

Lapsley v Triborough Bridge & Tunnel Auth.

2022 NY Slip Op 33613(U)

October 20, 2022

Supreme Court, New York County

Docket Number: Index No. 156775/2020

Judge: David B. Cohen

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. DAVID B. COHEN

PART 58

Justice

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INDEX NO. 156775/2020

RICHARD J. LAPSLEY,

MOTION SEQ. NO. 001

Plaintiff,

- v -

TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY, MTA
BRIDGES AND TUNNELS, METROPOLITAN
TRANSPORTATION AUTHORITY, RICHARDS PLUMBING
AND HEATING CO., INC., PLANETARY MOVERS INC.,
KHURSHID ERKINOV, and JECI CORPORATION,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65

were read on this motion to/for

CONSOLIDATE/JOIN FOR TRIAL.

In this personal injury action, defendants Planetary Movers, Inc. (“Planetary Movers”) and Khurshid Erkinov (collectively “movants”) move, pursuant to CPLR 602, to consolidate the instant action with three other actions pending in this Court. Plaintiff Richard J. Lapsley opposes the motion. After consideration of the parties’ contentions, as well as a review of the relevant statutes and case law, the motion is decided as follows.

Factual and Procedural Background

Plaintiff commenced this action in August 2020 after he was allegedly injured while working at a construction site on the Robert F. Kennedy Bridge (Doc No. 11 at 5-14). He alleged that a vehicle driven by Erkinov, and owned by Planetary Movers, struck a second vehicle present at the site, causing the second vehicle to strike him (Doc No. 11 at 5-14).

Plaintiff asserted causes of action sounding in ordinary negligence and violations of various

Labor Law provisions (Doc No. 11 at 14-17). Shortly thereafter, issue was joined by movants (Doc No. 28).

Movants now move, pursuant to CPLR 602, for an order consolidating this action with three other actions pending in this Court (Doc Nos. 37-38),¹ arguing that consolidation is appropriate because all four actions arise out of the same motor vehicle accident and that consolidation promotes judicial economy by avoiding duplicate trials and preventing the possibility of inconsistent outcomes (Doc No. 38 at 3-5). Plaintiff opposes the motion contending, among other things, that consolidation will prejudice his right to a speedy trial, since discovery in the instant action has progressed further than in the other actions (Doc No. 49).

Legal Conclusions

Pursuant to CPLR 602(a), a court has the discretion, upon motion, to bring together actions “involving common questions of law or fact” (*Matter of Progressive Ins. Co. (Vasquez-Countrywide Ins. Co.)*, 10 AD3d 518, 519 [1st Dept 2004]; *accord L.B. v Stahl York Ave. Co.*, 188 AD3d 421, 421 [1st Dept 2020]), whether it be through a joint trial of multiple actions (*see Lema v 1148 Corp.*, 176 AD3d 653, 654 [1st Dept 2019]) or through “organic consolidation,” i.e., merging all of the pending actions at issue into a single, new action where all of the litigants are merged into one group of plaintiffs and one group of defendants (*Padilla v Greyhound Lines*, 29 AD2d 495, 497 [1st Dept 1968]; *see Pigott v Field*, 10 AD2d 99, 101 [1st Dept 1960]).² Generally, consolidation or joinder for trial is preferred, unless the party opposing consolidation or joinder demonstrates that such reconfiguring of the actions will “prejudice a substantial right”

¹ The three other actions are the matter of *Mario Fernandez v Planetary Movers Inc.*, Index No. 155413/20; the matter of *Anibar Rivera v Planetary Movers Inc.*, Index No. 155294/20; and the matter of *Ramiro Quintanilla v Khurshid Erkinov*, Index No. 152141/21.

² Unlike a consolidated action, “[a] joint trial preserves the integrity of the several actions, requires a separate decision or verdict, . . . and several judgments, with the costs of the particular action in each case” (*Padilla*, 29 AD2d at 497).

(*Matter of Oct. 31, 2017 Terrorist Attack/Lower Manhattan Litig.*, 194 AD3d 645, 646 [1st Dept 2021]; *accord Quik Park 808 Garage LLC v 808 Columbus Commercial Owner LLC*, 199 AD3d 536, 536 [1st Dept 2021]). Further, a court may choose to order a joint trial of multiple actions, instead of consolidating them, even if the moving party specifically seeks consolidation (*see Frank v Y. Mommy Taxi, Inc.*, 206 AD3d 971, 972 [2d Dept 2022] [modifying Supreme Court order consolidating actions after concluding that joint trial was “the appropriate procedure” because multiple actions involved different defendants]; *Longo v Fogg*, 150 AD3d 724, 725 [2d Dept 2017] [similar]).

Common of questions of law and fact exist between this action and the three actions movants seek to consolidate it with. Since all four actions involve personal injury claims arising from the same motor vehicle accident on the Robert F. Kennedy Bridge (Doc No. 38 at 3-5), there is a common question about who is responsible for the alleged injuries sustained by the plaintiffs in each of the four actions (*compare Hood v City of New York*, 8 AD3d 232, 232-233 [2d Dept 2004] [finding common questions of law and fact existed about responsibility for vehicle accident at issue in two actions involving personal injury claims], *with McGinty v Structure-Tone*, 140 AD3d 465, 466 [1st Dept 2016] [finding no common questions of law or fact between personal injury action and insurance coverage action because actions involved different contracts and different parties]). Although all four actions do not involve identical defendants, multiple defendants — including movants — are common across all of the actions, and determining their liability is a vital question common to each action. Therefore, plaintiff bears the burden of establishing prejudice to a substantial right to avoid consolidation (*see Matter of Vigo S. S. Corp. (Marship Corp. of Monrovia)*, 26 NY2d 157, 161-162 [1970], *cert denied* 400 US 819 [1970]; *Matter of Grynberg v BP Exploration Operating Co. Ltd.*, 127 AD3d

553, 554 [1st Dept 2015], *lv dismissed* 26 NY3d 940 [2015]; *Geneva Temps, Inc. v New World Communities, Inc.*, 24 AD3d 332, 334-335 [1st Dept 2005]).

However, he fails to establish such prejudice. Contrary to plaintiff's contention that he would be prejudiced by consolidation because the four actions are at different points of discovery (Doc No. 49 at 1-4), this Court can order expedited discovery, thereby bringing all of the actions to the same stage (*see Rogin v Rogin*, 90 AD3d 507, 509 [1st Dept 2011]; *Callazo v City of New York*, 213 AD2d 270, 271 [1st Dept 1995]; *Chinatown Apts. v New York City Tr. Auth.*, 100 AD2d 824, 825 [1st Dept 1984]; *cf. Gillard v Reid*, 145 AD3d 446, 446 [1st Dept 2016] [upholding denial of joint trial of three actions where one action ready for trial and other two still in discovery; *Abrams v Port Auth. Trans-Hudson Corp.*, 1 AD3d 118 [1st Dept 2003] [upholding denial of consolidation of two actions where one action already on trial calendar and other action early in discovery]). In any event, despite plaintiff's concerns about waiting for the other actions to "catch up" (Doc No. 49 at 4), "the added delay, if any, will be inconsequential and the benefits to be derived from the consolidation [will] far exceed the burdens which it may impose" (*Pace v New York City Tr. Auth.*, 19 AD2d 630, 630 [2d Dept 1963]).

Plaintiff's additional contentions that consolidation is improper because defendants in the other actions are not named as defendants in the instant action and because consolidation would place him opposite his employer in the caption of the new, consolidated action, which is not permitted, are also without merit and he fails to cite any authority supporting these arguments (Doc No. 49 at 2-5). There is no requirement that the parties in each action to be consolidated must be identical (*see e.g. Hood v City of New York*, 8 AD3d at 232-233 [consolidating actions involving different defendants]; *Raboy v McCrory Corp.*, 210 AD2d 145, 146-147 [1st Dept 1994] [similar]) and there is no requirement that a plaintiff in one action be able to bring a claim

against all of the defendants in the other actions sought to be consolidated (*see e.g. Matter of New York City Asbestos Litig.*, 121 AD3d 230, 235-242, 244-246 [1st Dept 2014] [upholding consolidation of actions where plaintiff in one action did not have claim against defendant in second action], *affd* 27 NY3d 1172 [2016]). Therefore, consolidating the four actions would be proper.

Yet, despite movants' demand for "organic consolidation" (Doc Nos. 37-38), joinder for discovery and trial on the issue of liability, with separate subsequent trials for damages, is the more appropriate procedure (*see Fisher 40th & 3rd Co. v Welsbach Elec. Corp.*, 266 AD2d 169, 170 [1st Dept 1999]). This conclusion is reinforced by plaintiff's assertion that movants' depositions have not been completed (Doc No. 49 at 3). Movants are defendants in each of the other three actions; one deposition taken by all of the relevant parties will streamline the process of gathering information and avoid the redundancy caused by movants being deposed multiple times about the same incident.

Anibar Rivera and Mario Fernandez, plaintiffs in two of the other actions at issue here, contend that each of the actions involve different questions of law and fact because the claims vary between actions; there are claims of ordinary negligence related to the operation of the vehicle, and claims of ordinary negligence and Labor Law violations related to the operation of the construction site on the bridge (Doc No. 50 at 1-4). Thus, according to Rivera and Fernandez, consolidation is improper because these "individual issues predominate" any common issues present, and because a jury could become confused if it was forced to hear these differing claims all at once (Doc No. 50 at 1-4). However, "[i]t is well settled that in granting a joint trial, 'it is not required that *all* questions of law or fact be common to the various actions'"

(*Kupferschmid v Hennessy*, 221 AD2d 225, 226 [1st Dept 1995] [emphasis added], quoting *Gage v Travel Time & Tide*, 161 AD2d 276, 277 [1st Dept 1990]).

Therefore, “consolidation for discovery and joint trial on liability only, in New York County Supreme Court, with each action maintaining its own index number, will promote judicial economy and avoid any potential prejudice to defendants that may arise by trying . . . damages claims together” in a consolidated action (*Johnson v 200 Varick St. De LLC*, 2020 NY Slip Op 34187[U], *1 [Sup Ct, New York County 2020]).

The parties’ remaining contentions are either without merit or need not be addressed given the findings set forth above.

Accordingly, it is hereby:

ORDERED that the motion of defendants Planetary Movers Inc. and Khurshid Erkinov to consolidate is granted to the extent that the above-captioned action is joined for discovery and trial with *Mario Fernandez v Planetary Movers Inc. et al.*, pending in this Court under Index No. 155413/2020; *Anibar Rivera v Planetary Movers Inc. et al.*, pending in this Court under Index No. 155294/2020; and *Ramiro Quintanilla et al. v Khurshid Erkinov et al.*, pending in this Court under Index No. 152141/2021; and it is further

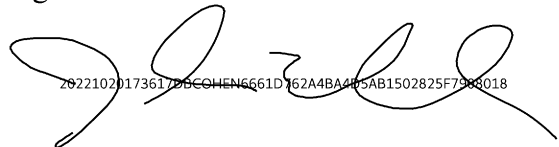
ORDERED that the Clerk of the General Clerk’s Office shall reassign the above-captioned action, *Mario Fernandez v Planetary Movers Inc. et al.*, Index No. 155413/2020, and *Ramiro Quintanilla et al. v Khurshid Erkinov et al.*, Index No. 152141/2021 to the Honorable Denise Dominguez, Part 21 (who is assigned the case with the first filed RJI); and it is further

ORDERED that, within 30 days from entry of this order, counsel for movants shall serve a copy of this order, with notice of entry, on all parties to the above-captioned action as well as on all parties in *Mario Fernandez v Planetary Movers Inc. et al.*, Index No. 155413/2020; *Anibar*

Rivera v Planetary Movers Inc. et al., Index No. 155294/2020; Ramiro Quintanilla et al. v Khurshid Erkinov et al., Index No. 152141/2021; 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 Trial Support Office shall place the aforesaid actions upon the trial calendar for a joint trial; and it is further

ORDERED that, upon receipt of a copy of this order with notice of entry, the parties to the joined actions shall confer and contact the Part 21 Clerk to schedule a discovery conference at a date and time convenient to the Honorable Denise Dominguez.



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10/20/2022
DATE

DAVID B. COHEN, 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

APPLICATION:

CHECK IF APPROPRIATE: