

Go v Harrynaraine

2021 NY Slip Op 33993(U)

August 18, 2021

Supreme Court, Queens County

Docket Number: Index No. 718563/2019

Judge: Maurice E. Muir

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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT – QUEENS COUNTY

Present: HONORABLE MAURICE E. MUIR
Justice

IAS Part - 42

MICHAEL GO,

**CORRECTED DECISION
& ORDER**

Plaintiff,

Index No.: 718563/2019

-against-

Motion Date: 4/22/21

ROHAN HARRYNARAINA AND LITTLE RICHIE
BUS SERVICE, INC.,

Motion Cal. No. 9

Defendants.

Motion Seq. No. 4

The following electronically (“EF”) filed documents read on this motion by Michael Go (“Mr. Go” or “plaintiff”) for an Order consolidating (“Action No. 1”) with a Supreme Court action entitled *Go v. Logan Bus Co., Inc.*, Index No. 722298/2020 (“Action No. 2”), pursuant to CPLR § 602 and for an extension of time to file the Notice of Issue. Moreover, Rohan Harrynaraine (“Mr. Harrynaraine”) and Little Richie Bus Service, Inc. (“Little Richie”) (collectively, the “defendants”) cross-move to consolidate Action No. 2 into Action No. 1, pursuant to CPLR § 602.

	<u>Papers</u> <u>Numbered</u>
Notice of Motion - Affirmation - Exhibits - Service.....	EF 45 - 51
Notice of Cross Motion - Affirmation - Affidavit.....	EF 52 - 54

Upon the foregoing papers, it is ordered that the motion and cross-motion are combined herein for disposition, and determined as follows:

This is an action to recover damages for personal injuries, which plaintiff allegedly sustained in a motor vehicle accident. The plaintiff alleges that on September 17, 2019, the vehicle owned Little Richie and operated by Mr. Harrynaraine came into contact with his motor vehicle on the Van Wyck Expressway at or near Liberty Avenue, in the County of Queens, city

and state of New York (“subject accident”). As a result, he allegedly sustained serious injuries. On or about October 31, 2019, the plaintiff commenced the instant action against the defendants. On December 10, 2019, issue was joined, wherein the defendants interposed an answer. On February 7, 2020, the court issued a preliminary conference order (“PCO”), which directed the parties to conduct examination(s) before trial (“EBT”) on or before May 4, 2020 and independent examination(s) (“IME”) within 45 days thereafter. Thereafter, on November 19, 2020, the plaintiff commenced Action No. 2 against Logan Bus, Inc. (“Logan Bus”), which is entitled *Go v. Logan Bus Co., Inc.*, Index No. 722298/2020. In Action No. 2, the plaintiff alleges that Mr. Harrynaraine was working, within his scope of employment, for Logan Bus when the subject accident occurred. On December 15, 2020, issue was joined in Action No. 2, wherein Logan Bus interposed an answer.

Pursuant to CPLR § 602, consolidation or a joint trial is appropriate to avoid unnecessary duplication of trials, save unnecessary costs and expenses, and prevent an injustice, which would result from divergent decisions based on the same facts. (*see Robinson v. 47 Thames Realty, LLC*, 158 AD3d 780, 781 [2d Dept 2018]; *Wang v. Wang*, 96 AD3d 1005 [2d Dept 2012]). Furthermore, a motion for consolidation or a joint trial rests within the sound discretion of the trial court. (*Tieshamaker v. EMB Contracting Corp.*, 143 AD3d 886 [2d Dept 2016]; *Matter of Long Is. Indus. Group v. Board of Assessors*, 72 AD3d 1090, 1091 [2d Dept 2010]; *Mattia v. Food Emporium, Inc.*, 259 AD2d 527 [2d Dept 1999]). Absent prejudice to a substantial right of the opposing party, consolidation or a joint trial is proper, where common questions of law and fact exist. (*D’Abreau v. American Bankers Ins. Co. of Fla.*, 261 AD2d 501 [2d Dept 1999]; *Whiteman v. Parson Transportation Group of New York, Inc.*, 72 AD3d 677 [2d Dept 2010]; *Cromwell v. CRP 482 Riverdale Ave., LLC*, 163 AD3d 626 [2d Dept 2018].) Moreover, consolidation or joint trials are “. . . favored by the courts in serving the interest of justice and judicial economy.” (*Flaherty v. RCP Assoc.*, 208 AD2 496 [2d Dept 1994]; *Shanley v. Callanan Indus.*, 54 NY2d 52 [1981]; *see also Bruno v. Capetola*, 101 AD3d 785 [2d Dept 2012]).

Here, the court finds that the evidence in Action No. 2 and the instant action involves the same essential facts, and transactions between the parties, and will require the determination of common issues. Furthermore, Logan Bus failed to demonstrate any prejudice that might result from a consolidation. (*Hae Sheng Wang v. Pao-Mei Wang*, 96 AD3d 1005, 1009 [2d Dept 2012]; *Moses v. B & E Lorge Family Trust*, 147 AD3d 427 [2d Dept 2017]). Lastly, in the interest of

justice and judicial economy, and to avoid inconsistent verdicts, both actions should be consolidated for trial. (*Barkagan v. S&L Realty, LLC*, 185 AD3d 643 [2d Dept 2020]). Lastly, the court has scheduled a compliance conference, which will address all discovery issues and the timeframe for the filing of the note of issue and certificate of readiness.

Accordingly, it is hereby

ORDERED that the motion and cross-motion to consolidate, pursuant to CPLR § 602, are granted and the above-captioned action ("Action No. 1") to be consolidated in this court, for all purposes with Supreme Court action entitled *Go v. Logan Bus Co., Inc.*, Index No. 722298/2020 ("Action No. 2") under Index No. 718563/2019; and it is further,

ORDERED that Action No. 1 and No. 2 shall be consolidated for all purposes under Index No. 718563/2019; and it is further,

ORDERED, that the consolidated actions shall bear the following caption:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

MICHAEL GO,

Plaintiff,

Index No.: 718563/2019

-against-

ROHAN HARRYNARAIN, LITTLE RICHIE BUS
SERVICE, INC. and LOGAN BUS CO., INC.,

Defendants.

; and it is further,

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further,

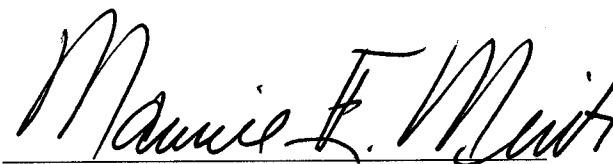
ORDERED, that the plaintiff shall serve a copy of this Order with Notice of Entry on the clerk of this court and upon counsel for all parties in Action No. 1 and Action No. 2 on or before August 31, 2021; and it is further,

ORDERED that upon service on the clerk of a copy of this Order with Notice of Entry, the clerk shall consolidate the papers in the actions hereby consolidated and shall mark his/her records to reflect the consolidation; and it is further,

ORDERED that any other requested relief not expressly addressed herein has nonetheless been considered by this Court and is hereby denied.

The foregoing constitutes the Decision and Order of the court.

Dated: August 18, 2021



MAURICE E. MUIR
J.S.C.