

**Cruz v Komatsu Am. Corp.**

2023 NY Slip Op 30658(U)

March 6, 2023

Supreme Court, New York County

Docket Number: Index No. 151438/2021

Judge: Mary V. Rosado

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. MARY V. ROSADO PART 33M**

*Justice*

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ANGEL CRUZ,

Plaintiff,

- v -

KOMATSU AMERICA CORP., KOMATSU LTD., MILLER UK LTD., MILLER INTERNATIONAL LTD., MILLER INTERNATIONAL HOLDINGS LIMITED, ESCO CORPORATION, ESCO GROUP LLC, THE WEIR GROUP PLC, HYDRAFORCE INC., HYDRAFORCE HYDRAULIC SYSTEMS (CHANGZHOU) CO., LTD., F AND M EQUIPMENT, LTD.

Defendant.

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**INDEX NO.** 151438/2021  
**MOTION DATE** 10/05/2022  
**MOTION SEQ. NO.** 008

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 008) 216, 217, 218, 219 were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER.

Upon the foregoing documents, there being no opposition, and good cause having been shown, Defendant Hydraforce Hydraulics, Ltd.'s ("Hydraforce") motion to reargue, pursuant to CPLR § 2221(d), this Court's Decision and Order dated July 14, 2022 (NYSCEF Doc. 211), which marked Hydraforce's motion for consolidation as withdrawn, is granted, and upon reargument, Hydraforce's motion to transfer to Queens County is granted and upon effectuating said transfer, the parties are directed to contact the Clerk of Queens County Supreme Court to determine the most efficient method to consolidate this transferred action with the pending action in Queens County Supreme with index number 720914/2021E.

Pursuant to CPLR § 2221(d), a motion for leave to reargue shall be based upon matters of fact or law allegedly overlooked or misapprehended in determining the prior motion. The prior notice of motion, dated April 15, 2021, requested consolidation of this action with an action in Supreme Court, Bronx County (NYSCEF Doc. 35). In a letter dated November 11, 2021, addressed

to Hon. Alexander Tisch, who previously was assigned this case, Hydraforce stated “we withdraw Motion No. 2 in advance of oral argument” and asked that a “so-ordered stipulation be executed to transfer and consolidate this action with an action pending in Queens” (NYSCEF Doc. 153).

According to a supplemental affirmation dated November 23, 2021, at oral argument on November 16, 2021, Judge Tisch granted Hydraforce leave to submit a supplemental affirmation in support of its motion to consolidate this action with one in Queens County (NYSCEF Doc. 163). Some months thereafter, this matter was transferred to this Part, wherein an order was issued regarding motion sequence 002 deeming it withdrawn (NYSCEF Doc. 211). Hydraforce now seeks leave to reargue on the basis the Court overlooked NYSCEF Doc. 163 wherein Hydraforce requested the Court consolidate this action with the action in Queens. The Court agrees that the supplemental affirmation was overlooked by the Court, and therefore leave to reargue is granted.

Upon re-argument, and there being no opposition, the Court grants the motion to transfer to Queens County. The present action and the Queens County action have the same plaintiff, are based on the same allegations, have identical Defendants, and arise out of the same accident at LaGuardia Airport in March of 2018. Moreover, transfer to Queens County is appropriate where the companion action in Bronx County has already been transferred to Queens County and consolidated with the Queens County action. Further, Plaintiff’s injury took place in Queens County, there is no opposition to transferring this action to Queens County, and there are few, if any, countervailing circumstances which would warrant keeping this action in New York County. For the aforementioned reasons, and there being no opposition, the Court also finds that consolidation of this action with the already consolidated Queens County and Bronx County actions is appropriate. However, as each county clerk may follow their own procedures for consolidation, upon effectuating the transfer of this action to Queens County, the parties are

directed to contact the Clerk of Queens County Supreme Court to discern the most efficient method for consolidating two cases pending in Queens County Supreme Court.

Accordingly, it is hereby,

ORDERED that the motion for a change of venue is granted and venue of this action is changed from this Court to the Supreme Court, County of Queens; and it is further

ORDERED that the Clerk of this Court shall transfer the file in this action to the Clerk of the Supreme Court, County of Queens and shall mark his records to reflect such transfer; and it is further

ORDERED that, within 30 days from entry of this order, counsel for movant shall serve a copy of this order with notice of entry upon the Clerk of this Court, shall pay the appropriate transfer fee, if any, and shall contact the staff of the Clerk of this Court and cooperate in effectuating the transfer; and it is further

ORDERED that the Clerk of the Court shall coordinate the transfer of the file in this action with the Clerk of the Supreme Court, Queens County, so as to ensure an efficient transfer and minimize insofar as practical the reproduction of documents, including with regard to any documents that may be in digital format; and it is further

ORDERED that such service upon the Clerk of this 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); and it is further

ORDERED that upon transfer to Queens County, the parties are directed to contact the Clerk of Queens County Supreme Court to determine the most efficient means to consolidate this action with the pending action in Queens County Supreme Court with index number 720914/2021E.

This constitutes the Decision and Order of the Court.

<u>3/6/2023</u> DATE		<u>Mary V Rosado</u> HON. MARY V. ROSADO, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE