

Ginsberg v Lex Owners Corp.

2024 NY Slip Op 32120(U)

June 24, 2024

Supreme Court, New York County

Docket Number: Index No. 153523/2022

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

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GAIL GINSBERG,

Plaintiff,

- v -

LEX OWNERS CORP., MAXWELL KATES, INC, BANK OF AMERICA CORPORATION, BANK OF AMERICA, NATIONAL ASSOCIATION, THE BOARD OF MANAGERS OF THE 136 CONDOMINIUM, GREENWICH ASSOCIATES, LLC, D'AGOSTINO SUPERMARKET, INC., HOFFMAN MANAGEMENT CORPORATION

Defendant.

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INDEX NO. 153523/2022
MOTION DATE 05/04/2024
MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 96, 97, 98, 99, 100, 112, 113, 114, 115

were read on this motion to/for CONSOLIDATE

Upon the foregoing documents, Plaintiff Gail Ginsberg's ("Plaintiff") motion to consolidate is granted.

This is a personal injury action stemming from a fall on October 8, 2021 at 1066 Lexington Avenue, New York, New York (NYSCEF Doc. 37). Plaintiff had a subsequent fall on October 11, 2021 at 1257 2nd Avenue, also in New York (NYSCEF Doc. 97 at ¶ 4). Plaintiff has also filed a lawsuit based on that fall under index number 152532/2023. Plaintiff requests the two matters be consolidated because a jury would find it virtually impossible to assign what injuries and collateral damage resulted from which accident.

Defendant Greenwich Associates, LLC ("Greenwich") opposes. Greenwich argues juries will be able to assign injuries to each accident because the medical records themselves show that in the October 8, 2021 accident Plaintiff injured her left wrist, while in her October 11, 2021 fall

the medical records reflect she sustained a right shoulder injury. Defendant Bank of America Corp. and Bank of America, N.A. (collectively “Bank of America”) also opposes on the same basis.

In reply, Plaintiff concedes that the left wrist injury is solely related to this lawsuit and is not related to the October 11 lawsuit (NYSCEF Doc. 122 at ¶ 4). However, Plaintiff is arguing that the right shoulder injury is a result of both accidents and cannot be separated.

Pursuant to CPLR § 602(a), where two actions involve a common question of law or fact, the court may order a joint trial of any or all matters in issue. It is not necessary that all issues of law and facts be common to both actions (*Grzesik v Sanchez*, 2022 NY Slip Op. 30058 [NY Co. Sup. Ct., 2022] [J. Cohen, David B.] citing *de Saint Phalle v de Saint Phalle*, 92 AD3d 792 [1st Dept 1983]). Where an allegedly pre-existing injury may be aggravated by an injury sustained in a prior action, consolidation is proper (*William v City of New York*, 191 AD3d 217 [1st Dept 1993]; see also *Gomez v New York City Hous. Auth.*, 161 AD2d 190, 191 [1st Dept 1990]). Here, the temporal proximity of Plaintiff’s two falls indicate that both falls may have played some role to her shoulder injury. Moreover, Defendants have not shown how they would be prejudiced by a joint trial on damages, and judicial economy will be served by obviating the need for medical experts to testify twice about the same injuries. Finally, the Court finds there is no risk of confusion as Plaintiff is not requesting liability be tried jointly. The defendants in the 2023 action all claim as an affirmative defense that the shoulder injury was caused by the 2022 action, and thus Plaintiff will be materially prejudiced if a joint trial on damages is not held. Finally, the pattern jury instructions provide that in a situation where two accidents happen so close in time that one jury should issue a damages verdict for all tortfeasors involved. Based on the facts and the law, Plaintiff’s motion is granted.

Accordingly, it is hereby,

ORDERED that the motion of Plaintiff is granted and the above-captioned action shall be consolidated solely for purposes of discovery and shall be jointly tried as to damages with *Gail Ginsberg v Board of Managers of the Manhattan House Condominium, et. al.*, Index No. 152532/2023, pending in this court; and it is further

ORDERED that, within 30 days from entry of this order, counsel for plaintiff in *Gail Ginsberg v Board of Managers of the Manhattan House Condominium, et. al.*, Index No. 152532/2023, shall file with the General Clerk's Office a copy of this order with notice of entry, together with, if a Request for Judicial Intervention ("RJI") has not yet been filed in that action, an RJI and shall pay the fee therefor, and the Clerk of the General Clerk's Office shall assign said action to the undersigned or reassign such action to the undersigned, as the case may be; and it is further

ORDERED that the Clerk of the General Clerk's Office shall reassign *Gail Ginsberg v Board of Managers of the Manhattan House Condominium, et. al.*, Index No. 152532/2023 to the undersigned; and it is further

ORDERED that the above captioned and action and the matter of *Board of Managers of the Manhattan House Condominium, et. al.*, Index No. 152532/2023 shall proceed under separate captions and index numbers; and it is further,

ORDERED that, upon payment of the appropriate calendar fees and the filing of notes of issue and certificates of readiness with the General Clerk's Office in each of the above actions, the Clerk of the General Clerk's Office shall place the aforesaid actions upon the trial calendar for a joint trial on damages; and it is further

ORDERED that in both actions such filing with 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 the court’s website); and it is further

ORDERED that all parties are directed to appear for an in-person conference July 31, 2024 at 9:30 a.m. in 60 Centre Street, New York, New York, Room 442, to enter into a joint discovery order. If the parties are able to agree to a proposed discovery order prior to the July 31, 2024 conference, they are directed to e-mail same to SFC-Part33-Clerk@nycourts.gov, which may obviate the need for a conference; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

<u>6/24/2024</u> DATE	<u>Mary V Rosado JSC</u> HON. MARY V. ROSADO, J.S.C.					
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