

Moreno v Leeding Bldrs. Group LLC

2024 NY Slip Op 32794(U)

August 7, 2024

Supreme Court, New York County

Docket Number: Index No. 161147/2022

Judge: Lynn R. Kotler

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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. LYNN R. KOTLER PART 08

Justice

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FABIAN MORENO,

Plaintiff,

- v -

LEEDING BUILDERS GROUP LLC, 1461-1469 THIRD AVE
OWNER LLC,

Defendant.

-----X

INDEX NO. 161147/2022

MOTION DATE 04/16/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39

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

Upon the foregoing documents, it is ORDERED that this motion and cross-motion are decided as follows.

Defendants Leeding Builders Group, LLC ("Leeding") and 1461-1469 Third Ave Owner, LLC ("Owner" and together with Leeding, collectively "Defendants") move for an order consolidating the action filed under Index Number 520654/2023 pending in Supreme Court, Kings County (the "Kings County Action") under this New York County action and amending the caption accordingly. Plaintiff's counsel cross-moves for an order consolidating the two actions but further seeks to have the consolidated action venued in Kings County. Defendants oppose the request to change venue to Kings County.

At the outset, the motion to consolidate is granted without opposition, as the parties' agree that consolidation is appropriate since both actions arise out of the same alleged accident/occurrence.

As for the balance of the cross-motion, it is denied. The New York County action was filed first-in-time and ordinarily is where these consolidated actions should be venued (*see e.g. Harrison v. Harrison*, 16 AD3d 206 [1st Dept 2005]). Plaintiff's counsel argues that "special circumstances" warrant a change in venue because both plaintiffs resided in Kings County at the time of the accident and at the time both actions were commenced. However, as defense counsel points out, the bill of particulars for one of the plaintiffs is contrary to that assertion. Plaintiffs' counsel further asserts that a conference scheduled in October in the Kings County Action warrants the venue change, however, minimal discovery has taken place in either action. Moreover, none of the parties have indicated why they did not comply with the August 7, 2023 preliminary conference order which required, *inter alia*, depositions to be completed on or before October 25, 2023, i.e. some manner of discovery dispute which prevents the parties from completing discovery in this matter (see Part 8 Rules, II. Conferences, available at [part8-rules.pdf \(nycourts.gov\)](https://www.nycourts.gov/part8-rules.pdf)).

For at least these reasons, that portion of plaintiff's cross-motion seeking a venue change is denied.

Accordingly, it is hereby ORDERED that the motion is granted ONLY to the extent that the action entitled Rodriguez vs. Leeding Builders Group LLC et al. , Index No. 520654/2023, pending in the Supreme Court, Kings County, shall be consolidated in this Court with Moreno vs. Leeding Builders Group LLC et al., Index No. 161147/2022 , New York County; and it is further

ORDERED that the consolidation shall take place under New York County Index No. 161147/2022 and the consolidated action shall bear the following caption:

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JULIO RAUL ARIAS RODRIGUEZ and FABIAN
MORENO a.k.a. CHRISTIAN MENDEZ,

Plaintiff(s)

-against-

LEEDING BUILDERS GROUP LLC, and
1461-1469 THIRD AVE OWNER LLC,

Defendant(s).

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LEEDING BUILDERS GROUP LLC, and 1461-1469
THIRD AVE OWNER LLC,

Third-Party Plaintiffs,

-against-

ALCY CONSTRUCTION, INC.,

Third-Party Defendant.

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And it is further

ORDERED that, within 30 days from entry of this order, counsel for the movant shall serve a certified copy of this order upon the Clerk of the Supreme Court, Kings County, and shall pay the appropriate fee, if any, for such transfer and shall contact the staff of said Clerk to arrange for the effectuation of the transfer in an efficient manner; and it is further

ORDERED that service upon the Clerk of the Supreme Court, Kings County shall be made in accordance with any applicable protocol or other procedures of said county; and it is further

ORDERED that the Clerk of the Supreme Court, Kings County, shall transfer the documents on file under Index No. 520654/2023 to the Clerk of this Court for the purpose of consolidation; and it is further

ORDERED that the Clerk of the Supreme Court, Kings County and the Clerk of this court shall coordinate the transfer of the documents being transferred so as to ensure an efficient transfer and to minimize insofar as practical the reproduction of such documents, including with regard to any documents that may be in digital format; 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, 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 such service upon the Clerk of the Court shall be made in hard-copy format if the case pending in this county is a hard-copy case or, if this case is an e-filed one, 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); and it is further

ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents transferred from the Supreme Court, Kings County in the consolidated case file under the Kings County 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 upon the Clerk of the General Clerk’s Office, 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 the case pending in this county is a hard-copy case or, if the case pending here is an e-filed one, shall be made in accordance with the procedures set forth in the aforesaid Protocol; and it is further

ORDERED that counsel are directed to appear for a status conference via Microsoft Teams on October 2, 2024 at 11:00am. Counsel should have both audio and video available for the Microsoft Teams meeting.

Invitations to the Microsoft Teams meeting will be sent to counsel of record on NSYCEF. Any party that needs an invitation to the meeting should contact Eric Wursthorn, Esq., Principal Court Attorney, at EWURSTHO@nycourts.gov. Please be advised that “each attorney who receives notification of an appearance on a specific date and time **is responsible for notifying all other parties by email that the matter is scheduled to be heard on that assigned date and time**” (Uniform Civil Rules for the Supreme Court and the County Court § 202.23[c]).

If the parties are able to meet and confer and set deadlines for all outstanding discovery in a written stipulation to be so ordered by the court, they may file the stipulation on NYSCEF with a request that it be so ordered and notify the court that the conference is unnecessary and said conference will be cancelled.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.

LYNN R. KOTLER, J.S.C.

8/7/2024
DATE

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED SETTLER ORDER GRANTED IN PART OTHER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE