

Yu v Cropper
2024 NY Slip Op 35701(U)
April 7, 2024
Supreme Court, Nassau County
Docket Number: Index No. 606653/2022
Judge: Francis D. Ricigliano
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SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU

Present: HON. FRANCIS RICIGLIANO
Supreme Court Justice

X

EUGENE YU and JANE WEN,

Plaintiffs,

-against-

TINGTING CROPPER,

Defendant.

X

DECISION and ORDER

PART 26

INDEX NO.: 606653/2022

Motion Seq. 2

The following papers were read on this motion

NYSCEF DOCS

Notice of Motion, Affirmations, Exhibits, etc 31-36.

By Notice of Motion, defendant TINGTING CROPPER moves, unopposed, for an Order pursuant to CPLR 602(a) joining this action with the action captioned *State Farm Mutual Automobile Insurance Company d/s/o Eugene Yu & Jen Wen v. Tingting Cropper* (Queens County Index No. 716461/2023) for the purposes of trial.

Action No. 1 was commenced by the plaintiff May 20, 2022, to recover for injuries allegedly sustained as a result of a motor vehicle accident that occurred on December 15, 2021, between plaintiffs' vehicle and defendant's vehicle. Action No. 2 was commenced by plaintiffs' insurance company against defendant from Action No. 1 to recover for damages plaintiffs sustained in the same motor vehicle accident.

CPLR 602 (a) authorizes the Court, upon motion and in its discretion, to order a joint trial of actions that involve “common questions of law or fact.” “[C]onsolidation or joinder of trial is favored to avoid unnecessary duplication of trial, save unnecessary cost and expense, and prevent an injustice which would result from divergent decisions based on the same facts.” *Calle v. 2118 Flatbush Ave. Realty, LLC*, 209 AD3d 961 (2d Dept 2022). Thus, “[w]here common questions of law or fact exist, a motion to consolidate pursuant to CPLR 602 (a) should be granted absent a showing of prejudice to a substantial right by [a] party opposing the motion.” (*Perini Corp. v. WDF, Inc.*, 33 AD3d 605 (2d Dept 2006). “Regardless of whether a specific request is made to the court to change venue, the court may change venue to the appropriate forum in connection with a motion to consolidate or for a joint trial pursuant to CPLR 602(a).” *Clark v. Clark*, 93 A.D.3d 812 (2d Dept 2012). Moreover, in the absence of special circumstances, where the actions have been commenced in different counties, venue should be placed in the county having jurisdiction over the action commenced in the first action. *Oboku v. New York City Transit Auth.*, 141 AD3d 708 (2d Dept 2016).

Here, in the absence of any opposition and a showing of substantial prejudice, joining the two actions for the purposes of trial is appropriate. (*Ashwood v. Uber, USA, LLC*, 219 AD3d 1289, 1290 (2d Dept 2023); *Oboku*, 141 AD3d at 708. Both actions arise out of the same motor vehicle accident that occurred on December 15, 2021. Additionally, the nature of Action No. 2 is to recover for damages sustained by the plaintiffs in the motor vehicle accident that Action No. 1 arose out of. Based on the foregoing, the Court grants defendant’s motion to join these matters for trial.

Accordingly, it is hereby

ORDERED, the defendant's unopposed motion to consolidate pursuant to CPLR 602 (a) is GRANTED to the extent that Action No. 1, bearing Nassau County Index No. 606653/2022, and Action No. 2, bearing Queens County Index No. 716461/2023, are consolidated for all purposes; and it is further

ORDERED, that upon service of a copy of this Order and payment of the requisite fees, the Clerk of Queens County is directed to transfer the file bearing Queens County Supreme Court Index No. 716461/2023 and all papers therein to the Clerk of Nassau County; and it is further

ORDERED, that the Clerk of Nassau County is directed to consolidate the file of Queens County Index No. 716461/2023 into Nassau County Index No. 606653/2022; and it is further

ORDERED, that the pleading in each action shall stand as the pleading in the consolidated action; and it is further

ORDERED, that the caption shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

EUGENE YU, JANE WEN, and STATE FARM
MUTUAL AUTOMOBILE INSURANCE COMPANY
a/s/o EUGENE YU and JANE WEN,

Index No.: 606653/2022

Plaintiffs,

- against -

TINGTING CROPPER,

Defendant.

and it is further

ORDERED, that movant shall serve a copy of this Order upon all parties to the consolidated action within 20 days; and it is further

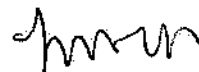
ORDERED, that all parties are directed to appear at the scheduled conference in the DCM Pretrial Part on June, 05, 2024.

This constitutes the Decision and Order of the Court. Any relief not specifically granted herein is denied.

Dated:

4/7/24

ENTER:



Hon. Francis Ricigliano
Supreme Court Justice