

King v City of New York

2023 NY Slip Op 34965(U)

May 22, 2023

Supreme Court, Queens County

Docket Number: Index No. 717037/2018

Judge: Mojgan C. Lancman

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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. MOJGAN C. LANCMAN

CLIFFORD KING,

Plaintiff,

-against-

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF EDUCATION, NEW YORK CITY
TRANSIT AUTHORITY d/b/a MTA NEW YORK CITY
TRANSIT, MANHATTAN AND BRONX SURFACE
TRANSPORTATION OPERATING AUTHORITY,
METROPOLITAN SUBURBAN BUS AUTHORITY d/b/a
MTA LONG ISLAND BUS, NASSAU INTER-COUNTY
EXPRESS, MTA BUS COMPANY and METROPOLITAN
TRANSPORTATION AUTHORITY,

Defendants.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
CLIFFORD KING,

Plaintiff,

-against-

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF EDUCATION, NEW YORK CITY
TRANSIT AUTHORITY d/b/a MTA NEW YORK CITY
TRANSIT, MANHATTAN AND BRONX SURFACE
TRANSPORTATION OPERATING AUTHORITY,
METROPOLITAN SUBURBAN BUS AUTHORITY d/b/a
MTA LONG ISLAND BUS, NASSAU INTER-COUNTY
EXPRESS, MTA BUS COMPANY, METROPOLITAN
TRANSPORTATION AUTHORITY, and PRIDE
TRANSPORTATION SERVICES INC.,

Defendants.

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IAS PART 20

ACTION 1

Index No.: 717037/2018

Motion Seq. No.: 4

Motion Date: 5.3.23

Motion Cal. No.: 16

ACTION 2

Index No.: 722341/2020

The e-filed papers bearing NYSCEF document numbers 45-55 were read on this motion filed by the plaintiff, Clifford King, for an Order consolidating this action (“Action 1”) with the action bearing index number 722341/2020 (“Action 2”).

I. Factual background and procedural history

The plaintiff commenced the actions seeking to recover damages for personal injuries allegedly sustained on August 10, 2017 in the same motor vehicle accident on South Conduit at its intersection with Brookville Boulevard, in Queens, New York. The accident purportedly occurred when a Q85 bus bearing number 8077 and a school bus made contact. The plaintiff in both actions, Clifford King, was a passenger on the Q85 bus.

By way of an Order dated July 8, 2022 in Action 1, the Honorable Justice Kevin J. Kerrigan granted the City of New York (the “City”) and the Department of Education (“DOE”) summary judgment and dismissed the action and all cross-claims as against them.

Accordingly, the defendant, Pride Transportation Services, Inc. (“Pride”), opposes this motion insofar as it requests that the Court, upon consolidation, adopt the Order and deem the action dismissed as against the City and the DOE. The motion is otherwise unopposed.

II. Consolidation of the Actions pursuant to CPLR 602[a]

The legal principles applicable to this motion are settled: “[w]here common questions of law or fact exist, a motion to consolidate ... pursuant to CPLR 602 should be granted absent a showing of prejudice to a substantial right by the party opposing the motion. Further, consolidation is appropriate where it will avoid unnecessary duplication of trials, save unnecessary costs and expense, and prevent an injustice which would result from divergent decisions based on the same facts” [internal quotation marks and citations omitted] (*Moses v B & E Family Trust*, 147 AD3d 1043, 1045 [2d Dept 2017]).

The actions arise from the same incident, involve the same plaintiff, and involve common questions of law and fact. Consolidation would serve the interests of justice and judicial economy, and avoid the potential for inconsistent verdicts. The motion is thus granted.

I. Dismissal of the action as against the City and the DOE

In Action 2, the plaintiff claims the City, the DOE, and/or their employees were negligent in the operation of the bus in question, and thus caused the plaintiff injuries in the accident on August 10, 2017. In Action 1, in an Order dated July 8, 2022, Justice Kerrigan dismissed the same claims against the City and the DOE on the merits. Accordingly, Pride asks the Court to adopt the Order and deem the consolidated action dismissed as against the City and the DOE.

The Court of Appeals has held,

“Under res judicata, or claim preclusion, a valid final judgment bars future actions between the same parties on the same cause of action. One linchpin of res judicata is an identity of parties actually litigating successive actions against each other: the doctrine applies only when a claim between the parties has been previously brought to a final conclusion. Importantly, the claim preclusion rule extends beyond attempts to relitigate identical claims. We have consistently applied a transactional analysis approach in determining whether an earlier judgment has claim preclusive effect, such that once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy. This rule is grounded in public policy concerns, including fairness to the parties, and is intended to ensure finality, prevent vexatious litigation and promote judicial economy” [internal quotation marks and citations omitted] (*Simmons v Trans Express Inc.*, 37 NY3d 107, 111 [2021]).

Here, Pride has shown that claims against the City and the DOE have already been determined on the merits in Action 1, resulting in dismissal. The claims against the City and the DOE must therefore be deemed dismissed in the consolidated action, as well.

For the reasons stated above, it is hereby:

ORDERED, that the plaintiff’s motion for consolidation is granted to the extent that Action 1 and Action 2 are consolidated for all purposes under Action 1, which bears index number 717037/2018; and it is further,

ORDERED, that the consolidated action is dismissed as against the City and the DOE, and the Clerk of the Court shall mark the records, accordingly; and it is further,

ORDERED, that the caption of the consolidated action shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
CLIFFORD KING,

Plaintiff,

Index No.: 717037/2018

-against-

NEW YORK CITY TRANSIT AUTHORITY d/b/a MTA NEW
YORK CITY TRANSIT, MANHATTAN AND BRONX
SURFACE TRANSPORTATION OPERATING AUTHORITY,
METROPOLITAN SUBURBAN BUS AUTHORITY d/b/a MTA

LONG ISLAND BUS, NASSAU INTER-COUNTY EXPRESS,
MTA BUS COMPANY, METROPOLITAN
TRANSPORTATION AUTHORITY and PRIDE
TRANSPORTATION SERVICES INC.,

Defendants.

-----X
; and it is further,

ORDERED, that the pleadings in each action shall stand as the pleadings in the consolidated action; and it is further,


ORDERED, that the movant shall serve a copy of this Order with Notice of Entry upon all defendants in the consolidated action and the Queens County Clerk by July 31, 2023; and it is further,

ORDERED, that the Queens County Clerk, upon being served with a copy of this Order with Notice of Entry, is directed to transfer all papers filed under index number 722341/2020 to the file bearing index number 717037/2018; and it is further,

ORDERED, that a copy of this Order shall accompany the Note of Issue.

This constitutes the Decision and Order of the Court.

Dated: Jamaica, New York
May 22, 2023



MOJGAN C. LANCMAN, J.S.C.

FILED J.W.
6/5/2023
COUNTY CLERK
QUEENS COUNTY