

Mesa v D'Arrigo Delivery
2024 NY Slip Op 35572(U)
February 1, 2024
Supreme Court, Bronx County
Docket Number: Index No. 815619/2022E
Judge: Bianka Perez
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 14

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JORGE DEL ROSARIA MESA,

Plaintiff,

-against-

D’ARRIGO DELIVERY, and MELVIN A.
CABRERA ALMONTE,

Defendants.

Index №. 815619/2022E
“Action No. 1”
Hon. BIANKA PEREZ
Justice Supreme Court

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D’ARRIGO DELIVERY AND MELVIN A.
CABRERA ALMONTE,

Third-Party Plaintiffs,

-against-

COURVILLE SERVICES, LLC, COURVILLE
BARN HILL, LLC, COURVILLE WHOLESALE
NURSERY LLC, 175 BARN HILL ROAD LLC and
“JOHN DOE” (Fictious name intended to represent
operator of Third-Party Defendants’ vehicle),

Third-Party Defendants.

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The following papers were read on these motions (Seq No.(s) 1 & 2) to **AMEND CAPTION/PLEADINGS** and for **CONSOLIDATION/JOINT TRIAL** submitted on **January 3, 2024**.

Notice of Motion – Affirmation and Exhibits	NYSCEF Doc. # 24-31
Affirmation in Opposition and Exhibits	No(s). 54
Replying Affidavit and Exhibits	No(s). N/A
Notice of Motion #2 – Affirmation and Exhibits	NYSCEF Doc. # 38 – 53
Affirmation in Opposition and Exhibits	No(s). N/A
Replying Affidavit and Exhibits	No(s). N/A

Upon the foregoing papers, Plaintiff moves, under motion sequence #1, to amend the complaint to add Third-Party Defendants COURVILLE SERVICES, LLC, COURVILLE BARN HILL, LLC, COURVILLE WHOLESALE NURSERY LLC AND 175 BARN HILL ROAD, LLC, and “JOHN DOE” (collectively hereinafter “COURVILLE”) as direct defendants. COURVILLE defendants oppose.

Upon the foregoing papers, Defendants/Third-Party Plaintiffs D'Arrigo Delivery and Melvin A. Cabrera Almonte, as defendants and Third-Party Plaintiffs in both Index No. 815619/2022E ("Action 1") and Index no. 818524/2022E ("Action 2") move, under motion sequence # 2, for an Order consolidating the above-entitled action for joint trial and discovery with the action *Derrick L. McDonald v. Uber Technologies, Inc., Uber U.S.A., LLC, Lux Credit Consultants LLC, D'Arrigo Delivery Inc., Melvin A. Cabrera Almonte and Jorge De Rosario Mesa*, Index no. 818524/2022E ("Action 2") Supreme Court, Bronx County is granted without opposition.

In support of the motion, Defendants contend that the above-entitled actions are personal injury actions arising out of the same motor vehicle accident which occurred on September 2, 2021. Plaintiffs allege that during discovery, Plaintiff learned that COURVILLE defendants where in the operation, supervision, management, maintenance and control of the motor vehicle that came into contact with Plaintiff's vehicle on the day of the accident.

CPLR 602 (a) "gives the trial court discretion to consolidate actions involving common questions of law or fact" and there is preference for consolidation or joint trial "unless the party opposing the motion demonstrates that consolidation will prejudice a substantial right" (see *Progressive Ins. Co. v Vasquez*, 10 AD3d 518, 519 [1st Dept 2004]). "[T]here is a preference for consolidation in the interest of judicial economy where there are common questions of law and fact, unless the party opposing the motion demonstrates that consolidation will prejudice a substantial right" (*Kukielka v Santana*, 191 AD3d 532, 532-533 [1st Dept 2021]).

Accordingly, it is hereby

ORDERED, that the Plaintiff's motion to amend is granted, it is further

ORDERED that the Summons and Verified Complaint are amended as stated below and deemed filed, and it is further

ORRDERED that the caption of this action is amended, and the clerk is directed to amend the caption of this action to read as follows:

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JORGE DEL ROSARIA MESA,

Index No. 815619/2022E

Plaintiff,

-against-

D'ARRIGO DELIVERY, MELVIN A. CABRERA
ALMONTE, COURVILLE SERVICES, LLC,
COURVILLE BARN HILL, LLC, COURVILLE
WHOLESALE NURSERY LLC, 175 BARN HILL
ROAD, LLC and "JOHN DOE",

Defendants.

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D'ARRIGO DELIVERY AND MELVIN A.
CABRERA ALMONTE,

Third-Party Plaintiffs,

-against-

COURVILLE SERVICES, LLC, COURVILLE
BARN HILL, LLC, COURVILLE WHOLESALE
NURSERY LLC, 175 BARN HILL ROAD LLC and
"JOHN DOE" (Fictitious name intended to represent
operator of Third-Party Defendants' vehicle),

Third-Party Defendants.

-----X, and it is further

ORDERED, that the consolidation motion is granted to the extent *Derrick L. McDonald v. Uber Technologies, Inc., et al.*, Index no. 818524/2022E ("Action 2") Supreme Court, Bronx County, shall be consolidated for discovery and joint trial with the above-captioned action, and it is further

ORDERED, that the Clerk of the Court shall reassign ("Action 2") to Part 14 and shall place both matters upon the Preliminary or Compliance Conference calendar before the Part 14 Judge for a Compliance Conference on **May 8, 2024 at 9:30am Room 708**, and it is further

ORDERED that a copy of this ORDER with Notice of Entry shall be served upon the Clerk of the Motion Support Office (Room 217), who is hereby directed to mark the Court's records to reflect this joint trial ORDER, and it is further

ORDERED, that upon payment of the appropriate calendar fees, the filing of R.J.I.s, if necessary, and notes of issue and statements of readiness in each of the above actions, and upon service of a copy of this order with notice of entry on the Clerk of the Motion Support Office, Rm, 217, said Clerk shall place the aforesaid actions upon the trial calendar for a joint trial, it is further

ORDERED, that Plaintiff is to serve amended summons and complaint upon COURVILLE SERVICES, LLC, COURVILLE BARN HILL, LLC, COURVILLE WHOLESALE NURSERY LLC AND 175 BARN HILL ROAD, LLC, and “JOHN DOE”, in accordance with the CPLR.

This constitutes the Decision and Order of the Court.

Dated: February 1, 2024

Hon. 

BIANKA PEREZ, J.S.C.

1. CHECK ONE.....

☐ CASE DISPOSED IN ITS ENTIRETY

☒ CASE STILL ACTIVE
2. MOTION IS.....

☒ GRANTED

☐ DENIED

☐ GRANTED IN PART

☐ OTHER
3. CHECK IF APPROPRIATE.....

☐ SETTLE ORDER

☐ SUBMIT ORDER

☐ SCHEDULE APPEARANCE

☐ FIDUCIARY APPOINTMENT

☐ REFEREE APPOINTMENT