

Hunter v Rhone
2025 NY Slip Op 35589(U)
February 7, 2025
Supreme Court, Bronx County
Docket Number: Index No. 815922/2021E
Judge: Naita A. Semaj
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NEW YORK SUPREME COURT – COUNTY OF BRONX

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX: PART 27

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Jennifer Hunter,

Petitioner,

Index No.: 815922/2021E

Hon. Naita A. Semaj,

Justice of the Supreme Court

-against-

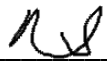
Marcia P. Rhone,
 Melisha Rhone,
 Maxlyn Rhone, and
 Edward L. Koester,

Respondents.

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The following papers numbered NYSCEF Doc. #66 to NYSCEF Doc. #72, 75 - 84 were read on **Respondent Edward L. Koester's** Motion (Seq. No. 4) for an Order (i) granting leave to reargue Decision and Order dated June 26, 2024; and upon granting reargument, (ii) vacating the June 26, 2024; (iii) denying Petitioner's motion to consolidate, and; (iv)(a) severing the 2023 action from the 2021 action, and upon severance; (iv)(b) reinstating the action(s) as a separate matter were noticed and duly submitted on **August 29, 2024.**

Sequence No. 4	NYSCEF Doc. Nos.
Notice of Motion - Exhibits and Affidavits Annexed	66 - 72
Answering Affirmation/Affidavit and Exhibits	75 - 84
Replying Affirmation/Affidavit and Exhibits	93

See attached decision and order dated **February 7, 2025.**Dated: February 7, 2025Hon. 

Naita A. Semaj, J.S.C.

1. CHECK ONE.....

☐ CASE DISPOSED IN ITS ENTIRETY ☒ CASE STILL ACTIVE

2. MOTION IS.....

☐ GRANTED ☒ DENIED ☐ GRANTED IN PART ☐ OTHER

3. CHECK IF APPROPRIATE.....

☐ SETTLE ORDER ☐ SUBMIT ORDER

NEW YORK SUPREME COURT – COUNTY OF BRONX

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COUNTY OF BRONX: PART 27

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Jennifer Hunter,

Petitioner,

Index No.: 815922/2021E

Decision and Order

-against-

Marcia P. Rhone,
 Melisha Rhone,
 Maxlyn Rhone, and
 Edward L. Koester,

Respondents.

-----X

HON. NAITAA. SEMAJ

Petitioner commenced three separate actions in Supreme Court, Bronx County. This matter is the second in time. The procedural posture of all actions is as follows:

- i. First Petitioner commenced a personal injury action against Respondents Rhone (index number 22432/2019E) [“A1”]. The court entered judgment in Petitioner’s favor on October 1, 2021.
- ii. Second, Petitioner commenced *this* action for fraudulent conveyance [“A2”]. Respondents Rhone interposed an Answer on January 12, 2022.
- iii. Third, Petitioner commenced an action against Respondent Koester for fraudulent conveyance (index number 814879/2023E) Respondent Koester interposed an answer on November 27, 2023.

Procedural Posture

On November 19, 2021, Petitioner commenced this action.

On December 11, 2023, the parties agreed to disqualify Respondent Koester as attorney for Respondents Rhone. (*see* Motion Seq. No. 1).

On April 9, 2024, Respondent Koester filed a motion to dismiss under A3. The A3 court did not render a decision.

On June 26, 2024, this court ordered consolidation of the A3 with A2 under this index. (*see* Motion Seq. No. 2).

On July 26, 2024, Respondent Koester filed the motion before the Court. Respondent Koester’s application is supported only by Attorney Affirmation. Petitioner filed opposition and movant replied.

Movant seeks an Order (i) granting leave to reargue Decision and Order dated June 26, 2024; and upon granting reargument, (ii) vacating the June 26, 2024; (iii) denying Petitioner's motion to consolidate, and; (iv)(a) severing the 2023 action from the 2021 action, and upon severance; (iv)(b) reinstating the action(s) as a separate matter.

On July 29, 2024, after submission of the pending motion, Respondent Koester appealed this Court's order dated June 26, 2024. The Appellate Division, First Department index number is 2024-04612. To date, the appeal is noticed, but not perfected.

After review of all papers, without prejudice and subject to the Appellate Division's decision on the matter pending appeal, the Court decides as follows:

Under CPLR § 2221, a motion to reargue "... shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion." (CPLR § 2221 [d]).

Also, "[w]here common questions of law or fact exist, a motion to consolidate should be granted absent a showing of prejudice to a substantial right by the party opposing the motion" (*Kally v. Mount Sinai Hosp.*, 44 A.D.3d 1010, 1010; *see Weiss & Biheller, MDSE, Corp. v. Preciosa USA, Inc.*, 127 A.D.3d 1176, 5 N.Y.S.3d 909; *Nigro v. Pickett*, 39 A.D.3d 720, 833 N.Y.S.2d 655). However, a motion to consolidate should be denied where the two actions do not share common questions of law or fact (*see New York Commercial Bank v. J. Realty F Rockaway, Ltd.*, 108 A.D.3d 756, 757, 969 N.Y.S.2d 796; *Weiss & Biheller, MDSE, Corp. v. Preciosa USA, Inc.*, 127 A.D.3d at 1176, 5 N.Y.S.3d 909).

Here, movant's counsel argues that this Court overlook or misapprehended or did not apply the appropriate standard in determining whether to consolidate separate pending actions.

Also, movant's counsel argues that the actions consolidated had "vastly different procedural postures" and claims that discovery is complete as to Petitioner and Respondents Rhone and incomplete as to Petitioner and Respondent Koester. Lastly, movant's counsel argues that Petitioner did not show that consolidation would avoid unnecessary costs or delay.

Movant's attorney's arguments are not persuasive.

The common issues and facts arise from (i) Respondents' conveyance of real property, (ii) the legality of the conveyance, (iii) whether the conveyance was performed by or ratified with the advice of Respondents' prior attorney, Respondent Koester, and; (iv) who may be liable for damages incurred by Petitioner and at what portion.

If consolidation remains, Petitioner will not be prejudiced because Petitioner *commenced* A2 and A3. Moreover, Petitioner *moved* to consolidate A2 and A3. Similarly, movant will not be prejudiced because dates can be arranged for additional discovery by stipulation or

application and a new note of issue may be failed, accordingly. Also, Respondent Koester will not be prejudiced because he is sued in A3 by the same Petitioner in A2. Since the matters are consolidated Respondent Koester may incorporate pleadings from A3 to A2 or move to amend his answer.

Lastly, as advised by movant's counsel, this Court notes the misquote in Decision and Order dated June 26, 2024 at page 2, paragraph 2: The paragraph reads:

“Whereas the parties hereto seek to consolidate Action 1 and Action 2 for all purposes, including discovery and trial.”

The order is amended, *nunc pro tunc*, to correct this sentence to read:

“Whereas Petitioner seeks to consolidate Action 1 and Action 2 for all purposes, including discovery and trial.”

Accordingly, it is hereby:

ORDERED, that Respondent Koester Motion for an Order (i) granting leave to reargue Decision and Order dated June 26, 2024; and upon granting reargument, (ii) vacating the June 26, 2024; (iii) denying Petitioner's motion to consolidate, and; (iv)(a) severing the 2023 action from the 2021 action, and upon severance; (iv)(b) reinstating the action(s) as a separate matter is DENIED, in its entirety, without prejudice.

This constitutes the Decision and Order of this Court.

Dated: February 7, 2025

Hon. _____


Naita A. Semaj, J.S.C.