

Acosta v Swenson

2025 NY Slip Op 31742(U)

May 13, 2025

Supreme Court, New York County

Docket Number: Index No. 157702/2024

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

JESUS ACOSTA Plaintiff,
INDEX NO. 157702/2024
MOTION DATE 03/28/2025
MOTION SEQ. NO. 001

- v -

EDWARD SWENSON, Defendant. DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15 were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

APPEARANCES:

Law Offices of Michael A. Cervini, Jackson Heights, NY (Michael Andrew Cervini, Esq., of counsel), for plaintiff.
Morris Duffy Alonso Faley & Pitcoff, New York, NY (Edward Joseph Harrington, Esq., of counsel), for defendant.

EMILY MORALES-MINERVA, J.S.C.

In this assault and battery action, defendant EDWARD SWENSON, moves, by notice of motion (sequence number 001), for an order, pursuant to CPLR § 602,1 consolidating the instant action with Edward Swenson and Sheri Swenson v Jesus Acosta, Index No. 159917/2024, for joint discovery and trial.

For the reasons set forth below, defendant's motion (seq. no.

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."

001) is granted entirely.

BACKGROUND

On August 21, 2024, plaintiff JESUS ACOSTA commenced the instant action against defendant EDWARD SWENSON pursuant to Index No. 157702/2024 (Action 1). Thereafter, on October 24, 2024, defendant in the instant action, EDWARD SWENSON, and his spouse, SHERI SWENSON, filed an action against plaintiff JESUS ACOSTA pursuant to Index No. 159917/2024 (Action 2) (Edward Swenson and Sheri Swenson v Jesus Acosta, Index No 159917/2024). In both complaints, the parties allege that on October 27, 2023, EDWARD SWENSON and JESUS ACOSTA were involved in an altercation while on an escalator at New York Pennsylvania Station (see NYSCEF Doc. No. 001, Complaint, Action 1; NYSCEF Doc. No. 002, Complaint, Action 2).

Now, defendant EDWARD SWENSON moves, unopposed, to consolidate Action 2 with Action 1 for joint discovery and trial (see NYSCEF Doc. No. 10, Notice of Motion to Consolidate). In support, defendant contends that the actions arise from the same incident, and involve the same questions of law and fact, and both actions are in the preliminary stages of discovery (see NYSCEF Doc. No. 11, 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 October 27, 2023, incident, and require 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 has not commenced in either action. Therefore, consolidation is appropriate.

Accordingly, it is hereby

ORDERED that defendant EDWARD SWENSON's motion (seq. no. 001) is granted, and Edward Swenson and Sheri Swenson v Jesus Acosta, Index No 159917/2024 (Action 2), is consolidated with the above-captioned action (Action 1), for joint discovery and trial; it is

further

ORDERED that each action shall maintain separate pleadings and index numbers; it is further

ORDERED that the caption of the consolidated action shall be as follows:

JESUS ACOSTA, Plaintiff, Index No. 157702/2024

-against- Action No. 1

EDWARD SWANSON, Defendant;

EDWARD SWENSON and SHERI SWENSON, Plaintiffs, Index No. 159917/2024

-against- Action No. 2

JESUS ACOSTA, Defendant.

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 it is further

ORDERED that the Clerk of Court shall assign Edward Swenson and Sheri Swenson v Jesus Acosta, Index No 159917/2024 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 August 13, 2025 at 10:00 A.M.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

05/13/2025
DATE

EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN				