

Castano v Korpenn LLC.
2021 NY Slip Op 31341(U)
April 21, 2021
Supreme Court, New York County
Docket Number: 154251/2020
Judge: David Benjamin Cohen
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DAVID BENJAMIN COHEN PART IAS MOTION 58EFM

Justice

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INDEX NO. 154251/2020

BLANCA CASTANO,

Plaintiff,

MOTION SEQ. NO. 002

- v -

KORPENN LLC., VORNADO REALTY TRUST, OTIS
ELEVATOR COMPANY, and SCHINDLER ELEVATOR
CORPORATION,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 28, 29, 30, 31, 32, 33, 34, 35, 36, 37

were read on this motion to/for CONSOLIDATION.

In this personal injury action, plaintiff Blanca Castano moves, pursuant to CPLR 602(a), to consolidate the captioned action with another action she commenced in this Court. Nouveau Elevator Industries, Inc., a defendant in the other case, opposes the motion. After consideration of the parties' contentions, as well as a review of the relevant statutes and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND

The captioned action arises from an incident on October 17, 2018 in which plaintiff was allegedly injured in an elevator at One Penn Plaza, also known as 250 West 34th Street, in Manhattan ("the premises"). Doc. 1. In her verified complaint filed June 12, 2020, plaintiff alleged that her injuries were caused by the negligence of defendants Korpenn LLC ("Korpenn") and Vornado Realty Trust ("Vornado"), which owned and/or managed the premises, as well as by the negligence of Otis Elevator Company ("Otis") and Schindler Elevator Corporation

(“Schindler”), which serviced, maintained, and/or repaired the elevator in which she was injured.

Id. Otis thereafter moved to dismiss the complaint and its motion was granted by order entered November 12, 2020. Doc. 20.

In her bills of particular against Korpenn, Vornado and Schindler, plaintiff alleged that she was injured during a freefall while inside elevator car # 15 at the premises on October 17, 2018 at 9:30 p.m. Docs. 21 and 22.

On September 28, 2020, plaintiff commenced a second action in this Court, styled *Blanca Castano v Nouveau Elevator Industries, LLC and Millar Elevator Service Company* under Index Number 157965/20 (“the 9/28/20 action”). Doc. 32. In the complaint in the 9/28/20 action, plaintiff alleged that she was injured when a dangerous condition on an interior stairwell at the premises caused her to fall on October 17, 2018 and that the incident occurred due to the negligence of Nouveau Elevator Industries, LLC (“Nouveau”) and Millar Elevator Service Company (“Millar”) in their ownership, operation, control, maintenance and management of the premises. Id.

Plaintiff now moves, pursuant to CPLR 602(a), to consolidate the captioned action with the 9/28/20 action. Docs. 28-34. In support of the motion, plaintiff argues that the actions must be consolidated because they both “arise from the same accident and circumstances.” Doc. 29 at par. 8.

Nouveau opposes the motion, asserting that the captioned action and the 9/28/20 action should not be consolidated since they do not arise from the same set of facts. Doc. 36 at 2.

LEGAL CONCLUSIONS

CPLR 602(a) provides that:

When 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.

The decision whether to "consolidate two or more actions rests within the sound discretion of the trial court" (*Kukielka v Santana*, 191 AD3d 532, 533 [1st Dept 2021] [citation omitted]).

In its discretion, this Court denies the instant motion (see *Betancourt v City of New York*, 172 AD3d 624, 624 [1st Dept 2019] citing *J. Henry Schroder Bank & Trust Co. v South Ferry Bldg. Co.*, 88 AD2d 570, 571 [1st Dept 1982]). As Nouveau argues, the captioned action involves the plaintiff's allegation that she was injured by a freefalling elevator at the premises, whereas the 9/28/20 action involves the plaintiff's alleged injury, on the same day, on an interior staircase at the premises. Thus, it is this Court's finding that the captioned action and the 9/28/20 action have insufficient common questions of fact, thereby warranting the denial of the motion (*J. Henry Schroder Bank & Trust Co. v South Ferry Bldg. Co.*, 88 AD2d at 571).

Although the actions share some common facts, such as the address and date of the alleged occurrences, "individual issues [such as how each alleged incident occurred] predominate, making consolidation inappropriate" (*172 Van Duzer Realty Corp. v 878 Educ., LLC*, 164 AD3d 1171, 1171 [1st Dept 2018] citing *Bender v Underwood*, 93 AD2d 747 [1st Dept 1983]).

Accordingly, it is hereby:

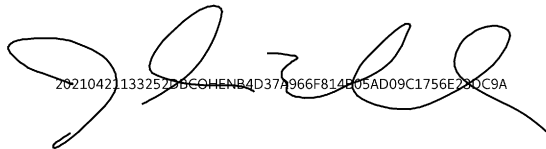
ORDERED that the motion to consolidate by plaintiff Blanca Castano is denied; and it is further

ORDERED that the parties in the captioned action are to appear for a preliminary conference on June 7, 2021 at 2:30 p.m. unless they first complete a bar coded preliminary conference form (to be provided by the Part 58 Clerk) and return the same by e-mail to the Part

58 Clerk at SFC-Part58-Clerk@nycourts.gov at least 2 business days before the scheduled conference.

4/21/2021

DATE



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DAVID BENJAMIN COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE