

Parra v J. Petheram Constr. Corp.
2024 NY Slip Op 35146(U)
October 17, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 600222/2022
Judge: Linda Kevins
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

INDEX No. 600222/2022
CAL. No. _____

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

PRESENT:

HON. LINDA KEVINS
Justice of the Supreme Court

MOTION SUBMIT DATE: 10/01/24
MOT. SEQ. # 1 - MG

-----X
CRISTIAN GUTIERREZ PARRA,
Plaintiff,

- against -

J. PETHERAM CONSTRUCTION CORP.,
WYANDOTTE LANE LLC, and OLD
PURCHASE PROPERTIES LLC,

Defendants.
-----X

Upon the following papers e-filed (documents # 22 through # 29) it is,

ORDERED that the unopposed motion by plaintiff for an order granting consolidation, pursuant to CPLR 602 (a), of this action under index number 600222/2022 with the action entitled *Cristian Gutierrez Parra v Phillip's Contracting, Inc.*, assigned index number 607056/2024, is **GRANTED**; and it is further

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

ORDERED that the actions are consolidated under index number 600222/2022, and the Clerk of the Court shall place the contents of the file for the action assigned index number 607056/2024 into the file for this action; and it is further

ORDERED THAT ALL COUNSEL (ATTORNEYS OF RECORD-HANDLING ATTORNEYS) AND IF NO COUNSEL, THEN THE PARTY UNLESS THE PARTY IS A CORPORATION AND THEREFORE MUST APPEAR BY COUNSEL [SEE CPLR § 321

PARRA V J. PETHERAM CONSTRUCTION CORP. ET AL.
INDEX NO. 600222/2022
MOTION SEQ. #1
Page 2 of 4

(a)] **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 December 12, 2024 , at 9:30 a.m.**, for a Compliance/Settlement Conference, unless an 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 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; 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 and to promptly file the affidavits of service with the Clerk of the Court.

Plaintiff commenced this action (“Action No. 1”) to recover damages for alleged personal injuries that took place on May 13, 2021 from a fall from height on new home construction at 8 Wyandotte Lane, Bellport, County of Suffolk, State of New York. Action No. 1 under index

PARRA V J. PETHERAM CONSTRUCTION CORP. ET AL.
INDEX NO. 600222/2022
MOTION SEQ. #1
Page 3 of 4

number 600222/2022 and Action No. 2 under index number 607056/2024 are both assigned to the undersigned. A Stipulation of discontinuance (e-filed document # 27) has been filed in Action No. 1 with respect to defendant Old Purchase Properties, LLC.

Action No. 2 under Index No. 607056/2024 was commenced by plaintiff in Supreme Court, Suffolk County against defendant Phillip’s Contracting, Inc. to recover damages alleged for personal injuries due from the same fall from height in Action No. 1.

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]). No papers were submitted in opposition to the motion, and no prejudice is shown. Moreover, consolidation is appropriate, as both actions arise out of the same incident and involve common questions of law and fact (*see 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]).

Given that the two actions arise from the same incident (*see* CPLR 602 [a]), consolidation will serve the interests of the court, the parties and the witnesses, and consolidation is, therefore appropriate. Accordingly, the unopposed motion by plaintiff is granted, and the consolidated and amended caption with the discontinuance of defendant Old Purchase Properties, LLP shall read:

-----X	
CRISTIAN GUTIERREZ PARRA,	
Plaintiff,	
- against -	Index No. 600222/2022
J. PETHERAM CONSTRUCTION CORP., WYANDOTTE LANE LLC, and PHILLIP’S CONTRACTING, INC.,	
Defendants.	
-----X	

PARRA V J. PETHERAM CONSTRUCTION CORP. ET AL.
INDEX NO. 600222/2022
MOTION SEQ. #1
Page 4 of 4

Anything not specifically granted herein is hereby denied.

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



LINDA KEVINS, JSC

Dated: 10.17.24

_____ FINAL DISPOSITION X NON-FINAL DISPOSITION