

Licona-Rubio v New York City Health & Hosps. Corp.
2022 NY Slip Op 32767(U)
August 16, 2022
Supreme Court, New York County
Docket Number: Index No. 805360/2021
Judge: Erika Edwards
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ERIKA EDWARDS

PART 10M

Justice

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JUAN CARLOS LICONA-RUBIO,

Plaintiff,

- v -

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION, JOHN/JANE DOE 1-10, INCLUSIVE, THE NAME OF THE LAST 10 DEFENDANTS BEING FICTITIOUS, INTENDED TO DESIGNATE PERSONS, PRESENTLY UNKNOWN TO PLAINTIFF, HAVING INVOLVEMENT IN THE ACTION ALLEGED HEREIN,

Defendant.

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INDEX NO. 805360/2021

MOTION DATE 05/19/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12

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

Upon the foregoing documents, the court grants Defendant NEW YORK CITY HEALTH and HOSPITALS CORPORATION's ("NYCHHC") motion to consolidate, amend the caption, and transfer the consolidated action to New York County.

Defendant NYCHHC moves to consolidate the present action, *Juan Licona-Rubio v New York City Health and Hospitals Corporation*, Index No. 805360/2021, and Plaintiff's Kings County Supreme Court action, *Juan Carlos Licona-Rubio v COA 200 E 34th LLC, Celtic Services NYC, Inc., Marine Plumbing and Mechanical, Inc., Moncon, Inc., Noble Construction Group, LLC Real Plumbing Corp. and Core Scaffold Systems, Inc.*, under Index No. 525101/2020. Defendant further seeks to transfer the Kings County action to New York County and proceed with the consolidated action under New York County Index No. 805360/2021.

Defendant NYCHHC argues in substance that although its action is grounded in medical malpractice claims and the Kings County action is a labor law action, the actions should be consolidated because Plaintiff alleges that both incidents caused a common injury, i.e. Plaintiff's attempted suicide. Defendant further argues in substance that consolidation of the action would preserve judicial resources, prevent inconsistent verdicts and prevent prejudice to the defendants in both actions. Additionally, Defendant NYCHHC contends that Plaintiff will not suffer any prejudice from the consolidation because both cases are in their early stages, as no preliminary conferences or depositions were held.

Plaintiff opposes the consolidation of the actions and argues in substance that despite the allegation of the same injury, both cases are vastly different. Plaintiff contends that the two actions involve two separate events which occurred two weeks apart, the two actions involve different parties, and the two actions are grounded in separate causes of action. Therefore, Plaintiff argues in substance that Defendant NYCHHC failed to show sufficient commonality of facts.

“Consolidation is generally favored in the interest of judicial economy and ease of decision-making where cases present common questions of law and fact, ‘unless the party opposing the motion demonstrates that a consolidation will prejudice a substantial right’” (*Raboy v McCrory Corp.*, 210 AD2d 145, 147 [1st Dept 1994], quoting *Amtorg Trading Corp. v Broadway & 56th St. Assoc.*, 191 AD2d 212, 213 [1st Dept 1993]). Where, as here, the two actions arise from the same accident, and the claims are made by the same plaintiff, they present similar questions of law and fact regarding to Plaintiff’s injuries (*see* CPLR 602; *DeSilva v Plot Realty, LLC*, 85 AD3d 422 [1st Dept 2011]; *Kern v Shandell, Blitz, Blitz & Bookson*, 58 AD3d 487 [1st Dept 2009]). Moreover, there is no indication that consolidation will prejudice any substantial right or delay the completion of discovery and the schedule for filing the note of issue (*see Amcan Holdings, Inc. v Torgys LLP*, 32 AD3d 337 [1st Dept 2006]).

In the present case, the court grants Defendant NYCHHC’s motion to consolidate, as the court finds that there is sufficient commonality of facts to warrant the consolidation. Moreover, the court finds that consolidation will preserve judicial resources and prevent the possibility of inconsistent jury verdicts. The court also finds that the consolidation of the two actions will not cause prejudice to the Plaintiff, as neither case has substantially completed discovery.

To the extent not expressly addressed herein, the court considered all arguments put forth and grants Defendant NYCHH’s motion to consolidate

As such, it is hereby

ORDERED that the court grants Defendant New York City Health and Hospitals Corporation’s motion to consolidate *Juan Licona-Rubio v New York City Health and Hospitals Corporation*, New York City Index Number 805360/2021, and *Juan Carlos Licona-Rubio v COA 200 E 34th LLC, Celtic Services NYC, Inc., Marine Plumbing and Mechanical, Inc., Moncon, Inc., Noble Construction Group, LLC Real Plumbing Corp. and Core Scaffold Systems, Inc.*, Kings County Index Number 525101/2020, under Index Number 805360/2021 for all purposes; and it is further

ORDERED that the consolidation shall bear the following caption:

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

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JUAN CARLOS LICONA-RUBIO,

Plaintiff,

- v -

COA 200 E 34TH LLC, MARINE PLUMBING 7
MECHANICAL, INC., MONCON, INC., NOBLE
CONSTRUCTION GROUP, LLC, REAL PLUMBING
CORP., and NEW YORK CITY HEALTH &
HOSPITALS CORPORATION,

Defendants.
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and it is further

ORDERED that Defendant New York City Health and Hospitals Corporation shall serve a copy of this order with notice of entry upon all other parties, the County Clerk, Kings County, as Clerk of the Supreme Court, Kings County, the County Clerk, New York County, as Clerk of the Supreme Court, New York County, and the Trial Support Office of the Supreme Court, New York County, located at 60 Centre Street, Room 148, New York, New York 10007, and shall file the notice required by CPLR 8019(c) in a completed Form EF-22 with the New York County Clerk and the Kings County Clerk; and it is further,

ORDERED that, upon the service of a copy of this order with notice of entry and the filing of the notice required by CPLR 8019(c) in a completed Form EF-22, the County Clerk, Kings County, as Clerk of the Supreme Court, Kings County, is directed to deliver to the County Clerk, New York County, as Clerk of the Supreme Court, New York County, all papers filed in the action entitled *Licona-Rubio v COA 200 E 34th LLC, et al.*, pending in the Supreme Court, Kings County, under Index No. 525101/2020, and certified copies of all minutes and entries, the Clerk of the Supreme Court, New York County, upon receipt thereof, shall consolidate that action into the action entitled *Licona -Rubio v New York City Health and Hospitals Corporation*, pending in the Supreme Court, New York County, under Index No. 805360/2021, and the Trial Support Office of the Supreme Court, New York County, shall thereupon amend the court records and caption of the action in accordance with this decision; and it is further

ORDERED that service of this order upon the Clerk of the Court and 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 the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that counsel are directed to appear for a status conference on November 29, 2022 at 10:30 a.m. via Microsoft Teams (link will be provided).

This constitutes the decision and order of the court.

8/16/2022
DATE


ERIKA EDWARDS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE