

**Casanova Meats Too, Inc. v Cold Storage of Nassau,
Inc.**

2024 NY Slip Op 35647(U)

November 19, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 602685/2022

Judge: Paul M. Hensley

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**SUPREME COURT- STATE OF NEW YORK
PART 70, SUFFOLK COUNTY**

PRESENT:**HON. PAUL M. HENSLEY, AJSC**

CASANOVA MEATS TOO, INC.,

Index No. 602685/2022

Action No. 1

Plaintiff,

-against

Motion Date: 11/19/2024

Submit Date: 11/19/2024

COLD STORAGE OF NASSAU, INC.,

Motion Seq.: 008- MG

MIRZALIYEV AZIZ,

ATTORNEY FOR PLAINTIFF:

Q LINE LOGISTICS INC.,

Siben & Siben, LLP

Andrew B. Siben, Esq.

STEVEN LUTZ,

90 E. Main St.

Bay Shore, NY 11706

BLAKA COOL INC.,

ATTORNEY FOR DEFENDANTS**AND THIRD PARTY:**

Defendants.

Stimpfl, Manashirov & Buncschuh, PLLC

Kevin J. Stimpfl, Esq.

150 Motor Pkwy., Suite 401

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Lester, Schwab Katz & Dwyer LLP

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Cruser, Mitchell and Novitz, LLP

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341 Conklin St., Suite 2

Farmingdale, NY 11735

Joseph A. Fisher P.C.

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585 Stewart Ave., Suite 326

Garden City, NY 11530

Steven Lutz

Pro Se

417 Railroad Ave.

Westbury, NY 11590

RAYMOND CHOW INTERNATIONAL
TRADING INC.,

Index No. 617790/2024
Action No. 2

FRESH HARVEST MEAT &
SEAFOOD, INC.,

SALAM AFRICAN FOODS, INC.,

ATTORNEY FOR PLAINTIFFS:
Adina Grodsky, Esq.
510 Broad Hollow Rd.
Melville, NY 11747

MARIE E. REDD, INC., d/b/a NUTRI-IVOIRE,

SWEDCO FOODS,

ETHNIC FOODS CORP.,

ATTORNEY FOR DEFENDANTS:
Lester Schwab Katz & Dwyer LLP
Jessica W. Brewer, Esq.
100 Wall St., 27th Floor
New York, NY 10005

AWA DIENG MBAYE d/b/a ADM FROZEN
FOOD,

SUMAN COMPANY LLC,

Stimpfl, Manashirov & Bundschuh, PLLC
Kevin J. Stimpfl, Esq.
150 Motor Pkwy., Suite 401
Hauppauge, NY 11788

OUMOU BAH d/b/a MCB, INC.,

NINNIN SAMAKE d/b/a IVOIRE FOODS,

Plaintiffs,

-against-

Joseph A. Fisher P.C.
Joseph A. Fisher, Esq.
585 Stewart Ave., Suite 326
Garden City, NY 11530

MIRZALIYEV AZIZ,

Q LINE LOGISTICS INC.,

Cruser, Mitchell and Novitz, LLP
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341 Conklin St., Suite 2
Farmingdale, NY 11735

COLD STORAGE OF NASSAU, INC.,

MICHAEL MOORE,

STEVEN LUTZ,

BLAKA COOL INC.,

Defendants.

CENTURY SURETY COMPANY a/s/o
425 RAILROAD AVE LLC,

Plaintiff,

-against-

RYDER TRUCK RENTAL, INC.,

AZIZ MIRZALIYEV,

Q LINE LOGISTIC INC.,

Q LINE LOGISTICS INC.,

Defendants.

Index No. 619388/2024
Action No. 3

ATTORNEY FOR PLAINTIFF:

Gottlieb Ostrager LLP
Eric W. Ostrager, Esq.
1601 Veterans Hwy., Suite 250
Islandia, NY 11749

ATTORNEY FOR DEFENDANTS:

Connors & Connors, P.C.
Robert J. Pfuhler, Esq.
766 Castleton Ave.
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Lester, Schwab Katz & Dwyer LLP
Jessica A. Brewer, Esq.
100 Wall St., 27th Floor
New York, NY 10005

COLD STORAGE OF NASSAU, INC.,
425 RAILROAD AVENUE LLC,

Plaintiff,

-against-

Q LINE LOGISTICS INC.,

MIRZALIYEV AZIZ,

Defendants.

Index No. 617877/2024
Action No. 4

ATTORNEY FOR PLAINTIFFS:

Stimpfl, Manashirov & Bundschuh, PLLC
Kevin J. Stimpfl, Esq.
150 Motor Pkwy, Suite 401
Hauppauge, NY 11788

ATTORNEY FOR DEFENDANTS:

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LONG ISLAND LIGHTING COMPANY d/b/a
LIPA,

Index No. 607252/2024
Action No. 5

LONG ISLAND ELECTRIC UTILITY
SERVCO LLC, individually,

ATTORNEY FOR PLAINTIFFS:
Hannum, Feretic Prendergast
& Merlino, LLC

LONG ISLAND ELECTRIC UTILITY
SERVCO LLC, as agent for LONG ISLAND
LIGHTING COMPANY d/b/a LIPA,

John E. Overbeck, Esq.
One Exchange Plaza
55 Broadway, Suite 202
New York, NY 10006

PSEG LONG ISLAND, LLC,

ATTORNEY FOR DEFENDANTS:

Plaintiffs,

Wilson, Elser, Moskowitz, Edelman
& Dicker, LLP

-against-

Gregory J. Dell, Esq.
150 E. 42nd St.
New York, NY 10017

VERIZON COMMUNICATIONS INC.,

VERIZON NEW YORK, INC.,

Law Office of William J. Fitzpatrick
William J. Fitzpatrick, Esq.
525 Townline Rd., Suite 1
Hauppauge, NY 11788

ALTICE USA, INC.,

CABLEVISION SYSTEMS CORPORATION,

CABLEVISION SYSTEMS SUFFOLK
CORPORATIONS,

Connors & Connors, P.C.
Robert J. Pfuhler, Esq.
766 Castleton Ave.
Staten Island, NY 10310

RYDER TRUCK RENTAL INC.,

Q-LINE LOGISTIC INC.,

Lester Schwab Katz & Dwyer LPP
Jessica A. Brewer, Esq.
100 Wall St., 27th Floor
New York, NY 10005

AZIZ MIRZALIYEV,

Upon the following papers read on defendants Mirzaliyev Aziz, and Q Line Logistic Inc., s/h/a Q Line Logistics Inc.'s motion to consolidate this action with previously joined actions one, two, three and four: NYSCEF documents 1 thru 193; it is hereby

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

ORDERED that action five bearing index number 607252/2024 is joined for discovery and trial with already joined action one bearing index number 602685/2022, and action two bearing index number 617790/2024, action three bearing index number 619388/2024 and action four bearing index number 617877/2024 but NOT consolidated into a single action; and it is further

ORDERED that defendants Mirzaliyev Aziz, and Q Line Logistic Inc., s/h/a Q Line Logistics Inc. are directed to serve a copy of this order with CPLR 8019 (c) notice upon the Suffolk County Clerk on or before December 8, 2024 and to file proof of service thereof on or before December 20, 2024; and it is further

ORDERED that upon receipt of this notice with CPLR 8019 (c) notice, the Suffolk County Clerk is directed to promptly make all amendments, changes, and/or modifications necessary to cause such joinder to be reflected in its records, if any such amendments, changes, and/or modifications are necessary; and it is further

ORDERED that this action next appear on this Court's calendar on December 2, 2024, at 9:30 a.m. in person for a conference.

CPLR 602 Consolidation provides:

(a) Generally. 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.

A motion pursuant to CPLR 602 for an Order consolidating or joining separate actions for trial rests within the sound discretion of the trial court (*see Frank v Y. Mommy Taxi, Inc.*, 206 AD3d 971, 168 NYS3d 891 [2d Dept 2022]; *Cromwell v CRP 482 Riverdale Ave., LLC*, 163 AD3d 626, 80 NY3d 423 [2d Dept 2018]; *New York Tile Wholesale Corp. v Thomas Fatato Realty Corp.*, 115 AD3d 832, 982 NYS2d 328 [2d Dept 2014]). Consolidation gives rise to a new action that displaces the actions affected thereby (*Pigott v Field*, 10 AD2d 99, 101, 197 AD2d 648 [1st Dept 1960]). In contrast, a joint trial preserves the separate character of each action but secures the advantage of a single trial on common issues (*see Import Alley of Mid-Is. v Mid-Island Shopping Plaza*, 103 AD2d 797, 477 NYS2d 675 [2d Dept 1984]). Absent prejudice to a substantial right of a party opposing the motion, consolidation or a joint trial of actions pending before a court should be granted when common questions of law or fact exist (*see Sherpa v Ford Motor Co.*, 216 AD3d 834, 188 NYS3d 200 [2d Dept 2023]; *Calle v 2118 Flatbush Ave. Realty, LLC*, 209 AD3d 961, 177 NYS3d 297 [2d Dept 2022]; *Frank v Y. Mommy Taxi, Inc.*, 206 AD3d 971, 168 NYS3d 891). However, while the interests of justice and judicial economy are better served by joint trials whenever possible, a motion for consolidation or a joint trial may be denied, even when there are common issues of law and fact, when the actions are a markedly different procedural stages and joinder would result in substantial prejudice to a substantial right (*see Ahmed v C.D. Kobsons, Inc.*, 73 AD3d 440, 904 NYS2d 366 [1st Dept 2010]; *Abrams v Port Auth. Trans-Hudson Corp.*, 1 AD3d 118, 766 NYS2d 429 [1st Dept 2003]; *Skelly v Sachem Cent. School Dist.*, 309 AD2d 917, 766 NYS2d 108 [2d Dept 2003]; *Continental Bldg. Co. v Town of N. Salem*, 150 AD2d 518, 541 NYS2d 112 [2d Dept 1989]). Furthermore, a joint trial, rather than a consolidation of actions involving common questions of law and fact, is appropriate where the two actions involve different plaintiffs (*see Brown v Cope Bestway Exp., Inc.*, 99 AD3d 746, 748, 952 NYS2d 220, 222 [2d Dept 2012]; *Whiteman v Parsons Transp. Group of New York, Inc.*, 72 AD3d 677, 678, 900 NYS2d 87, 88 [2d Dept 2010]).

Here, all five actions concern claims arising from the same motor vehicle accident that took place on June 9, 2021. The various plaintiffs allege that a vehicle operated by Mirzaliyev Aziz caused property damage to a cold storage facility and utility poles, resulting in loss of inventory, loss of business and personal/real property damage. All five actions involve common questions of law and fact and are at similar procedural stages however given that the actions involve different plaintiffs and defendants the interest of judicial economy is best served by a joint trial rather than consolidation. (*see Longo v Fogg*, 150 AD3d 724, 725, 55 NYS3d 61, 63 [2d Dept 2017]). Accordingly, defendants Mirzaliyev Aziz, and Q Line Logistic Inc., s/h/a Q Line Logistics Inc.'s motion is granted to the extent that the action five is joined with previously joined actions one through four for the purposes of discovery and a joint trial but not consolidated into a single action.

ENTER:



Hon. Paul M. Hensley
Acting Justice of the Supreme Court

Date: November 19, 2024
Riverhead, New York