

Sheridan v J.T. Magen & Co., Inc

2025 NY Slip Op 34632(U)

December 2, 2025

Supreme Court, New York County

Docket Number: Index No. 156538/2022

Judge: Kathleen Waterman-Marshall

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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. KATHLEEN WATERMAN-MARSHALL PART 31

Justice

-----X

DAVID SHERIDAN,

Plaintiff,

- v -

J.T. MAGEN & COMPANY INC, 4TS II LLC, JAMESTOWN
OTS, L.P., FOREST ELECTRIC CORP.,

Defendant.

-----X

J.T. MAGEN & COMPANY INC, 4TS II LLC

Plaintiff,

-against-

SWEENEY & HARKIN CARPENTRY DRY WALL CORP.,
FOREST ELECTRIC

Defendant.

-----X

INDEX NO. 156538/2022
MOTION DATE 09/15/2025
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

Third-Party
Index No. 595322/2023

The following e-filed documents, listed by NYSCEF document number (Motion 002) 147, 148, 149, 150,
151, 152, 153, 154, 155, 156, 157, 158

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

Upon the foregoing documents, the motion by Forest Electric Corp. i/s/h/a/ Forest
Electric ("Forest") to consolidate this matter with David Sheridan v Rahi Systems, Inc. et al
(New York County Index No. 150132/2025), is granted in part, without opposition and on the
merits.¹

Background

In the instant 2022 personal injury (Labor Law injured worker) action, plaintiff David
Sheridan ("Mr. Sheridan") alleges he was an employee of Sweeney & Harkin Carpentry and
Drywall Corp. performing construction type work at a building in Times Square in Manhattan.
Mr. Sheridan claims that while performing construction type work from a scaffold, the scaffold
tipped over and he fell to the ground. He further alleges that J.T. Magen & Company Inc. ("J.T.
Magen"), 4TS II LLC ("4TS"), and Forest were general contractors/construction managers at the

¹ The notice of motion seeks to join the two matters for the purposes of trial and discovery; however, the affirmation
in support makes clear that complete consolidation is sought (see NYSCEF Doc. No. 148 at ¶ 31).

construction site and owned, controlled, and operated the scaffold.² He asserts claims for negligence, gross negligence, and Labor Law §§ 200 240(1), and 241(6).

In the related 2025 action, Mr. Sheridan asserts claims for negligence and Labor Law §§ 200 240(1), and 241(6) against Rahi Systems Inc. (“Rahi”) and TikTok, Inc., (“TikTok”) arising out of the same alleged scaffold tipping accident. He alleges that Rahi had a contract to perform work at the construction site and that TikTok managed, controlled, and occupied the premises. Thus, he contends Rahi and TikTok are likewise responsible for his accident.

Discussion

Consolidation rests within the discretion of the Court and is appropriate where two actions involve “a common question of law or fact” (CPLR § 602[a]); the burden is on a party resisting consolidation to show that consolidation would be prejudicial (*Vigo S. S. Corp. v Marship Corp.*, 26 NY2d 157 [1970]). Courts are inclined to award consolidation where it promotes efficiency and judicial economy (*Amcan Holdings, Inc. v. Torys LLP*, 32 AD3d 337 [1st Dept 2006]).

Both the 2022 and 2025 actions arise out of the same construction accident; consequently, they involve common questions of law and fact. As the motion is unopposed, no party has resisted consolidation or shown that consolidation would be prejudicial. While discovery in the 2022 matter has progressed farther than the 2025 matter, this is the only factor militating against consolidation. Where two matters are in different procedural or discovery postures, but neither are not yet on the trial calendar, consolidation is generally appropriate (*see e.g. Collazo v City of New York*, 213 AD2d 270 [1st Dept 1995] [consolidation granted; any prejudice can be avoided by an expedited discovery schedule]; *compare Abrams v Port Authority Trans-Hudson Corp.*, 1 AD3d 118 [1st Dept 2003] [consolidation denied; first action was already on trial calendar while second action had “barely advanced to discovery phase”]; *Smith v Smith*, 261 AD2d 928 [4th Dept 1999] [same]). Consequently, consolidation is granted.

However, that part of Forest’s motion for leave to amend its answer to assert unspecified crossclaims is denied. CPLR 3025(b) governs permissive leave to amend a pleading upon terms which are just. Leave is to be freely given absent a showing that amendment would cause surprise or prejudice (*Fahey v County of Ontario*, 44 NY2d 934 [1978]; *170 W. Vil. Assoc. v G & E Realty, Inc.*, 56 AD3d 372 [1st Dept 2008]; *Lanpont v Savvas Cab Corp., Inc.*, 244 AD2d 208 [1st Dept 1997]). However, “[i]n order to conserve judicial resources, an examination of the underlying merits of the proposed causes of action is warranted. Where a court concludes that an application to amend a pleading clearly lacks merit, leave is properly denied” (*Eighth Ave. Garage Corp. v HKL Realty Corp.*, 60 AD3d 404 [1st Dept 2009] [internal citation omitted]). The motion to amend the pleading “shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading” (CPLR 3025[b]).

Forest has failed to provide its proposed amended pleading asserting crossclaims against Rahi and/or TikTok. Thus, the Court cannot perform the requisite examination of the underlying

² The claims against Jamestown Ots, L.P. were discontinued by stipulation.

merits of the proposed crossclaims. This denial is without prejudice to further application including the proposed amended pleading, or submission of a stipulation to be so-ordered.

Accordingly, it is

ORDERED that the motion is granted to the extent that the above-captioned action is consolidated in this Court with *David Sheridan vs. Rahi Systems, Inc., et al*, Index No. 150132/2025, pending in this Court; and it is further

ORDERED that the consolidation shall take place under Index No. 156538/2022 and the consolidated action shall bear the following caption:

SUPREME COURT OF THE STATE OF NEW YORK
COUTY OF NEW YORK

-----X
DAVID SHERIDAN,

Plaintiff,

-against-

J.T. MAGEN & COMPANY INC., 4TS II LLC,
JAMESTOWN OTS, L.P., FOREST ELECTRIC CORP.,
RAHI SYSTEMS, INC. and TIKTOK INC.

Defendants

-----X
J.T. MAGEN & COMPANY INC. and 4TS II LLC,

Third-Party Plaintiffs,

-against-

SWEENEY 7 HARKIN CARPENTRY DRY WALL
CORP. and FOREST ELECTRIC

Third-Party Defendants

-----X

; and 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, 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 counsel for the movant shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed; and it is further

ORDERED that service of this order upon the Clerk of the Court 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

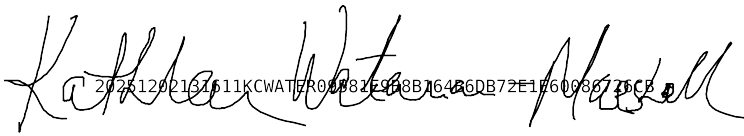
ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents being consolidated in the consolidated case file under the index number of the consolidated action in the New York State Courts Electronic Filing System or make appropriate notations of such documents in the e-filing records of the court so as to ensure access to the documents 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 General Clerk's Office, who is hereby directed to reflect the consolidation by appropriately marking the court's records; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the aforesaid *Protocol*; and it is further

ORDERED that the motion for leave to serve and file an amended answer is denied without prejudice; and it is further

ORDERED that counsel are reminded a preliminary conference is scheduled for **December 17, 2025 at 10:00am** in Room 623 at 111 Centre Street, New York, NY.



12/2/2025
DATE

KATHLEEN WATERMAN-MARSHALL,
J.S.C.

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