

Gerstle v Fuentes
2024 NY Slip Op 35496(U)
September 24, 2024
Supreme Court, Westchester County
Docket Number: Index No. 58059/2024
Judge: Janet C. Malone
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To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, on all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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DOREEN GERSTLE,

Index No. 58059/2024

Plaintiff,

-against-

DECISION AND ORDER

ERICK M. FUENTES and MANUEL FUENTES,

Motion Seq. Nos. 1-2

Defendants.

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MALONE, J.

The three cases below are currently pending in New York State Supreme Court, Westchester County before the Undersigned:

1. *Doreen Gerstle v. Erick M. Fuentes and Manuel Fuentes* (“Gerstle Action”), Index Number 58059/2024 commenced on March 5, 2024;
2. *Brayan Lopez v. Yorktown Central School District, Doreen Gerstle, Manuel A. Fuentes, and Erick M. Fuentes* (“Lopez Action”), Index No. 62552/2024 commenced on May 16, 2024; and
3. *James F. Martin and Cherilyn Ruprecht v. Erick M. Fuentes and Manuel Fuentes* (“Martin Action”), Index No. 66777/2024 commenced on August 7, 2024.

The cases arise from a motor vehicle accident that occurred on April 26, 2023 on Lake Road, in the Town of New Castle, County of Westchester, State of New York, when the Honda vehicle operated by Defendant Erick M. Fuentes and owned by Defendant Manuel Fuentes (individually, Erick and Manuel and collectively, “Defendants” or “Fuentes”) struck the Yorktown Central School bus driven by Plaintiff Doreen Gerstle (“Gerstle”) that was carrying passengers Brayan Lopez (“Lopez”), James F. Martin (“Martin”) and Cherilyn Ruprecht (“Ruprecht”).

Now, there are two motions before the Court filed by Defendants on June 20, 2024 (Motion Sequence No.1) and August 26, 2024 (Motion Sequence No. 2) pursuant to CPLR § 602 to join the Lopez Action (NYSCEF Doc. Nos. 11-15), and the Martin Action (NYSCEF Doc. Nos. 19-25), respectively, with the Gerstle Action for discovery and trial. Gerstle and Lopez

support consolidation for discovery and trial (NYSCEF Doc. No. 17-18) and Martin, Ruprechect and Yorktown Central School District did not respond to the motions, although served (*see* Affirmation of Service, NYSCEF Doc. No. 25); however, while Lopez admits that all three actions arise out of a single accident and does not oppose consolidation for discovery, he argues that he would be prejudiced by the consolidation all three actions for trial as “DOREEN GERSTLE is featured as the plaintiff in Action No. 1 and as a co-defendant in Action No. 2” (Affirmation of Zachary K. Giampa, Esq.]NYSCEF Doc. No. 16] at ¶9)

Upon consideration of the foregoing papers, the motions are determined as follows:

“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.” CPLR R. 602(a). “Consolidation is addressed to the sound discretion of the trial court” (*Kaladze v Ocean Park Acquisition, LP*, 203 A.D.3d 1151, 1152 [2d Dept 2022]) and “[a]bsent a showing of substantial prejudice by the party opposing the same, [joinder] is proper where there are common questions of law and fact” *Best Price Jewelers.Com, Inc. v Internet Data Stor. & Sys., Inc.*, 51 A.D.3d 839, 839 (2d Dept 2008).

Here, it is undisputed that all three cases arise from the same sets of facts and “the interests of justice and judicial economy would be served by joint [discovery] ” *Alizio v. Perpignano*, 78 AD3d 1087, 1088 (2d Dept. 2010)(“Court did not improvidently exercise its discretion in granting ... a joint trial because the several actions involve common questions of law and fact”); *Frank v. Y. Mommy Taxi, Inc.*, 206 AD3d 971, 972 (2d Dept. 2022)(“consolidation or joinder is favored to avoid unnecessary costs of delay”)

However. at this juncture, Lopez has demonstrated that Gerstle would be a plaintiff in the Gerstle Action and defendant in the Lopez Action, which may potentially confuse the jury. *Cromwell v. CRP 482 Riverdale Ave., LLC*, 163 AD3d 626, 627(2d Dept. 2018). Thus, the motions to join all three actions for discovery is granted; however, the motion to join all three actions for trial is denied, without prejudice to renew at the completion of discovery.

The parties’ remaining contentions have been considered and deems them to lack merit or to be moot in light of the foregoing. Accordingly, it is hereby

ORDERED that the motion filed by Defendants Erick M. Fuentes and Manuel Fuentes (Motion Seq. No. 1) to join the case of *Brayan Lopez v. Yorktown Central School District, Doreen Gerstle, Manual A. Fuentes, and Erick M. Fuentes*, (Index No. 62552/2024 [Sup. Ct. Westchester Co.]), with the case of *Doreen Gerstle v. Erick M. Fuentes and Manuel Fuentes* (Index Number 58059/2024 [Sup. Ct. Westchester Co] is **granted** to the extent of joining the cases for discovery; and it is further

ORDERED that the motion filed by Defendants Erick M. Fuentes and Manuel Fuentes (Motion Sequence No. 2) to join the case of *James F. Martin and Cherilyn Ruprecht v. Erick M. Fuentes and Manuel Fuentes*, (Index No. 66777/2024 [Sup Ct Westchester Co.]), with the case of *Doreen Gerstle v. Erick M. Fuentes and Manuel Fuentes* (Index Number 58059/2024 [Sup. Ct. Westchester Co] is **granted** to the extent of joining the cases for discovery; and it is further

ORDERED, the Chief Clerk's Office shall mark the files joined for discovery, maintaining their respective index numbers; and it is further

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ORDERED that the caption is amended to read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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DOREEN GERSTLE,

Index No. 58059/2024

Plaintiff,

-against-

Action Number 1

ERICK M. FUENTES and MANUEL FUENTES,

Defendants.

-----X

BRAYAN LOPEZ

Index No. 62552/2024

Plaintiff,

-against-

Action Number 2

YORKTOWN CENTRAL SCHOOL DISTRICT,
DOREEN GERSTLE, MANUEL A. FUENTES, and
and ERICK M. FUENTES,

Defendants.

-----X

JAMES F. MARTIN and CHERILYN RUPRECHT,

Index No. 66777/2024

Plaintiffs,

-against-

Action Number 3

ERICK M. FUENTES and MANUEL FUENTES,

Defendants.

-----X

and it is further

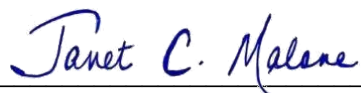
ORDERED, that compliance conference scheduled for **September 30, 2024**, in *Gerstle v. Fuentes*, Index No. 58059/2024 is hereby vacated; and it is further

ORDERED, that Counsel for Defendants Erick M. Fuentes and Manuel Fuentes is to serve a copy of this Decision and Order upon all parties' counsel in all the actions referenced above, no later than **September 26, 2024**, with an affidavit of service filed on NYSCEF in each action, no later than **September 27, 2024**; and it is further

ORDERED, that all parties in all three actions shall appear for a virtual discovery conference before Court Attorney Referee Benjamin Michael Wright, Esq. on **October 4, 2024** at 2:00pm [Click here for the videoconference](#) .

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
September 24, 2024



HON. JANET C. MALONE, J.S.C.