves complex insurance, contract, indemnification, and construction issues in contrast to the personal injury actions in the Chuvasheva, Technology and Jones Actions. NYSCEF Doc. No. 66 ¶ 14. Second, 63rd argues that the actions are at “markedly different stages of the procedural process.” *Id.* ¶ 20. Finally, the opposing defendants argue that there will be prejudice due to undue delay in these actions.

The Court disagrees with each of these contentions. First, as the reply papers highlight, consolidation of cases arising from a single incident but seeking different relief is in no way unique. *In Re East 51st Street Crane Collapse Litigation* (Index Number 769000/2008), for example, consolidated several litigations, with claims ranging from personal injuries, property damages, subrogation, wrongful death and requests for declaratory relief. Second, the parties are not at remarkably different stages of the procedural process as the additional defendants have already answered in the Chuvasheva Action, and the bills of particulars and discovery demands have already been made in the Jones Action.² Finally, as stated above, the Court finds that no prejudice of a substantial right would befall the parties in the 63rd Action. The fact that the 63rd Action may be mediated with the related actions is not a cause of prejudice nor will there be any prejudicial delay. In fact, the consolidated action will be sent to the same Commercial Division ADR Program as the 63rd Action.


² The Court notes that the movants have been seeking discovery since at least December of 2019. NYSCEF Doc. No. 67 ¶ 6.

The caselaw cited in the opposition papers is also inapposite. The cited cases either involve a motion for consolidation of trials—which is not the relief being sought in this motion—or the cited cases are inapplicable to the facts at bar. For example, the second department decision cited by the opposing parties appears to have involved a case in which at least one of the actions to be consolidated was already scheduled for a dispositive proceeding. Here, all cases are still in discovery and no decision has been filed in any of them. Fourteen parties have been named in the four litigations to be consolidated and only Hudson Meridian and 63rd NYC LLC³ have objected. Regardless, the Court is exercising its discretion to consolidate the actions.

ORDERED the instant action is consolidated with the following actions: (i) 63rd & 3rd NYC LLC v. RSC Group LLC (Index No.657421/2019) (“the 63rd Action”; (ii) Technology Insurance Company Inc. on its own and on behalf of Digby Management Co. LLC and 63 Company LLC v. Hudson Meridian Construction Group, LLC, et al (Index No. 152882/2020) (“the Technology Action”); and (iii) Ulyana Chuvasheva, Neeru Shulze-Singh, and James McKee v. Hudson Meridian Construction Group et al. Company LLC (Index No. 150984/2020) (“the Chuvasheva Action”) for purposes of discovery and all pre-trial purposes.

ORDERED that the consolidated action will be sent to the same Commercial Division ADR Program for mediation.

This constitutes the decision and order of the Court.

<u>2/3/2021</u> DATE	 JAMES EDWARD D'AUGUSTE, 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"/>	SUBMIT ORDER
	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER

³ Hudson Meridian and 63rd NYC LLC are represented by the same counsel.