

Posner v Circle Jay Glass LLC

2023 NY Slip Op 31607(U)

May 11, 2023

Supreme Court, New York County

Docket Number: Index No. 652742/2022

Judge: Louis L. Nock

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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. LOUIS L. NOCK **PART** **38M**

Justice

-----X

MICHAEL POSNER,

Plaintiff,

- v -

CIRCLE JAY GLASS LLC,

Defendant.

-----X

INDEX NO. 652742/2022

MOTION DATE 02/06/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, and 48

were read on this motion to CONSOLIDATE.

Upon the foregoing documents, plaintiff’s motion for consolidation of actions is granted for the reasons set forth in the moving and reply papers (NYSCEF Doc. Nos. 32, 44) and the exhibits attached thereto, in which the court concurs, as summarized herein. “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” (CPLR 602). A motion to consolidate is addressed to the discretion of the court (*Cromwell v CRP 482 Riverdale Ave., LLC*, 163 AD3d 626, 627 [2d Dept 2018]). “[T]here is a preference for consolidation in the interest 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 consolidation will prejudice a substantial right” (*Progressive Ins. Co. v Vasquez*, 10 AD3d 518, 519 [1st Dept 2004]).

Here, plaintiff establishes that this action arises out of the same facts as the action filed against Circle Glass LLC (*Posner v Circle Glass LLC*, index No. 653918/2020 [Sup Ct NY

County]) (the “first action”), whose assets were purchased by defendant herein. In both actions, plaintiff alleges that he was a sales agent for the defendant and that he is owed unpaid commissions (*compare* complaint in first action, NYSCEF Doc. No. 41, *with* complaint, NYSCEF Doc. No. 42). An open question exists as to which defendant employed plaintiff when he earned the alleged unpaid commissions, and, therefore, which defendant owes him said funds. In opposition to the motion, defendant fails to show “prejudice of a substantial right” (*Progressive Ins. Co.*, 10 AD3d at 519). Contrary to defendant’s present argument that the actions are not related, defendant previously argued that the cases were so related that the instant action should be dismissed in favor of the first action (Cammarata affirmation, NYSCEF Doc. No. 47, ¶¶ 12-14).

Accordingly, it is hereby

ORDERED that the plaintiff’s motion for consolidation of actions is granted and the above-captioned action is consolidated in this court with *Posner v Circle Glass LLC*, index No. 653918/2020, pending in this court; and it is further

ORDERED that the consolidation shall take place under index No. 653918/2020 and the consolidated action shall bear the following caption:

“-----X

MICHAEL POSNER,

Index No. 653918/2020

Plaintiff,

-v-

CIRCLE GLASS LLC, CIRCLE JAY GLASS LLC,

Defendants.

-----X”; and it is further

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

ORDERED that, within 30 days from the date of filing hereof, movant shall serve a copy of this order with notice of entry on the Clerk of the Court, who shall consolidate the documents in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that counsel for the movant shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed; and it is further

ORDERED that service of this order upon the Clerk of the 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, as applicable and insofar as is practical, the Clerk of this Court shall file the documents being consolidated in the consolidated case file under the index number of the consolidated action in the New York State Courts Electronic Filing System or make appropriate notations of such documents in the e-filing records of the court so as to ensure access to the documents in the consolidated action; and it is further

ORDERED that counsel for the parties are directed to appear for a status conference in Room 1166, 111 Centre Street, New York, New York, on June 21, 2023, at 2:00 PM.

This constitutes the decision and order of the court.



<u>5/11/2023</u>			<u>LOUIS L. NOCK, J.S.C.</u>	
DATE				
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE