

<b>Brisson v Port Auth. of N.Y. &amp; N.J.</b>
2022 NY Slip Op 31665(U)
May 23, 2022
Supreme Court, New York County
Docket Number: Index No. 154885/2019
Judge: Frank P. Nervo
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. FRANK NERVO PART 04**

*Justice*

-----X

LUCIEN BRISSON,

Plaintiff,

- v -

THE PORT AUTHORITY OF NEW YORK & NEW JERSEY,

Defendant.

-----X

THE PORT AUTHORITY OF NEW YORK & NEW JERSEY

Plaintiff,

-against-

T.U.C.S. CLEANING SERVICE, INC.

Defendant.

-----X

INDEX NO. 154885/2019

MOTION DATE 02/25/2022

MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595838/2021

The following e-filed documents, listed by NYSCEF document number (Motion 003) 44, 45, 46, 47, 48, 49, 50, 51

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

Plaintiff moves for an order joining the above captioned action with *Lucien Brisson v. Tucs Services*, Index No. 159855/2021 for trial. The motion is unopposed.

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]). Where consolidation would be inappropriate due to a party's role as both a plaintiff and defendant in the proposed consolidated action, but the claims underlying the actions arise from the same facts or occurrence, joint trial is appropriate (*Bass v. France*, 70 AD2d 849 [1st Dept 1979]).

As an initial matter, movant incorrectly states that Lucien Brisson is the defendant in the second action (Index No. 159855/2021). Lucien Brisson is a plaintiff in both actions and, therefore, it appears to the Court that complete consolidation is appropriate. Upon review of the pleadings, the two actions involve common questions of law and fact. Given the lack of opposition on this motion, there is no prejudice to granting consolidation.

Accordingly, it is

ORDERED that the motion is granted to the extent of consolidating the two matter, and the above-captioned action is consolidated in this Court with LUCIEN BRISSON vs. TUCS SERVICES, Index No. 159855/2021, pending in this Court; and it is further

ORDERED that the consolidation shall take place under Index No. 154885/2019 and the consolidated action shall bear the following caption:

-----X  
LUCIEN BRISSON,

*Plaintiff*

-against-

THE PORT AUTHORITY OF NEW YORK  
& NEW JERSEY and TUCS SERVICES,

*Defendants*

-----X  
THE PORT AUTHORITY OF NEW YORK  
& NEW JERSEY,

*Third-party Plaintiff*

-against-

T.U.C.S. CLEANING SERVICE, INC.,

*Third-party Defendant*

-----X

; 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, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the Court (60 Centre Street, Room 141 B), who shall consolidate the documents in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that counsel for the movant shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed; and it is further

ORDERED that service of this order upon the Clerk of the Court shall be made in hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, 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](http://www.nycourts.gov/supctmanh)); and it is further

ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents being consolidated in the consolidated case file under the index number of the consolidated action in the New York State

Courts Electronic Filing System or make appropriate notations of such documents in the e-filing records of the court so as to ensure access to the documents in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is hereby directed to reflect the consolidation by appropriately marking the court's records; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, shall be made in accordance with the procedures set forth in the aforesaid *Protocol*; and it is further

ORDERED that the note of issue deadline is extended in light of the above consolidation, to December 29, 2023; and it is further

ORDERED that counsel for the parties shall confer regarding outstanding discovery; and it is further

ORDERED that to the extent agreement can be reached on outstanding discovery, counsel shall file (via NYSCEF with courtesy copy to chambers in accordance with the Part Rules) a single joint letter to judge so advising and annex a proposed discovery order thereto, addressing all outstanding discovery, no later than July 22, 2022; and it is further

ORDERED that to the extent agreement cannot be reached on outstanding discovery, the abovementioned joint letter shall so advise, providing the parties' respective positions and objections; and it is further

ORDERED that the Court will consider only a complying single joint letter from counsel and will not consider competing individual discovery letters; and it is further

[continued on following page]

ORDERED that the failure to timely file a single joint letter in compliance with the aforementioned directives shall constitute waiver of outstanding discovery, and counsel are reminded of the Part Rules, available on the Court's website or in Courtroom 327 at 80 Centre Street.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

5/23/2022  
DATE

CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
 GRANTED IN PART  
 SUBMIT ORDER  
 FIDUCIARY APPOINTMENT

J.S.C.  
 OTHER

REFERENCE



HON. FRANK P. NERVO