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| <b>Lancer Ins. Co. v Grande</b>                                                                                                                                                                                                |
| 2024 NY Slip Op 35346(U)                                                                                                                                                                                                       |
| July 19, 2024                                                                                                                                                                                                                  |
| Supreme Court, Westchester County                                                                                                                                                                                              |
| Docket Number: Index No. 60529/2023                                                                                                                                                                                            |
| Judge: David F. Everett                                                                                                                                                                                                        |
| 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.                                                                                                                                                         |

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER**

-----X  
LANCER INSURANCE COMPANY a/s/o CIAMARRA  
ENTERPRISES, INC. and JOHN COLON JR.,

**INDEX NO. 60529/2023**

Plaintiffs,

**DECISION/ORDER  
Motion Seq. 2**

-against-

OLINDA GRANDE,

Defendant.

-----X  
**EVERETT, J.**

Upon consideration of the papers filed in the New York State Courts Filing System (NYSCEF) Doc Nos. 17-21, relative to the motion by plaintiff to join “this action [Action No. 1] for the purpose of conducting and completing discovery and joint trial with another action venued in Westchester Supreme Court, entitled *Geico Indemnity Company aso Olinda Grande v. Ciamarra Enterprises, Inc. and John Colon, Jr.*, Index No: 557302/2024 [Action No. 2],” the Court determines as follows:

In the affirmation in support (NYSCEF Doc No. 18), plaintiff’s counsel explains that Action No. 1 is an action for automobile damage stemming from a motor vehicle accident that occurred on January 11, 2023, which was commenced by the filing of a summons and complaint on February 16, 2024, and issue was joined by the service of the verified answer on March 6, 2024 (NYSCEF Doc No. 19); that Action No. 2 is a subrogation claim for reimbursement of property damage paid out on behalf of plaintiff’s insured as a result of the property damage sustained from

the same motor vehicle accident that gave rise to Action 1; that Action No. 2 was commenced by filing the summons and complaint on May 3, 2023, and the answer was served on November 28, 2023; and that neither action has been noticed for trial.

CPLR 602 (a) states:

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 cost or delay.

It is appropriate to consolidate actions involving common questions of law or fact, and it is inappropriate to consolidate actions which involve different factual and legal issues (*see Mas-Edwards v Ultimate Servs., Inc.*, 45 AD3d 540, 540-541 [2d Dept 2007]; *Pau v Bellavia*, 145 AD2d 609, 611 [2d Dept 1988]).

A trial court has broad discretion in determining whether to order consolidation, particularly if the interests of justice and judicial economy are better served by consolidating cases that share material questions of law or fact, and there is no showing of prejudice to a substantial right of a party (*see Hanover Ins. Group v Mezansky*, 105 AD3d 1000, 1000-1001 [2d Dept 2013]). Further, prejudice may be outweighed by the possibility of inconsistent verdicts if separate trials ensue (*id.* at 1001).

Here, Actions # 1 and 2 arose out of the same motor vehicle accident that occurred on January 11, 2023, resulting in common questions of law and fact. The evidence to be adduced in each case will be substantially the same, as will the parties and witnesses who will testify at trial, and there is no showing of prejudice. Under the facts alleged in these actions, consolidation is in the interest of justice and judicial economy and avoids the possibility of inconsistent verdicts if there were separate trials.

Accordingly, it is,

ORDERED that plaintiff's unopposed motion for consolidation is granted; and it is further

ORDERED that the consolidated action will bear the following captions:

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER**

-----X  
GEICO INDEMNITY COMPANY A/S/O OLINDA GRANDE, **INDEX NO. 57302/2024**

Plaintiff,

-against-

CIAMARRA ENTERPRISES, INC. AND JOHN COLON, JR.,

Defendants.

-----X  
LANCER INSURANCE COMPANY a/s/o CIAMARRA **INDEX NO. 60529/2023**  
ENTERPRISES, INC. and JOHN COLON JR,

Plaintiffs,

-against-

OLINDA GRANDE,

Defendant

-----X  
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

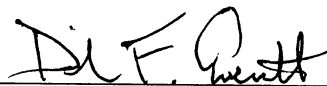
ORDERED that, within 30 days of the filing of this Decision and Order in NYSCEF, plaintiff shall serve a copy of this Order with notice of entry on all parties entitled to notice and the Clerk of the Court, who shall reflect the consolidation for the purpose of conducting and

completing discovery and joint trial and shall mark the records to reflect the consolidation in accordance with NYSCEF protocols.

The foregoing constitutes the Decision and Order of the Court.

Dated: White Plains, New York  
July 19, 2024

ENTER:

A handwritten signature in black ink, appearing to read "D.F. Everett", is written over a horizontal line.

HON. DAVID F. EVERETT, J.S.C.

Filed in NYSCEF