

**Grzesik v Sanchez**

2022 NY Slip Op 30058(U)

January 11, 2022

Supreme Court, New York County

Docket Number: 155128/2020

Judge: David Benjamin Cohen

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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. DAVID B. COHEN PART 58

Justice

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INDEX NO. 155128/2020

ALEXANDRA GRZESIK,

Plaintiff,

MOTION SEQ. NO. 002

- v -

MARYALICE SANCHEZ,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 24, 25, 26, 27, 28, 29, 30, 31

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

In this tort action commenced by plaintiff Alexandra Grzesik, defendant Maryalice Sanchez moves, pursuant to CPLR 602, to consolidate the captioned action with the matter of Alexandra Grzesik v The City of New York, N.Y.P.D., and Daniel Faughnan, pending in this Court under Index Number 155126/20 before Hon. Dakota Ramseur (Part 5), for discovery and all pre-trial and trial purposes, along with such other and further relief as this Court deems just and proper.1 Plaintiff 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:

On July 17, 2020, plaintiff commenced the captioned action against Sanchez, alleging that, on October 15, 2019, she and Sanchez, who lived in the same building, had a confrontation while riding in an elevator together. Doc. 1. Specifically, alleged plaintiff, while they were in

1 Although the notice of motion also seeks consolidation with the matter of Alexandra Grzesik v Maryalice Sanchez, pending in this court under Index Number 152534/19, this is evidently an error since no such action exists.

the elevator, Sanchez's dog brushed up against plaintiff and, as plaintiff asked Sanchez to control the dog, Sanchez allegedly said "Why are you hitting me?" despite the fact that plaintiff had not done so. Doc. 1. On October 19, 2019, Sanchez allegedly went to the New York City Police Department's ("NYPD") 19<sup>th</sup> Precinct to file a complaint against plaintiff, falsely reporting that plaintiff had kicked her in the elevator. Doc. 1. Sanchez allegedly repeated this false claim to the NYPD in "Supporting Depositions" dated December 31, 2019 and January 24, 2020. Doc. 1. Plaintiff claims that, as a result of Sanchez's false accusation, she (plaintiff) was arrested on November 20, 2019 and charged with five separate crimes. Doc. 1. On March 11, 2020, the New York County District Attorney's office agreed to adjourn the charges against plaintiff in contemplation of dismissal. Doc. 1. In her complaint, plaintiff alleged causes of action for libel, malicious prosecution, and negligence against Sanchez. Doc. 1.

On July 8, 2020, at or about the same time the captioned action was filed, plaintiff commenced an action against the City of New York ("the City"), the NYPD, and Detective Daniel Faughnan in this Court under Index Number 155126/20 ("the 7/8/20 action"). Doc. 27. In the complaint in the 7/8/20 action, which is pending before Hon. Dakota Ramseur (Part 5), plaintiff alleged that, on November 20, 2019, Det. Faughnan, an employee of the NYPD, falsely imprisoned and/or arrested her based on the complaint by Sanchez, resulting in five criminal charges being filed against her. Doc. 1 filed under Ind. No. 155126/20. As a second cause of action, plaintiff claimed that criminal charges were filed against her due to the negligent investigation conducted by the City, the NYPD, and Faughnan. *Id.*

Sanchez now moves to consolidate the captioned action with the 7/8/20 action. Doc. 25. In support of the motion, Sanchez's attorney argues that each of the actions arises from the events of October 19, 2019 and that plaintiff alleges in each action damages arising from the

incident, including the claimed filing of false charges against plaintiff and the allegedly improper arrest of plaintiff by the NYPD. Doc. 25. Counsel for Sanchez asserts that the parties in each action are likely to seek the same documents, examine the same witnesses, and that many of the same legal issues will be raised in the two actions. Doc. 25. Despite the request for consolidation in the notice of motion, Sanchez's attorney asserts that "a joint trial of these actions would . . . be appropriate for reasons of judicial economy and allowing the Court [to provide the jurors with] a better overall perspective of the entire controversy." Doc. 25.<sup>2</sup>

In opposition, plaintiff's counsel argues that the consolidation of the captioned action with the 7/8/20 action will "fatally prejudice" plaintiff's case. Doc. 28 (*emphasis provided*). This, urges counsel, is because Faughnan did not ask plaintiff about her version of the incident but rather just signed defendant's criminal complaint, thereby giving "the imprimatur of law enforcement to Sanchez's false claim." Doc. 28. Additionally, argues counsel, the two actions share no common facts since Sanchez's involvement begins on the day of the alleged incident, October 15, 2019, and ends on October 19, 2019, when she made her complaint to the NYPD, whereas the NYPD's involvement in the case "seems" to begin on November 20, 2019, on which date Faughnan signed a criminal complaint against plaintiff. Doc. 28 at par. 2.<sup>3</sup>

Plaintiff's counsel further asserts that, if the cases are consolidated, "Sanchez will have [the City, NYPD and Faughnan] lining up on her side against [plaintiff]." This, urges counsel, will "create an insurmountable obstacle for [plaintiff] to overcome and severely prejudice her case." Doc. 28 at pars. 3, 5. Additionally, counsel maintains that the actions should not be

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<sup>2</sup> Indeed, the caption proposed by Sanchez's attorney reflects that the cases should be joined for trial and not truly consolidated. Doc. 25.

<sup>3</sup> The purported criminal complaint against plaintiff, written by Faughnan and annexed as an exhibit to Doc. 29 to her opposition papers, merely reflects that it was faxed from an unnamed person to another unnamed person on November 20, 2019. Doc. 29. The exhibit also contains only page one of two of the criminal complaint and does not reflect that it was actually signed by Faughnan.

consolidated because the causes of action asserted in the respective actions are not identical.

Doc. 28.

In reply, counsel for Sanchez argues that consolidation would further the interests of judicial economy. Doc. 31.

### LEGAL CONCLUSIONS:

CPLR 602(a) provides that:

Generally. 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.

“Great deference is accorded a motion court's discretion in granting consolidation pursuant to CPLR 602(a); where there are common questions of law and fact, there is a preference for consolidation in the interest of judicial economy unless the party opposing the motion demonstrates that consolidation will prejudice a substantial right” (*Matter of Oct. 31*, 194 AD3d 645, 646 [1<sup>st</sup> Dept 2021] [citations omitted]).

In determining whether two actions should be consolidated, it is not necessary that all the issues of law and all the facts be common to both actions (*See de Saint Phalle v de Saint Phalle*, 92 AD2d 792 [1st Dept 1983]). Additionally, consolidation or joint trial is proper if evidence admissible in one action is admissible in, or relevant to, the other (*See Siegel v Greenberg*, 85 AD2d 516 [1<sup>st</sup> Dept 1981]). Consolidation or joint trial of two causes of action will not be withheld merely because some of the parties involved are different (*Mascioni v Consolidated Rail Corp.*, 94 AD2d 738, 739 (2d Dept 1983)). A joint trial is often preferred to consolidation because “the rights of the respective defendants can probably be presented to the jury more easily” (3 New York Civil Practice: CPLR P 602.03 [2021] quoting *McNamara v Penner*, 123 NYS2d 576, 585, 1953 NY Misc LEXIS 1998 [Sup Ct Oneida County 1953]). A joint trial is

particularly useful when there is an issue of fact or law common to two or more cases, but there is only one party common to all of the actions (3 New York Civil Practice: CPLR P 602.03 [2021] citing, *inter alia*, *Cola Rugg Enters., Inc. v Consolidated Edison Co. of N.Y., Inc.*, 109 AD2d 726 [2d Dept 1985] and *Mascioni*, 94 AD2d at 739).

Here, there is clearly an issue of fact common to both actions, namely whether plaintiff actually assaulted Sanchez. Evidence of such an assault in the captioned action would clearly be relevant to the issues in the 7/8/20 action even though plaintiff is the only party common to both actions. Thus, the actions should be joined for the purposes of discovery and joint trial.

The bare and speculative allegations of prejudice set forth by plaintiff's counsel are insufficient to establish that joining the cases for trial would result in prejudice to plaintiff (*See Computer Strategies, Inc. v Commodore Business Machines, Inc.*, 105 AD2d 167 [2d Dept 1984], *reh'g denied, app. denied*, 110 AD2d 743 [2d Dep't 1985]; *Mascioni*, 94 AD2d at 739).

In opposing the motion, plaintiff relies on the cases of *Amtorg Trading Corp. v Broadway & 56th St. Assoc.*, 191 AD2d 212 (1st Dept 1993), *Doll v Castiglione*, 86 AD2d 711 (3d Dept 1982), and *Vigo S.S. Corp. v Marship Corp. of Monrovia*, 26 NY2d 157 (1970). In *Amtorg*, the Appellate Division held that the IAS Court properly granted consolidation where the party opposing the consolidation failed to establish any prejudice. In *Vigo*, the Court of Appeals held that two actions should have been consolidated where they involved common questions of fact and the consolidation would not result in prejudice to the party opposing consolidation. Thus, *Amtorg* and *Vigo* do not warrant the denial of the instant motion.

In *Doll*, the Appellate Division determined that two cases should not be joined for trial where they involved "separate unrelated accidents occurring at different locations and times with each [accident] presenting unique factual issues for resolution" (*Doll*, 86 AD2d at 711).

However, *Doll* is clearly distinguishable herein given that plaintiff's claims against the City, the NYPD, and Faughnan are directly related to the alleged altercation between plaintiff and Sanchez.

Accordingly, it is hereby:

ORDERED, that defendant Maryalice Sanchez's motion to consolidate is granted to the extent that the captioned action is joined for discovery and trial with the matter of *Alexandra Grzesik v The City of New York, NYPD, and Daniel Faughnan*, pending in this Court under Index Number 155126/20 before Hon. Dakota Ramseur (Part 5); and it is further

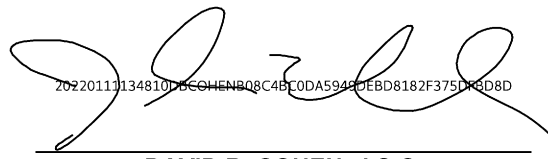
ORDERED that the captioned action shall be transferred to Part 5, a City Part, since The City of New York, NYPD, and Daniel Faughnan are represented by Corporation Counsel; and it is further

ORDERED that within 30 days from entry of this order, counsel for the movant shall serve a copy of this order, with notice of entry, upon the Clerk of the Trial Support Office, who is hereby directed to transfer the captioned action to Part 5 and to mark the court's records to reflect that the captioned action has been joined with the matter of *Alexandra Grzesik v The City of New York, NYPD, and Daniel Faughnan*, Ind. No. 155126/20 for the purposes of discovery and joint trial; it is further

ORDERED that within 30 days from entry of this order, counsel for the movant shall serve a copy of this order, with notice of entry, on all parties to the captioned action as well as on all parties in the matter of *Alexandra Grzesik v The City of New York, NYPD, and Daniel Faughnan*, Ind. No. 155126/20; and it is further

ORDERED, that upon payment of the appropriate calendar fees and the filing of notes of issue and statements of readiness in each of the above actions, the Clerk of the Trial Support Office shall place the aforesaid actions upon the trial calendar for a joint trial; it is further

ORDERED that upon receipt of a copy of this order with notice of entry, the parties to the joined actions shall confer and contact the Part 5 Clerk to schedule a discovery conference at a date and time convenient to Justice Ramseur.

  
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DAVID B. COHEN, J.S.C.

1/11/2022  
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
APPLICATION:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
CHECK IF APPROPRIATE:	<input type="checkbox"/>		<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE