

Juarez v Levitt

2022 NY Slip Op 32078(U)

March 30, 2022

Supreme Court, New York County

Docket Number: Index No. 154268/2020

Judge: Sabrina Kraus

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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. SABRINA KRAUS PART 57TR

Justice

-----X

HUGO SEBASTIAN JUAREZ,

Plaintiff,

- v -

JEFFREY A. LEVITT, AS TRUSTEE OF RHFT
INVESTMENT TRUST,

Defendant.

-----X

INDEX NO. 154268/2020

MOTION DATE 03/09/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

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

BACKGROUND

Plaintiff commenced this personal injury action to recover monetary damages due to what he alleges was serious injury on March 12, 2020, when he fell from a ladder while performing construction work. A second action was commenced by plaintiff captioned *Hugo Sebastian Juarez v. Jacques Grange, Inc.* under Index No.: 158664/2021.

Both actions involve the same accident and involve similar questions of law and fact.

THE PENDING MOTIONS

On March 9th, 2022, defendant moved for an order pursuant to CPLR §602 joining the two actions for the purpose of joint discovery and trial, and plaintiff cross-moved for an order consolidating the two actions.

The motion and cross-motion are consolidated herein for determination and granted to the extent of consolidating the two actions.

DISCUSSION

CPLR §602(a) states:

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.

Under CPLR 602(a), the standard for uniting separate actions is the same, regardless of whether the court orders consolidation or joint trial. The actions must have a common question of law or fact.

Consolidation is favored in those matters, such as the cases at bar, where there are common questions of law or fact and absent a showing of prejudice to a substantial right of a party. *See generally, Geneva Temps, Inc. v New World Communities, Inc.*, 24 A.D.3d 332, 334 (1st Dep't 2005); *Lecorps v. Bromberg*, 127 A.D.3d 931, 932 (2d Dep't 2015). In *Geneva*, the Appellate Division, First Department held "it is well settled that there is a preference for consolidation in the interest of judicial economy where there are common questions of law and fact, unless the party opposing the motion demonstrates that consolidation will prejudice a substantial right." *Id.* at 334.

The statutory commentaries identify three instances where a joint trial would be the preference over consolidation:

First, consolidation may be inappropriate if the resulting merger would tend to confuse the issues at trial. Second, consolidation is improper if one of the parties, as a result of the necessary realignment, would end up as both a plaintiff and a defendant. Third, in cases involving a mix of legal and equitable issues relating to the same transaction, consolidation creates a serious risk of implied waiver of jury trial of the legal issues.

N.Y. C.P.L.R. 602 (McKinney).

None of these factors is present in the cases at bar.

CONCLUSION

WHEREFORE it is hereby:

ORDERED that defendant's motion and plaintiff's cross-motion are granted to the extent of consolidating the two actions and the above-captioned action is consolidated in this Court with *Hugo Sebastian Juarez vs. Jacques Grande, Inc.*, Index No. 158664/2021, pending in this Court; and it is further

ORDERED that the consolidation shall take place under Index No. 154268/2020 and the consolidated action shall bear the following caption:

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

-----X
HUGO SEBASTIAN JUAREZ, Index No.: 154268/2020

Plaintiff,

-against-

JEFFREY A. LEVITT, AS TRUSTEE
OF RHFT INVESTMENT TRUST and
JACQUES GRANGE, INC.,

Defendants.
-----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 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, plaintiff 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

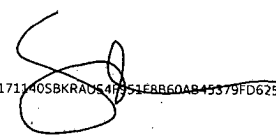
ORDERED that such service upon the Clerk of the General Clerk's Office shall be made shall be made in accordance with the procedures set forth in the aforesaid Protocol; and it is further

ORDERED that counsel are directed to appear for a virtual preliminary conference on May 16, 2022 at 10 AM.

3/30/2022

DATE

202203301711405BKRAUS07951EBR60AB45379FD625277CB320F4



SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE