

Perez v City of New York

2025 NY Slip Op 34339(U)

November 14, 2025

Supreme Court, New York County

Docket Number: Index No. 160680/2024

Judge: Hasa A. Kingo

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. HASA A. KINGO PART 05M

Justice

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OSUALDO PERALTA PEREZ,
Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF TRANSPORTATION, DAVID CORREIA,
ANTONIO RODRIGUEZ,

Defendant.

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INDEX NO. 160680/2024

MOTION DATE 10/03/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 23, 24, 25, 26, 27, 28, 29, 32, 34

were read on this motion to/for JOIN FOR TRIAL.

Upon the foregoing documents, Defendant Francisco Rodriguez’ (“Defendant Rodriguez”) motion to join for discovery and trial, this action, Index No. 160680/2024 (Action #1) with a related action pending in this court, the Supreme Court, New York County, bearing Index No. 154554/2025 (Action #2) is granted.

Defendant Rodriguez contends that joining these actions for discovery and trial is proper because the matters arise from the same automobile accident and therefore contain common questions of law and fact (NYSCEF Doc No. 24, Snitily aff’ ¶ 3, 6, 12). Further, Defendant Rodriguez argues that joining the cases for discovery and trial will further the interests of judicial economy while avoiding duplicate testimony and inconsistent results (*id.* ¶ 12-3). Plaintiff Osualdo Peralta Perez (“Plaintiff Perez”) opposes the motion on the basis that “a joint trial for both actions is untenable” (NYSCEF Doc No. 32, Mulderig aff’ ¶ 4).¹ Specifically, Plaintiff Perez contends

¹ Defendants the City of New York, New York City Department of Transportation, and David Correia (collectively the “City Defendants”) do not oppose the motion.

that he would face “substantial prejudice given the fact that [Defendant Rodriguez] would be a co-plaintiff [. . .] thereby subjecting the jury to a high risk of confusion” (*id.* at 5). Finally, Plaintiff Perez contends that he would be prejudiced by “the substantial delay that would occur if plaintiff is required to wait for discovery in Action 2 to be completed” (*id.*).

A motion to consolidate is addressed to the sound discretion of the trial court (*Progressive Ins. Co. v Vasquez*, 10 AD3d 518, 519 [1st Dept 2004]; *see* CPLR § 602 [“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”]). “There is a preference to join cases for discovery and trial in the interests of judicial economy and ease of decision-making where there are common questions of law and fact” (*Lema v 1148 Corp.*, 176 AD3d 653, 654 [1st Dept 2019]). Moreover, absent a showing of prejudice to a substantial right by a party opposing the motion, a motion for joint discovery and trial should be granted (*Lema*, 176 AD3d at 654).

At the outset the court notes that Defendant Rodriguez has not moved for a full consolidation of the matters, but rather to join the actions for discovery and trial (see NYSCEF Doc No. 24, Snitily *aff* ¶ 2 [“I make this affirmation in support of the within application for consolidation of the above-entitled actions *for the purpose of Joint Discovery and Joint Trial*”]). Thus, to the extent that Plaintiff Perez opposes a full consolidation, the argument is moot (NYSCEF Doc No. 32, Mulderig *aff* ¶ 1-3, 9-10). Next, it is undisputed that both actions arise out of a single motor vehicle accident that occurred on May 16, 2024 (NYSCEF Doc No. 25; NYSCEF Doc No. 27). Specifically, Defendant Rodriguez was driving near the intersection of West 179th Street and Amsterdam Avenue when his vehicle was purportedly struck by Defendant David

Correia, who was operating a City of New York vehicle at the time. Plaintiff Perez was a passenger in Defendant Rodriguez' vehicle. Both Defendant Rodriguez and Plaintiff Perez allege that the City Defendants' negligence caused them to sustain personal injuries. Thus, both actions involve the same questions of law and fact, and the matters should be joined absent a showing of prejudice to a substantial right (*Lema*, 176 AD3d at 654; *Heck v Waldbaum's Supermarkets, Inc.*, 134 AD2d 568, 569 [2d Dept 1987] ["Indeed, we have held that '[a] single common issue' will suffice to warrant a joint trial"]). Plaintiff Perez contends that he will be prejudiced by a "substantial time delay that would occur if [he were] required to wait for discovery in Action 2 to be completed" (NYSCEF Doc No. 32, Mulderig aff' ¶ 4-5). However, Plaintiff Perez concedes that there have been no depositions in either action (NYSCEF Doc No. 32, Mulderig aff' ¶ 5-6). Moreover, actions are joined under the earlier index, which in this case is Plaintiff Perez' matter. Thus, the time for setting the matters down for joint a preliminary conference will follow Plaintiff Perez' request which was filed on March 17, 2025, and not Defendant Rodriguez' request, which was filed on June 9, 2025 (*see* NYSCEF Doc No. 18; Index No. 154554/2025 NYSCEF Doc No. 3). Thus, as it relates to discovery, particularly where there has been none exchanged, the court is constrained to see how Plaintiff Perez would be prejudiced.

Finally, Plaintiff Perez argues that joining these matters for trial will "subject the jury to a high risk of confusion" (NYSCEF Doc No. 32, Mulderig aff' ¶ 5). Plaintiff does not however expound upon how or in what way a jury would be confused by these particular parties or facts. As such, Plaintiff Perez has failed to meet his burden of demonstrating prejudice to a substantial right (*Alizio v Perpignano*, 78 AD3d 1087, 1088 [2d Dept 2010] ["the plaintiffs' unsubstantiated claim that a joint trial would be 'unwieldy' was not sufficient to satisfy the burden of demonstrating prejudice to a substantial right"]). Therefore, Defendant Rodriguez' motion is granted.

Accordingly, it is hereby

ORDERED that the motion is granted, and the above-captioned action (Action # 1) is joined for discovery and trial in this court with *Francisco Rodriguez v. The City of New York, New York City Department of Transportation, and David Correia*, Index No. 154554/2025 (Action # 2), pending in this court; and it is further

ORDERED that each action shall maintain separate pleadings and index numbers (Action #1- 160680/2024 and Action #2- 154554/2025), along with separate certificates of readiness and notes of issue; and it is further

ORDERED that the caption shall be:

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

-----X Index No. 160680/2024
OSUALDO PERALTA PEREZ,

Plaintiff,

-against-

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF TRANSPORTATION, DAVID
CORREIA and FRANCISCO A. RODRIGUEZ s/h/a/
ANTONIO RODRIGUEZ,

Defendants.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
-----X Index No. 154554/2025
FRANCISCO RODRIGUEZ,

Plaintiff,

-against-

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF TRANSPORTATION, and DAVID
CORREIA,

Defendants.

-----X

; 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 under both indexes (Action #1- 160680/2024 and Action #2- 154554/2025); and it is further

ORDERED that, within 30 days from entry of this order, movant shall file with the General Clerk’s Office a copy of this order with notice of entry under both indexes, and the Clerk of the General Clerk’s Office shall reassign Action #2, Index No. 154554/2025, to the undersigned; and it is further

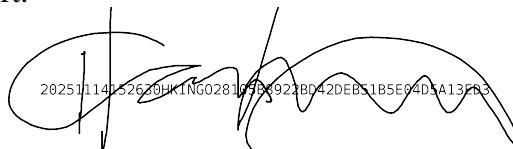
ORDERED that, upon payment of the appropriate calendar fees and the filing of notes of issue and certificates of readiness with the General Clerk’s Office in each of the above actions, the Clerk of the General Clerk’s Office shall place the aforesaid actions upon the trial calendar for a joint trial before the undersigned or other Justice of this court; and it is further

ORDERED that in both actions such filing with the Clerk of the General Clerk’s Office shall be made 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); and it is further

ORDERED that the Clerk is directed to set this matter down for a preliminary conference in the Differentiated Case Management Part on the next available date.

This constitutes the decision and order of the court.

11/14/2025
DATE



HASA A. KINGO, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION