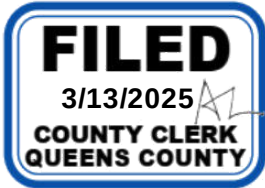


Ceballos v Singh
2025 NY Slip Op 35469(U)
March 5, 2025
Supreme Court, Queens County
Docket Number: Index No. 704027/2024
Judge: Denise N. Johnson
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DENISE N. JOHNSON IAS Part 11
Justice



-----X
HILDA ROBLES CEBALLOS
Plaintiff(s),

Index No.: 704027/2024
Motion Date: 11/12/24
11/26/24

- and -

RUPINDER SINGH, TPINE LEASING CAPITAL
CORPORATION, 9827293 CANADA INC. D/B/A
FLASH TRANSPORT
Defendant(s).

Motion Seq. No: 2 & 3

-----X

The following papers numbered EF 37-63 read on this motion by Defendants RUPINDER SINGH and 9827293 CANADA,INC, D/B/A FLASH TRANSPORT for an Order pursuant to CPLR§ 3126(3), dismissing the Plaintiff's Complaint for her willful failure to comply with the Defendants' demand for ad damnum pursuant to CPLR§ 3017(c) for an order, this cross motion by Plaintiff for an order pursuant to CPLR§3126 striking defendants answer for failure to provide proper and complete discovery responses, and Plaintiff's motion for an order pursuant to CPLR §602 for joint trial and discovery.

Papers
Numbered

Mot Seq 2

Notice of Motion – Affirmation – Exhibits – Service.....	EF 37-48
Notice of Cross-Motion – Affirmation – Exhibits – Service.....	EF 64-76
Affirmation in Opposition – Exhibits – Service.....	EF 77-80

Mot Seq 3

Notice of Motion – Affirmation – Exhibits – Service.....	EF 50-54
Affirmation in Opposition – Exhibits – Service.....	EF 61
Reply Affirmation	EF 62-63

Upon the foregoing papers it is **ORDERED** as follows:

This is an action to recover for personal injury sustained from a motor vehicle accident on November 17, 2023, on the Long Island Expressway at or near its intersection with Guinea Woods Road in

the County of Nassau, State of New York. Plaintiff commenced the action with the filing of the summons and complaint on February 22, 2024. Defendants RUPINDER SINGH and 9827293 CANADA, INC, D/B/A FLASH TRANSPORT now move for an Order pursuant to CPLR§ 3126(3), dismissing the Plaintiff's Complaint for her willful failure to comply with the Defendants' demand for ad damnum pursuant to CPLR§ 3017(c). Plaintiff cross moves for an order pursuant to CPLR§3126 striking defendants answer for failure to provide proper and complete discovery responses, and Plaintiff also moves for an order pursuant to CPLR §602 for joint trial and discovery.

Motion Sequence 2

It is well-settled that the drastic remedy of striking a pleading pursuant to CPLR §3126 for failure to comply with disclosure should be granted only where the conduct of the resisting party is shown to be willful, contumacious, or in bad faith. Only where a party disobeys a court order by its conduct and, thus, frustrates disclosure, is dismissal within the discretion of the trial court (*see, Ave. C Constr. V. Gassner*, 306 AD2d 506 [2d Dept. 2003]; *Cronic v. Perry*, 269 A.D.2d 351 [2d Dept. 2001]).

CPLR § 3107(c) provides that “ ... that a party against whom an action to recover damages for personal injuries or wrongful death is brought, may at any time request a supplemental demand setting forth the total damages to which the pleader deems himself entitled.” Here, Defendant has properly moved for an order directing a supplemental demand from Plaintiff detailing the specific amount of damages sought. Plaintiff opposes, arguing that Plaintiff is still undergoing treatment and therefore an appropriate response cannot be given. Plaintiff further argues that Defendant offers no binding legal authority in support of their application however the application is brought pursuant to the statute which is binding. Therefore, Defendants' motion seeking an order pursuant to CPLR 3017 (c) compelling the plaintiff motion to compel plaintiff to set forth the total damages requested is GRANTED. Plaintiff retains the right to supplement this response once trial conferences are held.

Plaintiff argues that Defendant has failed to serve complete responses to discovery requests and has failed to comply with the Preliminary Conference order and compliance Conference Orders which direct the completion of EBTS. In support of this application Plaintiff offers the pleadings, Preliminary Conference Order, Compliance Conference Orders, an Affirmation of Good faith, discovery responses received to date, emails between the parties and Plaintiff's Good faith letter. Pursuant to Uniform Rules for Trial Courts § 202.7(c), movant should comply with the procedures when filing a motion with the court which requires an affirmation that counsel has conferred with opposing counsel in good faith efforts to resolve the issues raised by the motion. 22 NYCRR § 202.7(c) sets forth specifically what is required prior to moving for discovery relief. It delineates what information must be included in an affirmation of good

faith. In support of this application Plaintiff has failed to show that there has been a diligent good faith effort pursuant to 22 NYCRR § 202.7(c) to resolve the discovery dispute prior to the filing of the instant motion (see 22 NYCRR 202.7 [c]; *Deutsch v Grunwald*, 110 AD3d 949 [2d Dept 2013]). Plaintiff's affirmation of good faith is devoid of substantive information regarding the attempts at resolving the discovery dispute. It includes no information as to the type of contact made to resolve the dispute, when the contact to resolve the dispute was made or to whom the contact, if any, was directed. Therefore, Plaintiff's cross-motion pursuant to CPLR §3126 is DENIED.

Motion Sequence 3

The instant action was commenced by Plaintiff HILDA ROBLES CEBALLOS ("Ceballos") in this court under Index No. 704027/2024 to recover for personal injury sustained from a motor vehicle accident on November 17, 2023. In this action Ceballos alleges that Defendants were negligent and careless in the ownership and operation of their involved motor vehicle in the aforementioned accident and caused injuries to Ceballos.

AMANDA CEBALLOS CARVAJAL ("Carvajal") commenced an action ("Action 2") in this court, under Index No. 711418/2024 against Rupinder Singh, 9827293 Canada Inc. D/B/A/ Flash Transport, Hilda Robles Ceballos, Vicente Chicatorres. In Action 2 Carvajal alleges that Defendants were negligent and careless in the ownership and operation of their involved motor vehicle in the same accident occurring on November 17, 2023, and caused injuries to Carvajal. Plaintiff now moves for an order pursuant to CPLR § 602 seeking to join the actions for joint trial and discovery.

In support of the instant motion, Plaintiff submits the pleadings in both actions, a copy of the police report, and the affidavit of service. Defendants partially oppose the motion arguing that consolidation should not be granted because Plaintiff in action 1 is also a Defendant in action 2. Plaintiff has shown, and Defendants do not dispute, that both actions derive from the same accident and involve common questions of law and fact. Furthermore, Defendant has failed to argue or demonstrate that consolidation for the purposes of joint trial and discovery would prejudice a substantial right of theirs. Even though a party will become both a plaintiff and defendant, joint trial is appropriate, where common questions of law or fact exist absent a showing of prejudice to a substantial right (*see Calle v 2118 Flatbush Avenue Realty, LLC*, 209 AD3d 961 [2d Dept 2022]; CPLR § 602). Under the circumstances presented herein, consolidation of these actions for the purpose of joint discovery and trial is warranted. In balancing the various interests, the court finds that judicial economy coupled with avoiding the risk of inconsistent verdicts outweighs any disadvantage and inconvenience to the parties (*see Sarads v Dove Demolition*, 71 AD 2d 1001 [2d Dept 1979]; *Boyman v Bryant*, 133 AD2d 802 [2d Dept 1987]). Furthermore, instead of having two separate trials where defendants can place the blame on each other, having one jury determine the issues of fact

would add complete protection to the plaintiffs, fairness to the defendants, and save unnecessary costs and expense (*see Moses v. B & E Lorge Family Trust*, 147 AD3d 1043 [2d Dept 2017]; *Thayer v. Collett*, 41 AD2d 581 [3d Dept 1973]).

Accordingly, the motion is granted to the extent that a joint trial of Actions 1 and 2 shall be had and separate Index Numbers, Requests for Judicial Intervention (RJI) and Notes of Issue shall be filed for each action. The title of actions combined for joint trial shall be:

-----X

HILDA ROBLES CEBALLOS

Plaintiff(s),

Action 1

Index No.: 704027/2024

- and -

RUPINDER SINGH, 9827293 CANADA INC.

D/B/A FLASH TRANSPORT

Defendant(s).

-----X

AMANDA CEBALLOS CARVAJAL

Plaintiff(s),

Action 2

Index No.: 711418/2024

- and -

RUPINDER SINGH, 9827293 CANADA INC.

D/B/A FLASH TRANSPORT, HILDA ROBLES

CEBALLOS AND VICENTE CHICATORRES,

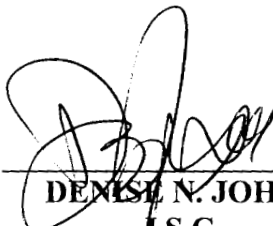
Defendant(s).

-----X

The movant shall serve a copy of this order on all parties in the above joined actions and on the Queens County Clerk.

The foregoing shall constitute the decision and order of this court.

Dated: March 5, 2025



DENISE N. JOHNSON

J.S.C.

