

Taub v City of New York

2025 NY Slip Op 34900(U)

December 16, 2025

Supreme Court, New York County

Docket Number: Index No. 162208/2024

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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MALCOLM S. TAUB,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF TRANSPORTATION, NEW YORK CITY
DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Defendant.

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INDEX NO. 162208/2024

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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

Plaintiff Malcolm S. Taub (“Plaintiff”) moves, pursuant to CPLR § 602(a), for an order consolidating this action, *Taub v. City of New York*, Index No. 162208/2024 (“Action No. 1”), with the related action entitled *Taub v. Consolidated Edison Company of New York, Inc.*, Index No. 158766/2025 (“Action No. 2”), under Index No. 162208/2024, together with such other and further relief as the court deems just and proper. The motion is unopposed.

BACKGROUND AND PROCEDURAL HISTORY

Both actions arise from the same alleged incident occurring on May 12, 2024, at or near Park Avenue and East 34th Street, in the County, City, and State of New York. Plaintiff alleges that he sustained personal injuries when he tripped and fell due to a defective condition in the roadway.

Action No. 1 was commenced on December 24, 2024, by the filing of a summons and verified complaint against the City of New York, the New York City Department of Transportation, and the New York City Department of Environmental Protection, alleging ownership, control, and maintenance responsibilities with respect to the roadway at issue. Defendants interposed a verified answer on March 20, 2025.

Action No. 2 was commenced on July 9, 2025, by the filing of a summons and verified complaint against Consolidated Edison Company of New York, Inc., alleging that Con Edison performed work, repairs, or construction in the area of the alleged defect. Con Edison interposed a verified answer on July 29, 2025.

At the time this motion was made, no preliminary conference had been held in either action, and both matters remain in the early stages of discovery. Plaintiff now seeks consolidation,

contending that the actions involve identical factual allegations, overlapping legal issues, and common questions of liability and damages, and that consolidation will promote judicial economy, avoid duplicative discovery, and prevent the risk of inconsistent verdicts.

DISCUSSION

CPLR § 602(a) provides, in relevant part, that “[w]hen 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 delays.”

The determination of whether to consolidate actions pursuant to CPLR § 602 rests within the sound discretion of the trial court. That discretion, however, is guided by a well-established preference for consolidation where actions arise out of the same occurrence and share common questions of law or fact, particularly where consolidation will advance judicial economy and reduce the risk of inconsistent outcomes (*Matter of Progressive Ins. Co. (Vasquez-Countrywide Ins. Co.)*, 10 AD3d 518, 519 [1st Dept 2004]; *Matter of Vigo S.S. Corp. (Marship Corp. of Monrovia)*, 26 NY2d 157, 163 [1970]).

Here, consolidation is plainly warranted. The two actions are premised upon the same accident, the same location, and the same alleged defective roadway condition. Resolution of liability in each case will necessarily involve overlapping factual inquiries, including the condition of the roadway on the date of the incident, the nature and extent of any work performed in the area, notice, causation, and the apportionment of fault, if any, among the defendants. These shared factual predicates give rise to common questions of law and fact within the meaning of CPLR § 602(a).

Appellate authority makes clear that, where such commonality exists, consolidation should be granted absent a showing of prejudice to a substantial right (*Whiteman v. Parsons Transp. Group of N.Y., Inc.*, 72 AD3d 677, 678 [2d Dept 2010]; *Zupich v. Flushing Hosp. & Med. Ctr.*, 156 AD2d 677, 678 [2d Dept 1989]). No such showing has been made here. Indeed, the motion is unopposed, and there is nothing in the record to suggest that consolidation would result in jury confusion, undue delay, or prejudice to any party.

To the contrary, consolidation at this juncture—before the completion of discovery and prior to any preliminary conference—will serve the interests of justice by streamlining discovery, reducing duplicative motion practice, conserving judicial resources, and eliminating the risk of inconsistent determinations regarding the same occurrence (*Beerman v. Morhaim*, 17 AD3d 302, 303 [2d Dept 2005]).

The court further notes that consolidation will not alter the substantive rights of any party. Each defendant will retain the ability to assert defenses, pursue discovery, and seek apportionment of liability as permitted by law. Under these circumstances, consolidation represents not only a permissible exercise of discretion, but the preferred course.

Accordingly, Plaintiff’s unopposed motion to consolidate is granted in its entirety.

As such, it is hereby

ORDERED that the motion is granted and the above-captioned action is consolidated in this court with *Malcolm S. Taub v. Consolidated Edison Company of New York, Inc.*, Index No. 158766/2025, pending in this court; and it is further

ORDERED that the consolidation shall take place under Index No. 162208/2024, and the consolidated action shall bear the following caption:

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

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MALCOLM S. TAUB,

Plaintiff,

Index No. 162208/2024

-against-

THE CITY OF NEW YORK,
NEW YORK CITY DEPARTMENT OF TRANSPORTATION,
NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL
PROTECTION, and CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.,

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 thirty (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 the Clerk's 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; 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 thirty (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 aforesaid Protocol.

This constitutes the decision and order of the court.

HASA A. KINGO, J.S.C.

12/16/2025
DATE

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