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| <b>Mackenzie v City of New York</b>                                                                                                                                                                                            |
| 2023 NY Slip Op 31435(U)                                                                                                                                                                                                       |
| May 1, 2023                                                                                                                                                                                                                    |
| Supreme Court, New York County                                                                                                                                                                                                 |
| Docket Number: Index No. 152528/2016                                                                                                                                                                                           |
| Judge: Judy H. Kim                                                                                                                                                                                                             |
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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. JUDY H. KIM PART 05RCP

*Justice*

-----X

ANGUS MACKENZIE,

Plaintiff,

- v -

THE CITY OF NEW YORK,

Defendant.

-----X

INDEX NO. 152528/2016

MOTION DATE 02/10/2023

MOTION SEQ. NO. 001

## DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

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

In this negligence action, plaintiff moves, pursuant to CPLR §602, to consolidate the instant action (“Action 1”) with a subsequently-filed action, Angus Mackenzie v. Consolidation Edison Company of New York, Inc. and Time Warner Cable New York City, LLC, and its accompanying third party action, Time Warner Cable New York City LLC v Old HDE Inc., individually and as successor in interest to Hylan Datacom & Electrical Inc., Hylan Datacom & Electrical LLC and Hylan Datacom & Electrical Inc., individually, pending in New York State Supreme Court, New York County, under Index Number 158891/2018 (“Action 2”), for joint discovery and trial. Time Warner Cable New York City LLC (“Time Warner”), a defendant/third-party plaintiff in Action 2, opposes the motion, arguing that it will be prejudiced by the consolidation because discovery in Action 1 has progressed further than in Action 2. Time Warner argues, alternatively, that in the event these actions are consolidated, it is entitled to all prior discovery exchanged in Action 1 and to depose each party involved in that action—i.e., plaintiff and defendant the City of New York.

**DISCUSSION**

Plaintiff's motion is granted. Both actions arise out of plaintiff's November 7, 2015 trip and fall upon the sidewalk abutting at 2291 Third Avenue, New York, New York and involve identical questions of law. Therefore, the interests of justice and judicial economy are better served by a joint trial (See Lema v 1148 Corp., 176 AD3d 653, 654 [1st Dept 2019]). The fact that both actions are at different procedural stages does not bar consolidation here (See Progressive Ins. Co. v Countrywide Ins. Co., 10 AD3d 518, 519 [1st Dept 2004]) and any prejudice to Time Warner can be alleviated by an expedited discovery schedule, as set forth below (See Badillo v 400 E. 51st St. Realty LLC, 74 AD3d 619, 620 [1st Dept 2010]).

Accordingly, it is

**ORDERED** that plaintiff's motion is granted and the action Angus Mackenzie v. Consolidation Edison Company of New York, Inc. and Time Warner Cable New York City, LLC, pending in the Supreme Court of New York, New York County under Index No. 158891/2018, shall be consolidated with this action (Index No. 152528/2016); and it is further

**ORDERED** that the consolidation shall take place under New York County Index No. 152528/2016 and the consolidated action shall bear the following caption:

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

-----X  
ANGUS MACKENZIE,

Index No.: 152528/2016

Plaintiff,

-against-

THE CITY OF NEW YORK, CONSOLIDATED  
EDISON COMPANY OF NEW YORK, INC. and  
TIME WARNER CABLE NEW YORK CITY LLC,

Defendants.

-----X  
TIME WARNER CABLE NEW YORK CITY LLC,

Third-Party Plaintiff,

-against-

OLD HDE INC., individually and as successor in interest  
To HYLAN DATACOM & ELECTRICAL INC.,  
HYLAN DATACOM & ELECTRICAL, LLC  
Individually and as successor in Interest to,  
HYLAN DATACOM & ELECTRICAL INC., and  
HYLANN DATACOM & ELECTRICAL INC.,  
Individually,

Third-Party Defendants.

-----X

and it is further

**ORDERED** that the pleadings in these actions are hereby consolidated and shall stand as the pleadings in the consolidated action; and it is further

**ORDERED** that within thirty days from the date of this decision and order, all parties shall exchange any previously disclosed discovery and, within sixty days after such exchange, all parties shall produce witnesses and appear for depositions; and it is further

**ORDERED** that within ten days from the entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the Court (60 Centre St., Room 141B) and the Clerk of the General Clerk's Office (60 Centre St., Rm. 119) who shall consolidate the documents in the actions hereby consolidated and mark their records to reflect the consolidation; and it is further

**ORDERED** that such service upon the Clerk of the Court and the Clerk of 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 this court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).

This constitutes the decision and order of the Court.

5/1/2023

DATE

CHECK ONE:

☐

CASE DISPOSED

☒

GRANTED

☐

DENIED

APPLICATION:

☐

SETTLE ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

*Judy H. Kim*  
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HON. JUDY H. KIM, J.S.C.

☒

NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

OTHER

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE