

Pedraza v New York City Tr. Auth.
2022 NY Slip Op 31603(U)
May 16, 2022
Supreme Court, New York County
Docket Number: Index No. 159366/2013
Judge: Frank P. Nervo
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. FRANK NERVO PART 04

Justice

-----X

JOSE PEDRAZA,

Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY,
METROPOLITAN TRANSPORTATION AUTHORITY,
ANGEL RIVERA

Defendant.

-----X

INDEX NO. 159366/2013

MOTION DATE 03/18/2022

MOTION SEQ. NO. 009

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 009) 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322

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

As relevant to this motion, plaintiff was struck by a subway train at the Spring Street station in Manhattan. Plaintiff seeks to consolidate this matter with *Martinez v. New York City Transit Authority et al*, Index No. 153421/2017, in which Martinez was also struck by a subway train at the Spring Street station. Appeals were taken by the defendants in both *Pedraza* and *Martinez*, and the Appellate Division, in decisions issued the same date, directed that defendants' qualified immunity claims be addressed at trial.

Consolidation rests within the discretion of the Court and is appropriate where two actions involve "a common question of law or fact" (CPLR §

602[a]); the burden is on a party resisting consolidation to show that consolidation would be prejudicial. (*Vigo S. S. Corp. v. Marship Cop.*, 26 NY2d 157 [1970]). Courts are inclined to award consolidation where it promotes efficiency and judicial economy (*Amcan Holdings, Inc. v. Torys LLP*, 32 AD3d 337 [1st Dept 2006]).

Here, there is no prejudice to defendants. Defendants allege, without any support, that trials must be unified in the First Department and the presentation of differing injuries will confuse the jury (*see* NYSCEF Doc. No. 316 at p. 3 “as unified trials are the rule in trial courts located within the First Department”). The Court’s own research reveals no such rule. In fact, the First Department has unequivocally held “Bifurcation is appropriate in complicated cases of liability and damages where such clarification or simplification will assist in reaching a fair and more expeditious resolution of the issues. A ruling on [bifurcation] is a matter of discretion as to which the trial court should be afforded great deference” (*Sommer v. Pierre*, 51 AD3d 464 [1st Dept 2008] [internal citations omitted]). The presentation of a meritless argument without any basis in law is sanctionable, especially where same is undertaken to intentionally mislead the Court or in bad faith (22 NYCRR § 130-

1.1; *In re Kover*, 134 AD3d 64 [1st Dept 2015]). Notwithstanding, the Court, in its discretion, declines to order a sanctions hearing at this time.

To the extent that defendants contend the matters are in disparate positions with respect to discovery, i.e. that consolidation will delay the resolution of the *Pedraza* matter, the Court does not so find. Discovery related to the defendants' speed policy in both matters remains outstanding. Issuance of an expedited discovery schedule in the consolidated matter ensures the matters will be heard without delay. Furthermore, as a procedural matter following remitter, *Pedraza* will be retried by this Court and will not wait for trial assignment; consolidating *Martinez* with *Pedraza* will likewise result in *Martinez* avoiding delays occasioned by the trial assignment process and will, in fact, expedite final resolution of the *Martinez* matter. Finally, the Court notes that, perhaps curiously, defendants oppose this motion to consolidate despite moving for consolidation of these matters on appeal before the Appellate Division. This inconsistent position is a tacit acknowledgement by defendants that the matters share common issues of law and fact – chiefly defendants' speed policy and application of principles of qualified immunity. Consequently, defendants have failed to meet their burden establishing consolidation is prejudicial and, therefore, consolidation is granted.

Turning to that portion of the motion seeking to strike defendants' answer for non-compliance with prior discovery orders, the Court denies that relief at this time and issues the below discovery order.

Accordingly, it is

ORDERED that the motion is granted to the extent that the above-captioned action shall be jointly tried with *Martinez v. New York City Transit Authority et al*, Index No. 153421/2017 pending in this Court; and it is further

ORDERED that, within 30 days from entry of this order, counsel for plaintiff in *Martinez v. New York City Transit Authority et al*, Index No. 153421/2017, shall file with the General Clerk's Office (60 Centre Street, Room 119) a copy of this order with notice of entry, together with, if a Request for Judicial Intervention ("RJI") has not yet been filed in that action, an RJI and shall pay the fee therefor, and the Clerk of the General Clerk's Office shall assign said action to the undersigned or reassign such action to the undersigned, as the case may be; and it is further

ORDERED that, upon payment of the appropriate calendar fees and the filing of notes of issue and certificates of readiness with the General Clerk's

Office in each of the above actions, the Clerk of the General Clerk's Office shall place the aforesaid actions upon the trial calendar for a joint trial before the undersigned Justice of this court for retrial, consistent with the Appellate Division's determination; and it is further

ORDERED that in both actions such filing with the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that defendants shall serve plaintiffs with all documentary evidence related to the speed policy underlying defendants' claim of qualified immunity, including but not limited to studies, analysis minutes of meetings, and memoranda or letters regarding: safe entry speed at stations (including the Spring Street station), sight restrictions as trains approach/enter the station, speed restrictions as trains approach/enter the station, no later than July 29, 2022; and it is further

ORDERED defendants shall produce a witness with knowledge of all of the above documentary evidence for deposition by plaintiffs to be completed by September 15, 2022; and it is further

ORDERED that plaintiffs shall serve notice of the above deposition at least 20 days prior to deposition date and such notice and defendants' response shall comply with the Uniform Rules; and it is further

ORDERED that the failure to timely serve notice of the above deposition shall constitute waiver of same; and it is further

ORDERED that the failure to timely appear for a timely notice deposition shall result in sanctions, including the striking of pleadings in the Court's discretion upon further application; and it is further

ORDERED that post-deposition demands shall be served no later than 14 days following the completion of the deposition giving rise to the demand; responses thereto shall be served within 14 days of receipt of post-deposition demand; and it is further

ORDERED that the failure to timely serve post-deposition demands shall constitute waiver of same; and it is further

ORDERED that the failure to timely respond to a timely post-deposition demand shall result in sanctions, including the striking of defendants' answer in the Court's discretion upon further application; and it is further

ORDERED that all parties shall serve courtesy copies of any outstanding demands not otherwise addressed herein within 14 days of notice of entry of this decision and order; and it is further

ORDERED that all parties shall respond to courtesy copy demands within 20 days of receipt of same; and it is further

ORDERED that the failure to timely serve courtesy copy demands, shall constitute waiver of such demand(s); and it is further

ORDERED that the failure to timely respond to a timely served courtesy copy demand shall result in sanctions, including the striking of pleadings, in the Court's discretion and upon further application; and it is further

ORDERED that to the extent that any party shall move for summary judgment, based solely upon discovery ordered herein, such motions shall be filed within 60 days of filing the NOI or shall be deemed waived; and it is further

ORDERED that the dates set forth herein may not be adjourned or otherwise modified absent the Court's advance written order upon good cause shown and the parties are reminded of the Part Rules, available on the Court's website, addressing correspondence with the Court and adjournment requests; and it is further

ORDERED that failure to comply with this discovery order shall result in the preclusion of such evidence at the time of trial and striking of pleadings, as appropriate; and it is further

[continued on following page]

ORDERED that the parties shall appear for a conference before Justice Nervo on November 17, 2022 at 11:30am via Microsoft Teams.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

May 16, 2022

DATE



HON. FRANK P. NERVO

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

J.S.C.

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE