

**Alicea v Ahamba**

2022 NY Slip Op 34581(U)

May 12, 2022

Supreme Court, Bronx County

Docket Number: Index No. 29191/2017E

Judge: Veronica G. Hummel

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX, IAS PART 31**

MICHAEL ALICEA

Plaintiff,

-against-

JOHN C. AHAMBA,

Defendants.

**Index No. 29191/2017E****HON. VERONICA G. HUMMEL, A.J.S.C.****Mot. Seq. No. 3**

In accordance with CPLR § 2219(a), the decision herein is made upon consideration of all papers filed by the parties in NYSCEF in support of the motion of defendant JOHN C. AHAMBA, joined by AMARACHI U. IKWUAGWU and IKECHUKWU EJIOGU (Seq. No. 3), seeking an order, pursuant to CPLR § 602(A), of consolidation.

Plaintiff seeks damages based on a rear-end vehicle collision that occurred on six years ago on September 7, 2016. Three months after the car accident, on December 7, 2016, plaintiff was allegedly injured in a slip and fall accident on the property of the City of New York.

One year after the car accident, in September 2017, plaintiff commenced a personal injury action against defendant Ahamba based on the car accident under Index Number 29191-2017e. (the 2017 Car Accident Action).

Two months later, on December 11, 2017, one year after the slip and fall accident, plaintiff commenced a personal injury action against the City of New York base on the slip and fall accident (31849-2017e) (the Slip and Fall Action).

On April 2, 2018, four years ago, plaintiff was granted summary judgment on liability as against defendant Ahamba in the 2017 Car Accident Action.

Approximately one year later, on September 12, 2019, plaintiff filed a second complaint (30775/2019e) based on the car accident against defendants Ikwuatwo and defendant Ejiolgu, both alleged to be the owner of the vehicle operated by defendant Ahamba (the 2019 Car Accident Action). On March 10, 2020, the two actions (2017 and 2019) arising from the car accident were joined for trial by Order of Justice Mary Ann Brigantti (“the Car Accident Cases”).

On March 13, 2020, plaintiff filed a Note of Issue in the 2017 Car Accident Action. There is no RJI or Note of Issue filed in the 2019 Car Accident Action.

Over one year later, on December 3, 2021, plaintiff filed the Note of Issue in the Slip and Fall Action.

Defendants in the Car Accident Cases now move to consolidate the Car Accident Cases with the Slip and Fall Action on the ground that the alleged injuries arising from the accidents that occurred three months apart are overlapping.

The motion is denied.

CPLR 602(a) provides: “*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 make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.*”

Consolidation is addressed to the sound discretion of the trial court (*Kaladze v Ocean Park Acquisition, L.P.*, 203 A.D.3d 1151 [2d Dept 2022]; *Best Price Jewelers.Com, Inc. v. Internet Data Stor. & Sys., Inc.*, 51 A.D.3d 839 [2d Dept 2008]).

Here, the motion to consolidate is denied based on the court’s discretion. The two joined motor vehicle cases are based on a car accident and the third action is based on a slip and fall accident. There are additional alleged injuries in the Slip and Fall Action. Hence, the litigations involve different facts, different witnesses, different claims, different defendants, different legal principles, and completely dissimilar causes of action. As such, individual issues predominate so as to preclude the direction of a joint trial (*Gillard v Reid*, 145 AD3d 446 [1<sup>st</sup> Dept 2016]).

As the actions involve dissimilar issues and disparate legal theories, there is a risk of confusing the jury and rendering the litigation unwieldy (*Kaladze v Ocean Park Acquisition, L.P.*, 203 A.D.3d 1151 [2d Dept 2022]). A joint trial would substantially prejudice the opposing party and pose a risk of confusing the jury or rendering the litigation unwieldy (*Cromwell v CRP 482 Riverdale Avenue, LLC*, 163 A. D. 3d 626 [2d Dept 2018]). Furthermore, the mere fact that it is alleged that some of the injuries from the Car Accident may have been aggravated by or may overlap with the Slip and Fall Accident alone does not warrant the consolidation of the actions (*Tafolla v Aldrich Management Co. LLC*, 172 A.D.3d 778 [2d Dept 2019]). While the issue of liability in the Car Accident Cases is resolved by summary judgment decision, the jury would still be required to consider the issue of serious injury under the Insurance Law, further complicating the matter (*see Gillard v Reid, supra*).

Of note, the Car Accident Cases have summary judgment on liability and an earlier Note

of Issue, with limited issues to be tried. Intertwining the litigation with a slip and fall claim against the City of New York would result in undue complications. Accordingly, defendants' motion pursuant to CPLR 602 to consolidate the actions , or, in the alternative, to join the three actions for trial is denied.

The Court has considered the additional contentions of the parties not specifically addressed herein. To the extent that any relief requested by a party was not addressed by the Court, it is hereby denied.

Accordingly, it is hereby:

**ORDERED** that the motion of defendant JOHN C. AHAMBA in this action (29191/2017e), joined by AMARACHI U. IKWUAGWU and IKECHUKWU EJIOGU (defendants in Index Number 30775/2019e) (jointly the Car Accident Actions) (Seq. No. 3), seeking an order, pursuant to CPLR § 602(A), consolidating the Car Accident Actions with the Slip and Fall Action (Index Number 31849-2017e) is denied; and it is further

**ORDERED** that plaintiff is directed to immediately file a RJI (referencing the joined case assigned to Part 31) and a Note of Issue in the 2019 Car Accident Action (30775/2019e); and it is further

**ORDERED** that, after a court conference held on May 10,2022, it was determined that the Car Accident Cases (29191/2017e and 30775/2019e) shall be referred to the STP Part for joint trial upon the filing of the necessary RJI and Note of Issue. To ensure the completion of the filing and transfer, the Car Accident Cases are scheduled for a Virtual Pre-trial Conference on July 19, 2022 at 10:30 a.m., link sent out on the date of this decision; and it is further

**ORDERED** that upon the filing of the RJI and Note of Issue, plaintiff shall upload a letter to NYSCEF under both index numbers informing the court of said filings; and is further

**ORDERED** that the Clerk shall mark the motion (Seq. No. 3) disposed in all Court records;

This constitutes the decision and order of the Court.

Dated: May 12 , 2022

Hon.   
VERONICA G. HUMMEL, A.J.S.C.

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- 1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY      x CASE STILL ACTIVE
  - 2. MOTION IS.....  GRANTED     DENIED     GRANTED IN PART     OTHER
  - 3. CHECK IF APPROPRIATE.....  SETTLE ORDER     SUBMIT ORDER    x SCHEDULE APPEARANCE
  - FIDUCIARY APPOINTMENT                       REFEREE APPOINTMENT
  - ISSUE A PRELIMINARY CONFERENCE/CASE SCHEDULING ORDER
  - CONVERT TO ELECTRONIC FILING       EDIT CAPTION