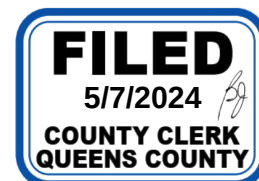


Martinez v Pavarini McGovern, LLC
2024 NY Slip Op 35390(U)
May 6, 2024
Supreme Court, Queens County
Docket Number: Index No. 706353/2019
Judge: Anna Culley
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government 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

NEW YORK SUPREME COURT - QUEENS COUNTY



Present: HONORABLE ANNA CULLEY IA Part 27
Justice

-----X
DENNY MARTINEZ,

Plaintiff,

-against-

Index

Number 706353 /2019

Motion

Date February 27, 2024

PAVARINI McGOVERN, LLC, PAVARINI NORTH
EAST CONSTRUCTION CO., LLC and
STRUCTURE TONE, LLC,

Mot Seq. No. 1

Amended Decision/Order

Defendants.

-----X

The following numbered papers read on this motion by defendant for an order 1) Pursuant to CPLR 3211 and/or 3216, dismissing the action for failure to prosecute; or, in the alternate, 2) pursuant to CPLR 3211 and/or 3212, dismissing Pavarini McGovern, LLC and Structure Tone, LLC from the action as non-involved parties; 3) pursuant to CPLR 602 consolidating the instant action with plaintiff's action under Index No.: 702453/2019.

Papers
Numbered

Notice of Motion - Affidavits - Exhibits EF 13-17

The Decision/Order dated May 1, 2024 and entered May 3, 2024 (NYSCEF Doc #21) is amended as follows to show that the caption in this action is amended to reflect the dismissal of the action as against defendants Pavarini McGovern, LLC and Structure Tone, LLC.

Defendants Pavarini McGovern, LLC, Pavarini North East Construction Co., LLC and Structure Tone, LLC, move to dismiss the action against them pursuant to CPLR 3211 and/or CPLR 3216 for failure to prosecute. Plaintiff has not opposed the motion.

Defendants allege that plaintiff has not taken any action in the underlying matter for approximately four years as there is a related companion matter (Index No. 702453/2019) with the exact same cause of action involving the same facts and circumstances. Defendants state that there is no prejudice to plaintiff as defendant Pavarini North East Construction Co, LLC is a third party defendant in the related action and is the proper general contractor /construction manager defendant for this accident location. In the alternative, defendants seeks dismissal against two

defendants, Pavarini McGovern, LLC, and Structure Tone, LLC, as improper parties based upon documentary evidence and after dismissal of the two defendants seeks to have this action consolidated with the related companion action pending under Index 702453/2019.

There is no opposition submitted to the motion. The court notes that plaintiff had ample time to submit opposition papers as this matter was before the court on several dates but no opposition was received. Accordingly, the court grants the motion to the extent that two of the defendants, Pavarini McGovern, LLC and Structure Tone, LLC, are dismissed from the action. The action remains as against defendant Pavarini North East Construction Co, LLC.

In light of the foregoing, the caption of the action is hereby amended to remove defendants Pavarini McGovern, LLC and Structure Tone, LLC therefrom.

As to branch of the motion to consolidate the above matter with a related action pending in Queens County Supreme entitled *Denny Martinez v. BMR-Landmark At Eastview LLC and Emerald Green Sewer District* (Index No.702453/2019) said branch is granted, solely to the extent that the matters shall be joined for trial and joint discovery.

“A motion to consolidate two or more actions rests within the sound discretion of the trial court.” (*Rhoe v Reid*, 166 AD3d 919, 921 [2d Dept 2018] [internal quotation marks omitted]; see *American Home Mtge. Servicing, Inc. v Sharrocks*, 92 AD3d 620 [2d Dept 2012].) “Where common questions of law or fact exist, a motion [pursuant to CPLR 602 (a)] to consolidate or for a joint trial should be granted, absent a showing of prejudice to a substantial right by the party opposing the motion.” (*Bruno v Capetola*, 101 AD3d 785, 786 [2d Dept 2012] [internal quotation marks and brackets omitted]; see *Rhoe v Reid*, *supra*.)

The two actions arise from the same accident on April 27, 2016 and involve common questions of law and fact. There is no prejudice to any party by ordering a joint trial and joint discovery. Although joined for trial and discovery, the actions shall remain separate actions for all other purposes. Motions are to be made under the caption and index number of the action to which the motion pertains. Separate requests for judicial intervention and notes of issue shall be filed for each action.

Accordingly, it is

ORDERED that branch of the motion to dismiss the action as against defendants Pavarini McGovern, LLC and Structure Tone, LLC is granted; and it is further

ORDERED that the caption of the action is hereby amended to remove defendants Pavarini McGovern, LLC and Structure Tone, LLC therefrom, and as set forth below; and it is further

ORDERED that the motion by defendant Pavarini McGovern, LLC, Pavarini North East Construction Co., LLC and Structure Tone, LLC to consolidate pursuant to CPLR 602 is granted without opposition, solely to the extent that both actions shall be joined for trial and joint

discovery. Each action joined for trial shall have its own index number and separate requests for judicial intervention and notes of issue shall be filed for each action; and, it is further

ORDERED that the title of the actions combined for joint trial and joint discovery shall be:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X

DENNY MARTINEZ,

Plaintiff,

Action No. 1

Index No. 702453/2019

-against-

BMR-LANDMARK AT EASTVIEW LLC,
BA LEASING BSC, LLC INC., and
PAVARINI NORTH EAST CONSTRUCTION
CO., LLC,

Defendants.

-----X

BMR-LANDMARK AT EASTVIEW LLC,

Third-Party Plaintiffs,

-against-

PAVARINI NORTH EAST CONSTRUCTION CO.
INC.,

Third-Party Defendant.

-----X

BMR-LANDMARK AT EASTVIEW LLC,

Second Third-Party Plaintiff,

-against-

REGENERON PHARMACEUTICALS, INC., THE
ATLANTIC GROUP -FPPM INC. and THE ATLANTIC
GROUP CONNECTICUT, LLC,

Second Third-Party Defendants.

-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS-----X
DENNY MARTINEZ,

Action No. 2

Plaintiff,

Index No. 706353/2019

-against-

PAVARINI NORTH EAST CONSTRUCTION CO., LLC

Defendants.
-----X

and, it is further

ORDERED that movant defendants Pavarini McGovern, LLC, Pavarini North East Construction Co., LLC and Structure Tone, LLC shall serve a copy of this order with notice of entry upon the Clerk of the Supreme Court, Queens County. Defendants Pavarini McGovern, LLC, Pavarini North East Construction Co., LLC and Structure Tone, LLC shall also serve a copy of this order with notice of entry upon all parties in each action and on the Clerk of the Supreme Court, Queens County. Additionally, at the time of filing of the notes of issue, a copy of this order with notice of entry shall be attached.

Movant is not relieved from the applicable provisions of CPLR 2220 and 202.5-b (h) (2) of the Uniform Rules of Supreme and County Courts insofar as it relates to service and notice of entry of the filed document upon all other parties to the action/proceeding, whether accomplished by mailing or electronic means, whichever may be appropriate dependent upon the filing status of the party.

The foregoing constitutes the decision and order of this court.


ANNA CULLEY, J.S.C.

Dated: May 6, 2024

