

Richardson v Bock-Harrison
2024 NY Slip Op 35625(U)
March 22, 2024
Supreme Court, Westchester County
Docket Number: Index No. 71129/2023
Judge: David F. Everett
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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
JASON RICHARDSON,

Plaintiff,

-against-

JOSEPH BOCK-HARRISON and ERIC BOCK,

Defendants.
-----X

EVERETT, J.

INDEX NO. 71129/2023

**DECISION/ORDER
Motion Seq. 1**

Upon consideration of the papers filed in the New York State Courts Filing System (NYSCEF) Doc Nos. 5-10, relative to the unopposed motion by defendants for consolidation (CPLR 602), the Court determines as follows:

In this negligence action, related to a September 2, 2022, motor vehicle accident, the affirmation in support (NYSCEF Doc No. 6) states the defendants seek to consolidate *Paillant-Richardson v Harrison-Bock* (Action # 1; [Sup Ct, Westchester County, Index No. 67199/2023]) with *Richardson v Bock-Harrison* (Action # 2; [Sup Ct, Westchester County, Index No. 71129/2023]) for all purposes, including discovery and joint trial. In Action # 1, Farah Paillant-Richardson, was a passenger in a vehicle operated by Joseph Randolph Harrison-Bock and owned by Eric John Bock. In Action # 2, the allegation is that Jason Richardson was injured in the same accident caused by Joseph Randolph Harrison-Bock.

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).

In *L-3 Communications Corp. v SafeNet, Inc.* (45 AD3d 1, 7 [1st Dept 2007]), the Court sets forth the first-in-time rule as follows:

New York courts generally follow the first-in-time rule, which instructs that ‘the court which has first taken jurisdiction is the one in which the matter should be determined and it is a violation of the rules of comity to interfere’ (*City Trade & Indus., Ltd. v New Cent. Jute Mills Co.*, 25 NY2d 49, 58 [1969] [internal quotations marks and citation omitted]). However, it is also clear that determining the priority of pending actions by dates of filing is a general rule that should not be applied in a ‘mechanical’ way, and that special circumstances may warrant deviation from this rule where ‘the action sought to be restrained is vexatious, oppressive or instituted to obtain some unjust or inequitable advantage’ (*White Light Prods. v On The Scene Prods.*, 231 AD2d 90, 97, 96 [(1st Dept) 1997] [internal quotations marks and citation omitted]; *see also Certain Underwriters at Lloyd's, London v Hartford Acc. & Indem. Co.*, 16 AD3d 167, 168 [(1st Dept) 2005]).

In *Brown v Cope Bestway Express, Inc.* (99 AD3d 746, 747-748 [2d Dept 2012]), the Court explained:

‘Where common questions of law or fact exist, a motion to consolidate or for a joint trial pursuant to CPLR 602 (a) should be granted absent a showing of prejudice to a substantial right by the party opposing the motion’ (*Perini Corp. v WDF, Inc.*, 33 AD3d 605, 606 [(2d Dept) 2006]; *see Alizio v Perpignano*, 78 AD3d 1087, 1088

[(2d Dept) 2010]; *Mas-Edwards v Ultimate Servs., Inc.*, 45 AD3d 540 [(2d Dept) 2007]). When consolidation or joint trials are ordered under CPLR 602 (a), venue should generally be placed in the county where the first action was commenced (*see Nigro v Pickett*, 39 AD3d 720, 722 [(2d Dept) 2007]). Special circumstances, however, may warrant the court, in its discretion, to place venue elsewhere (*see Gomez v Jersey Coast Egg Producers*, 186 AD2d 629, 630 [(2d Dept) 1992]; *cf. Moor v Moor*, 39 AD3d 507, 508 [(2d Dept) 2007]; *DeGregorio v DeGregorio*, 251 AD2d 366, 366-367 [(2d Dept) 1998]).

Here, Actions # 1 and 2 arose out of the same alleged September 2, 2022, motor vehicle accident, 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 defendants' unopposed motion for consolidation is granted; and it is further

ORDERED that the consolidated action will bear the following caption:

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

-----X
FARAH PAILLANT-RICHARDSON
and JASON RICHARDSON,

INDEX NO. 67199/2023

Plaintiffs,

-against-

JOSEPH RANDOLPH HARRISON-BOCK and
ERIC JOHN BOCK,

Defendants.
-----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 Order on NYSCEF, defendants shall serve a copy of this Order with notice of entry on plaintiffs and the Clerk of the Court, who shall consolidate the documents in the consolidated actions 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
March **22**, 2024

ENTER:


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

Filed in NYSCEF