

**Warner v 114 Bay View Walk LLC**

2024 NY Slip Op 34809(U)

September 30, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 616930/2023

Judge: Linda Kevins

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

INDEX No. 616930/2023

CAL. No. \_\_\_\_\_

**SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 29 - SUFFOLK COUNTY**

***P R E S E N T:***

MOTION SUBMIT DATE: 08/20/24  
MOT. SEQ. # 1 -MG

**HON. LINDA KEVINS**  
*Justice of the Supreme Court*

-----X	
ALISON WARNER,	
	Plaintiff,
- against -	
114 BAY VIEW WALK LLC and KESTUTIS VELUTIS,	
	Defendants.
-----X	

Upon the following papers e-filed (documents # 19 through # 27), it is,

**ORDERED** that the unopposed motion by plaintiff for an order, pursuant to CPLR 602 (a), consolidating this action with an action entitled *Alison Warner v. Susanne King and Rosemarie Cialini*, assigned index number 607435/2024, is **GRANTED**; and it is further

**ORDERED** that the actions are consolidated under index number 616930/2023, and the Clerk of the Court shall place the contents of the file for the action assigned index number 607435/2024 into the file for this action; and it is further

**ORDERED** that upon payment of any required fees, the Suffolk County Clerk shall amend the caption as stated below to effectuate this Court's Order; and it is further

**ORDERED THAT ALL COUNSEL TO THE CONSOLIDATED ACTION (ATTORNEYS OF RECORD-HANDLING ATTORNEYS), AND IF NO COUNSEL, THEN THE PARTY ARE DIRECTED TO APPEAR, IN PERSON, before the Court in IAS Part 29, located at the Alan D. Oshrin Courthouse, One Court Street, Riverhead, New York 11901, on November 6, 2024, at 9:30 a.m., for a Compliance/Preliminary Conference, unless an**

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executed proposed Certification Order or Stipulation of Discontinuance is filed with the Court prior thereto; and it is further

**ORDERED** that non-appearance will not be countenanced by the Court and may subject the non-appearing party to one or more of the sanctions provided pursuant to Uniform Rules for Trial Courts (22 NYCRR § 202.27) and Rules of the Chief Administrator of the Courts (22 NYCRR § 130-2.1); and it is further

**ORDERED** that at the call of the calendar, if either party does not appear or proceed or announce their readiness to proceed, the court shall consider an order pursuant to 22 NYCRR § 202.27 as follows: (a) if the plaintiff appears but the defendant does not, the court shall consider granting judgment by default and order an inquest; (b) if the defendant appears but the plaintiff does not, the court shall consider a dismissal of the action and order a severance of counterclaims or cross claims; and (c) if no party appears, the Court shall make such order as appears just; and it is further

**ORDERED** that appearances by persons with knowledge of the facts and vested with authority to make binding dispositions are required on all court dates unless excused by the Court. (See also 22 NYCRR 202.1) Counsel and parties shall bring with them to all court appearances copies of all relevant documents including courtesy copies of all pleadings, settlement offers, pending motions and affidavits of service comporting with Part 29 Court Rules which may be found in Part 29 and at: [www.nycourts.gov/courts/10jd/suffolk/sc\\_justices.shtml](http://www.nycourts.gov/courts/10jd/suffolk/sc_justices.shtml) and, if an e-filed case, the e-filed document numbers of same; and it is further

**ORDERED** that counsel for the parties are directed to confirm that all parties have complied with the Uniform Rules for Trial Courts (22 NYCRR § 202.11 Consultation prior to Preliminary and Compliance Conferences). Please advise the Court of the date of the consultation and what issues were resolved and what is left to be resolved after such consultation, by uploading such information to the e-filing system with notice to all parties and copying the Court by email to [sufkevins@nycourts.gov](mailto:sufkevins@nycourts.gov); and it is further

**ORDERED** that the movant is directed to promptly serve upon the Suffolk County Clerk, notice pursuant to CPLR §8019 [c] together with a copy of this Order and payment of any required fees; and it is further

**ORDERED** that upon Entry of this Order, movant is directed to promptly serve a copy of this Order with Notice of Entry upon all parties to the consolidated action and to promptly file the affidavits of service with the Clerk of the Court.

Plaintiff commenced this action for alleged negligence caused by a dangerous and defective condition that took place on defendants' premises located at 114 Bay View Walk, Cherry Grove, New York 11782. Plaintiff's attorney affirms that he is withdrawing this action against defendant 114 Bay View Walk LLC only, as it was discovered that Susanne King and Rosemarie Cialini are the owners of the property located at 114 Bay View Walk, Cherry Grove, New York 11782 (e-filed document # 20 ¶ 8) and not 114 Bay View Walk LLC.

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Action No. 1 was commenced by plaintiff Alison Warner under index number 616930/2023 against defendants 114 Bay View Walk LLC and Kestutis Velutis. The action under index number 607435/2024 (“Action No. 2”) was subsequently commenced by the plaintiff Alison Warner by the filing of a summons and complaint against defendants Susanne King and Rosemarie Cialini. The plaintiff alleges the same claims arising in Action No. 1 and Action No. 2, and both actions are assigned to the undersigned.

Absent prejudice to a substantial right of a party opposing the motion, consolidation or a joint trial of actions pending before a court should be granted when common questions of law or fact exist (*County of Westchester v White Plains Ave., LLC*, 105 AD3d 690, 962 NYS 2d 648, [2d Dept 2013]; *Alizio v Perpignano*, 78 AD3d 1087, 912 NYS2d 132 [2d Dept 2010]).

Here, consolidation is appropriate as Action No. 1 and Action No. 2 appear to arise out of the same alleged incident between the same parties and involve common questions of law and fact (*see Longo v Fogg*, 150 AD3d 724, 55 NYS3d 61 [2d Dept 2017]; *Whiteman v Parsons Transp. Group of N.Y., Inc.*, 72 AD3d 677, 900 NYS2d 87 [2d Dept 2010]; *Perini Corp. v WDF, Inc.*, 33 AD3d 605, 822 NYS2d 295 [2d Dept 2009]). As proper service was effectuated upon all parties and no papers were submitted in opposition to the motion, no prejudice has been shown.

Accordingly, unopposed motion by plaintiff is granted to the extent that these matters shall be consolidated, as it will serve the interests of the parties, the witnesses, and the Court. The amended and consolidated caption shall read:

-----X	
ALISON WARNER,	
	Plaintiff,
- against -	
KESTUTIS VELUTIS, SUSANNE KING AND ROSEMARIE CIALINI,	
	Defendants.
-----X	

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Anything not specifically granted herein is hereby denied.

The foregoing constitutes the decision and **Order** of the Court.



\_\_\_\_\_  
LINDA KEVINS, JSC

Dated: 9.30.24

\_\_\_\_\_ FINAL DISPOSITION      X   NON-FINAL DISPOSITION