

Chen v Peiling He

2022 NY Slip Op 35006(U)

November 7, 2022

Supreme Court, Queens County

Docket Number: Index No. 714859/2019

Judge: Mojgan C. Lancman

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.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. MOJGAN C. LANCMAN

IAS PART 20

FENGJIAO CHEN and CHUNYAN XU,

Index No.: 714859/2019

Plaintiffs,

Motion Seq. No.: 2

-against-

Motion Date: 9.28.22

PEILING HE and BRETT A. WARES,

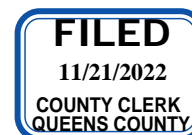
Motion Cal. No.: 6

Defendants.

-----X
PEILING HE,

Third-Party Plaintiff,

-against-



JIN ZHEHVAN,

Third-Party Defendant.

-----X
The e-filed documents listed by NYSCEF numbers 37-38 and 41-43 were read on this motion filed by the defendant, Brett Wares, for an Order joining this action with other actions for purposes of joint trial.

The plaintiffs, Fengjiao Chen and Chunyan Xu, commenced the instant action to recover damages for personal injuries allegedly sustained in a motor vehicle accident involving three vehicles that occurred on June 2, 2019 on the northbound Wantagh State Parkway. This action was previously joined with two other actions by way of an Order of the Honorable Justice Cheree Buggs dated September 24, 2020. It appears that one of those actions, bearing index number CV-005863/2020, was settled and discontinued in Nassau County before being transferred to the Queens Supreme Court.

Motion sequence number 003, by which Wares sought the same relief as the present motion, was withdrawn by way of a letter to the Court dated September 23, 2022.

Presently before the Court is Wares' motion to join an additional action for joint trial. The additional action, bearing index number 710582/2022, was commenced to recover damages for personal injuries allegedly incurred in the same accident on June 2, 2019. Wares is a defendant and third-party plaintiff in the additional action, as well as a defendant in the instant action. By contrast, Wares was not a party to the actions that were previously joined with this action by the Order of Justice Buggs dated September 24, 2020. The motion is unopposed.

The law is settled that: “[t]here is a preference to join cases for discovery and trial in the interests of judicial economy and ease of decision-making where there are common questions of law and fact, unless the party opposing the motion demonstrates that joint trial will prejudice a substantial right; deference is accorded to the motion court's discretion [citations omitted]” (*Lema v 1148 Corp.*, 176 AD3d 653, 654 [1st Dept 2019]).

CPLR 602, Consolidation, provides,

“(a) Generally. 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.”

Here, common questions of fact and law are presented in all the actions because they arise out of the same motor vehicle accident. The appropriate remedy is therefore to join the action bearing index number 710582/2022 with the actions previously joined for purposes of discovery and trial. Because the motion is unopposed, there is no claim that joint discovery and trial would result in prejudice (see *Flake v Van Wagenen*, 54 NY 25 [1873]; *Mixon v TBV, Inc.*, 76 AD3d 144 [2d Dept 2010]). On the contrary, the plaintiffs in the action bearing index number 714973/2019, Jian Fen Dai and Guoliang Pan, submitted an affirmation in support of joining all the actions, citing Justice Buggs’ prior Order dated September 24, 2020. The motion is therefore granted.

Accordingly, it is hereby:

ORDERED, that the Wares’ motion is granted to the extent indicated below; and it is further

ORDERED, that the joined actions bearing index numbers 714859/2019, 714973/2019, are joined for discovery and trial with the action bearing index number 710582/2022; and it is further

ORDERED, that in addition to paying all appropriate fees, separate index numbers, Requests for Judicial Intervention and Notes of Issue shall be filed in each action; and it is further

ORDERED, that the action bearing index number CV-005863/2020 shall be removed from the caption in light of its discontinuance; and it is further

ORDERED, that the title of the joined actions shall now read as set forth below:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

IAS PART 20

-----X
JIAN FEN DAI AND GUOLIANG PAN,

Plaintiffs,

Action 1

-against-

Index No.: 714973/2019

PEILING HE,

Defendant.

-----X
FENGJIAO CHEN and CHUNYAN XU,

Plaintiffs,

Action 2

-against-

Index No.: 714859/2019

PEILING HE and BRETT A. WARES,

Defendants.

-----X
PEILING HE,

Third-Party Plaintiff,

-against-

JIN ZHEHVAN,

Third-Party Defendant.

-----X
JIAN FEN DAI AND GUOLIANG PAN,

Plaintiffs,

Action 3

-against-

Index No.: 710582/2022

BRETT A. NORTHRIDGE A.K.A BRETT A.
WARES AND ZEHUAN JIN,

Defendants.

-----X
BRETT NORTHRIDGE A.K.A BRETT A
WARES,

Third-Party Plaintiff,

-against-

PEILING HE,

Third-Party Defendant.

-----X

; and it is further

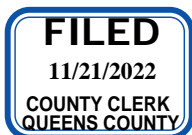
ORDERED, that Wares shall serve a copy of this Order with Notice of Entry on all parties in all the actions and the Queens County Clerk by December 9, 2022; and it is further

ORDERED, that a copy of this Order shall accompany the Note of Issue filed in each action; and it is further

ORDERED, that the Clerk of the Court is directed to assign the same Compliance Judge to all actions.

This constitutes the Decision and Order of the Court.

Dated: Jamaica, New York
November 7, 2022



A handwritten signature in black ink, appearing to be "Mojgan C. Lancman".

MOJGAN C. LANCMAN, J.S.C.