

Hernandez v Kobayashi Am. Mfg., LLC

2023 NY Slip Op 34386(U)

December 13, 2023

Supreme Court, New York County

Docket Number: Index No. 150973/2023

Judge: Dakota D. Ramseur

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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. DAKOTA D. RAMSEUR **PART** **34M**

Justice

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FREGGY HERNANDEZ,

Plaintiff,

- v -

KOBAYASHI AMERICA MANUFACTURING, LLC, EAST
VILLAGE FARM & GROCERY, INC.,

Defendants.

-----X

INDEX NO. 150973/2023

MOTION DATE 08/04/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22

were read on this motion to/for DISMISS.

Plaintiff, Greggry Hernandez (plaintiff), commenced this action for personal injuries against Kobayashi America Manufacturing, LLC (Kobayashi) and East Village Farm & Grocery, Inc. stemming from an alleged injuries she sustained while using a hand warmer manufactured by Kobayashi (Action 2). Kobayashi now moves pursuant to CPLR 3211(a)(5) to dismiss plaintiff’s claims for negligence and products liability. Plaintiff cross-moves pursuant to CPLR 602 to consolidate this case with an action entitled *Hernandez v Heatmax et al.*, index no. 157217/2019, pending in the Supreme Court, New York County (Action 1). The motion to dismiss is opposed. For the following reasons, the motion is denied, and the cross-motion is granted.

Plaintiff alleges that on March 2, 2019, she suffered burn injuries resulting from the use of Hothands warmers on her skin. Plaintiff commenced Action 1 on July 24, 2019, against East Village Farm & Grocery, Inc., a deli that sold Plaintiff the warmers, and Heatmax, Inc., the designer and distributor of the warmers. Plaintiff commenced Action 2 on January 31, 2023, by filing a summons and verified complaint against East Village and Kobayashi alleging the same claims as in the first action and adding the manufacturing defect claim. Kobayashi is the manufacturer of the Hothands warmers.

In support of its motion, Kobayashi argues that Action 2 should be dismissed because plaintiff failed to commence this action within the three-year statute of limitations. In opposition, and in support of her motion to consolidate Action 1 and Action 2, plaintiff argues that the relation back doctrine applies, since plaintiff timely commenced Action 1, both claims arise from the same occurrence, the entities in Action 1 and Action 2 are “united in interest” as Heatmax is a subsidiary of Kobayashi, and that Kobayashi knew plaintiff would have named defendant Kobayashi as a party earlier.

In order for the relation back doctrine to apply, the following conditions must be met:

“(1) both claims arose out of same conduct, transaction or occurrence, (2) the new party is ‘united in interest’ with the original defendant, and by reason of that relationship can be charged with such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits and (3) the new party knew or should have known that, but for an excusable mistake by plaintiff as to the identity of the proper parties, the action would have been brought against him as well”

(*Stanger v Shoprite of Monroe*, 180 AD3d 408, 409 [1st Dept 2020], quoting *Buran v Coupal*, 87 NY2d 173, 178 [1995]).

“Consolidation is generally favored in the interest of judicial economy and ease of decision making where cases present common questions of law and fact, ‘unless the party opposing the motion demonstrates that a consolidation will prejudice a substantial right’ ” (*Raboy v McCrory Corp.*, 210 AD2d 145 [1st Dept 1994], quoting *Amtorg Trading Corp. v Broadway & 56th St. Assoc.*, 191 AD2d 212, 213 [1st Dept. 1993]).

Here, Kobayashi does not appear to dispute the presence of the latter two conditions necessary for the relation back doctrine to apply. Kobayashi argues that the relation back doctrine does not apply because plaintiff did not allege manufacturing defect claims in Action 1. However, the criteria is not whether a plaintiff seeking to apply the relation back doctrine asserted the identical claims, but rather whether “[t]he claims against the new defendants arise from the same conduct, transaction, or occurrence as the claims against the original defendants” (*Higgins v City of New York*, 144 AD3d 511, 513 [1st Dept 2016]). Both actions contain allegations concerning the identical event, to wit, that plaintiff’s alleged injuries resulted from the use of the subject handwarmers. Moreover, Kobayashi’s argument that it did not have notice of a manufacturing defect claims is without merit, since Heatmax’s interrogatories in Action 1 state that the Kobayashi manufactured the product and that plaintiff’s interrogatories state that defendants failed to “exercise reasonable care and properly manufacture of the product ‘Hothands.’ ” Accordingly, the Court holds that the relation back doctrine applies, and plaintiff’s claims in Action 2 relate back to Action 1. The Court further holds that the two actions should be consolidated since both stem from the identical incident, and thus judicial economy will be served by consolidation (*see DeLuca v Baybridge at Bayside Condo. I*, 5 AD3d 533, 535 [2d Dept 2004] [holding that the upon the determination that the relation back doctrine applies, the court may consolidate two related actions]).

Accordingly, it is hereby,

ORDERED that Kobayashi’s motion to dismiss is denied; and it is further

ORDERED that plaintiff’s motion to consolidate Action 1 and Action 2 is granted, and that the consolidation shall take place under Index No. 157217/2019, and the consolidated action shall bear the following caption:

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

-----X
 FREGGY M. HERNANDEZ,

Index no. 157217/2019

Plaintiff,

-against-

HEATMAX, INC., HOT HANDS, LLC.
 EAST VILLAGE FARM & GROCERY, INC., and
 KOBAYASHI AMERICA MANUFACTURING, 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 entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the Court (60 Centre Street, Room 141 B), 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 hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, 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 at the address www.nycourts.gov/supctmanh); 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, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is hereby directed to reflect the consolidation by appropriately marking the court's records; and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office shall be made in hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, shall be made in accordance with the procedures set forth in the aforesaid *Protocol*.

This constitutes the decision and order of the Court.


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DAKOTA D. RAMSEUR, J.S.C.

12/13/2023
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<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