

Sabiaga v Cape Church Assoc., LLC
2022 NY Slip Op 31671(U)
May 23, 2022
Supreme Court, New York County
Docket Number: Index No. 160747/2019
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

JOSE SABIAGA,

Plaintiff,

- v -

CAPE CHURCH ASSOCIATES, LLC, CONSIGLI &
ASSOCIATES, LLC,

Defendant.

-----X

CAPE CHURCH ASSOCIATES, LLC, CONSIGLI &
ASSOCIATES, LLC

Plaintiff,

-against-

AM ARCHITECTURAL METAL & GLASS INC.

Defendant.

-----X

INDEX NO. 160747/2019

MOTION DATE 05/02/2022

MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595913/2020

The following e-filed documents, listed by NYSCEF document number (Motion 005) 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146 were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

Plaintiff seeks to consolidate the above action with another action pending in this Court, *Jose Subiaga Espinoza v. T.G. Nickel & Associates* Index No. 151951/2021, and to correct the caption in the consolidated matter. 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]).

Here, both actions arise from the same alleged injury and involve identical claims sounding in Labor Law against differing parties. Put simply, both actions raise common questions of law of fact. Given that that Court’s prior order vacated the note of issue in the above captioned action, directing discovery be completed by December 2023, and further given the lack of opposition on this motion, there is no prejudice to granting consolidation.

Accordingly, it is

ORDERED that the motion is granted and the above-captioned action is consolidated in this Court with JOSE SUBIAGA ESPINOZA vs. T.G. NICKEL & ASSOCIATES, LLC, Index No. 151951/2021, pending in this Court; and it is further

ORDERED that the consolidation shall take place under Index No. 160747/2019 and the consolidated action shall bear the following caption:

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JOSE SUBIAGA ESPINOSA,

Plaintiff

-against-

CAPE CHURCH ASSOCIATES, LLC,
CONSIGLI & ASSOCIATES, LLC and
T.G. NICKEL & ASSOCIATES, LLC,

Defendants

-----X
CAPE CHURCH ASSOCIATES, LLC and
CONSIGLI & ASSOCIATES, LLC,

Third-party Plaintiffs

-against-

AM ARCHITECTURAL METAL &
GLASS 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); 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 to the extent plaintiff's motion seeks a conference in the consolidated matter, 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

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.

<u>5/23/2022</u> DATE					 HON. FRANK P. NERVO
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	J.S.C.
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					REFERENCE
160747/2019 ESPINOZA,JOSE vs. CAPE CHURCH ASSOCIATES, LLC Motion No. 005					Page 6 of 6