

Palma v Fernandez

2024 NY Slip Op 34816(U)

September 17, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 626234/2023

Judge: Maureen T. Liccione

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This opinion is uncorrected and not selected for official publication.

Short Form Order

Index No. 626234/2023

SUPREME COURT – STATE OF NEW YORK
PART 78 – SUFFOLK COUNTY

P R E S E N T:

Hon. Maureen T. Liccione

Justice Supreme Court

-----x
RAFAEL PALMA and ANNA PALMA,

Plaintiffs,

-against-

DANIA FERNANDEZ, ROBERTO ANTONIO-
CHAVEZ and ADONIS G. TICAS,

Defendant.
-----x

Mot. Seq. No. 001– MotD
Orig. Return Date: 06/27/2024
Mot. Submit Date: 07/03/2024

PLAINTIFFS' ATTORNEY

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Upon the e-filed documents numbered 23 through 27 and due deliberation, it is determined as follows:

ORDERED that defendant Adonis G. Ticas's motion is granted to the extent that Adonis G. Ticas is directed, within 20 days of the entry of this Order, to file a request for judicial intervention and pay the appropriate fee, in connection with the action entitled *Adonis Ticas v*

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Angel Acosta Vasquez a/k/a A.J. Acosta Vasquez, Dania Fernandez and John Doe, pending in Suffolk County Supreme Court, under Index No. 615738/2023, and include this action as a related action in the request for judicial intervention, upon which defendant Adonis G. Ticas’s motion seeking to join for trial this action with the *Ticas* action shall be granted; and it is further,

ORDERED that, upon defendant Adonis G. Ticas’s compliance with the directive set forth above, this action and the action entitled *Adonis Ticas v Angel Acosta Vasquez a/k/a A.J. Acosta Vasquez, Dania Fernandez and John Doe*, pending in Suffolk County Supreme Court, under Index No. 615738/2023, shall be joined for trial; and it is further,

ORDERED that the actions joined for trial shall bear the following caption:

-----X

ACTION No. 1 INDEX #626234/2023

RAFAEL PALMA and ANNA PALMA,

Plaintiffs,

-against-

DANIA FERNANDEZ, ROBERTO ANTONIO-CHAVEZ and ADONIS G. TICAS,

Defendant.

-----X

ACTION No. 2 INDEX #615738/2023

ADONIS TICAS,

Plaintiff,

-against-

ANGEL ACOSTA VASQUEZ a/k/a A.J. ACOSTA VASQUEZ, DANIA FERNANDEZ and JOHN DOE, the name intended to be fictitious as the driver,

Defendant.

-----X

ORDERED that the parties of the actions joined for trial shall appear for a conference on November 14, 2024 at 9:30 a.m. at the Alan D. Oshrin Supreme Court Building, 1 Court Street, Court Annex, Part 78, Riverhead, New York 11901.

Defendant Adonis G. Ticas moves pursuant to CPLR 602 (a) to join this action (Action No. 2) with *Adonis Ticas v Angel Acosta Vasquez a/k/a A.J. Acosta Vasquez, Dania Fernandez*

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and John Doe, pending in Suffolk County Supreme Court with the Index number 615738/2023 (Action no. 1) for discovery and trial with separate certificates of readiness and notes of issue and to set both matters down for a discovery conference to coordinate discovery. In both actions, plaintiffs seek to recover for personal injuries allegedly sustained by plaintiffs as a result of a motor vehicle accident that occurred on March 4, 2022 at the intersection of West 11th Street and West 10th Street, in Huntington, NY. Rafael Palma and Anna Palma are plaintiffs in Action no. 2 and defendant Adonis G. Ticas is the plaintiff in Action no. 1. Dania Fernandez is a common defendant in both actions. Defendants have filed answers to the complaints in both actions. No opposition was filed in response to the motion.

Pursuant to CPLR 602 (a), when actions involving a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all the matters in issue, may order the actions consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. Where common questions of law or fact exist, a motion to consolidate or for a joint trial pursuant to CPLR 602 (a) should be granted absent a showing of prejudice to a substantial right by the party opposing the motion (*HSBC Bank USA, N.A. v Francis*, 214 AD3d 58, 62 [2d Dept 2023]; *Perini Corp. v WDF, Inc.*, 33 AD3d 605, 606 [2d Dept 2006]). “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” (*HSBC Bank USA, N.A.*, 214 AD3d at 62–63, quoting *Viafax Corp. v Citicorp Leasing, Inc.*, 54 AD3d 846, 850 [2d Dept 2008]). The interests of justice and judicial economy are better served by consolidation in those cases where the actions share material questions of law or fact (*Hanover Ins. Grp.*, 105 AD3d at 1001; *Megyesi v Auto. Rentals, Inc.*, 115 AD2d 596, 596 [2d Dept 1985]). When an action contains a defendant or plaintiff not present in the other, the appropriate procedure is a joint trial and not consolidation (*see Longo v Fogg*, 150 AD3d 724, 725 [2d Dept 2017]; *see also Cola-Rugg Enterprises, Inc. v Consol. Edison Co. of New York*, 109 AD2d 726, 727 [2d Dept 1985]).

A review of the record indicates that the interests of justice and judicial economy would be served by the joining for trial of the two actions since both actions arose out of the same motor vehicle accident. Both actions share material questions of law and fact. Moreover, no party has come forth to demonstrate prejudice to any substantial rights if the Court were to join the actions

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for trial. Since the actions involve different plaintiffs, the two actions will be joined for trial and not consolidated (*see Perini Corp. v WDF, Inc.*, 33 AD3d 605, 607 [2d Dept 2006]).

Nonetheless, 22 NYCRR 202.6 (a) provides, in relevant part, that, with certain exceptions not relevant here, “in an action not yet assigned to a judge, the court shall not accept for filing a notice of motion . . . unless such notice or application is accompanied by a request for judicial intervention.” CPLR 8020 (a) requires that, before a civil action is assigned to a judge or justice, the party seeking the assignment must pay a fee along with the filing of the request for judicial intervention (RJI). Even though the papers in support of the instant motion were uploaded to the NYSCEF system under Action No. 2, in which an RJI fee has been paid and an RJI has been filed, relief is also requested that affects Action No. 1, for which no RJI has yet been filed and no RJI fee has yet been paid. Thus, the filing of a separate RJI and the payment of the appropriate fee is required before this Court may join for trial the two actions.

Accordingly, the motion to join for trial is granted without opposition, provided that an RJI is filed in Action no. 1.

The foregoing constitutes the decision and Order of the Court.

ENTER

DATE: September 17, 2024
Riverhead, NY


HON. MAUREEN T. LICCIONE, J.S.C.

FINAL DISPOSITION

NON-FINAL DISPOSITION