

**Nunez v Construction Realty Safety LLC**

2025 NY Slip Op 31467(U)

April 21, 2025

Supreme Court, New York County

Docket Number: Index No. 162150/2024

Judge: Emily Morales-Minerva

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. EMILY MORALES-MINERVA PART 42M

Justice

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VICENTE NUNEZ

Plaintiff,

- v -

CONSTRUCTION REALTY SAFETY LLC,

Defendant.

INDEX NO. 162150/2024

MOTION DATE 03/03/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14 were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

APPEARANCES:

Raphaelson and Levine Law Firm PC, New York, NY (Jared Brett Dubin, Esq., of counsel), for plaintiff.

Law Office of Erin M. McGinnis, PLLC, New York, NY (Erin M. McGinnis, Esq., of counsel), for defendant.

EMILY MORALES-MINERVA, J.S.C.

In this labor law action, plaintiff VICENTE NUNEZ, moves, unopposed, by notice of motion (sequence number 001), for an order, pursuant to CPLR § 602,1 consolidating the instant action with Vicente Nunez v Aecom Tishman et al., Index No. 152742/2024.

For the reasons set forth below, plaintiff's motion (seq. no. 001) is granted entirely.

1 Section 602 of the CPLR provides, "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."

## BACKGROUND

On March 25, 2024, plaintiff VICENTE NUNEZ commenced an action against defendants AECOM TISHMAN, CAULDWELL WINGATE COMPANY LLC, LEX 47TH PROPERTY OWNER LLC, TRISTATE-SAFETY CORP. and NEPTUNE MECHANICAL INC. in New York County pursuant to Index No. 152742/2024 (L. Stroth, J.S.C.) (Action 1). Thereafter, on December 23, 2024, plaintiff commenced the instant action against defendant CONSTRUCTION REALTY SERVICE, INC. in New York County pursuant to Index No. 162150/2024 (Action 2). In both of plaintiff's complaints, plaintiff alleges that, on January 10, 2022, he was severely injured while performing construction work on a construction site located at 135 East 47<sup>th</sup> Street, New York, New York (premises) as a result of defendants' negligence (see NYSCEF Doc. No. 001, Complaint, Action 1; NYSCEF Doc. No. 001, Complaint, Action 2).

Now, plaintiff moves, unopposed, to consolidate Action 2 with Action 1 (see NYSCEF Doc. No. 009, Notice of Motion to Consolidate). In support, plaintiff contends that the actions arise from the same incident, and involve common questions of law and fact; plaintiff did not have knowledge of defendant CONSTRUCTION REALTY SAFETY LLC at the time Action 1 was commenced; and both actions are in the preliminary stages of discovery (see NYSCEF Doc. No. 10, Plaintiff's Affirmation in

Support).

#### ANALYSIS

"It is well settled that there is a preference of consolidation in the interest of judicial economy where there are common questions of law and fact" (Geneva Temps, Inc, v New World Communities, Inc., 24 AD3d 332, 334 [1st Dept 2005]; see Quik Park 808 Garage LLC v 808 Columbus Commercial Owner LLC, 199 AD3d 536, 536 [1st Dept 2021]; Grynberg v BP Expl. Operating Co. Ltd., 127 AD3d 553 [1st Dept 2015]). "Consolidation is mandated by judicial economy where two lawsuits are intertwined with common questions of law and fact" (Teitelbaum v PTR Co., 6 AD3d 254, 255 [1st Dept 2004]).

Here, the actions arise out of the same January 10, 2022 incident, involve identical causes of action against the six defendants, and require the the same evidence and witnesses (see Quik Park 808 Garage LLC, 199 AD3d at 536 [finding that consolidation was appropriate where all three actions involved common causes of action against each defendant]). Further, discovery is at its infancy in both actions. Therefore, consolidation is warranted.

Accordingly, it is hereby

ORDERED that plaintiff VICENTE NUNEZ'S motion (seq. no. 001) is granted, and the above-captioned action is consolidated in this

court with Vicente Nunez v Aecom Tishman et al., Index No. 152742/2024, also pending in this Court; it is further

ORDERED that the consolidation shall take place pursuant to Index No. 152742/2024, and the consolidated action shall bear the following caption:

VICENTE NUNEZ,

Plaintiff,

Index No. 152742/2024

-against-

AECOM TISHMAN, CAULDWELL WINGATE  
COMPANY LLC, LEX 47TH PROPERTY OWNER LLC,  
TRISTATE-SAFETY CORP., NEPTUNE MECHANICAL  
INC., and CONSTRUCTION REALTY SAFETY LLC,  
Defendants;

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 from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the Court in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website), who shall consolidate the documents in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that the Clerk of Court shall transfer the consolidated action under Index No. 152742/2024 to the Honorable Emily Morales-Minerva, J.S.C., Part 42;

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office in accordance with the procedures set forth in the aforesaid Protocol, who is hereby directed to reflect the consolidation by appropriately marking the court's records; it is further

ORDERED that the parties are directed to appear for a preliminary conference before the Honorable Emily Morales-Minerva, J.S.C., in Room 574, 111 Centre Street, New York, New York on June 18, 2025 at 10:30 A.M.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

04/21/2025  
DATE

*Emily Morales-Minerva*  
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE