

Vazquez v D.H.I. Constr. Servs., Inc.
2026 NY Slip Op 31401(U)
March 2, 2026
Supreme Court, New York County
Docket Number: Index No. 162276/2024
Judge: Gerald Lebovits
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.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. GERALD LEBOVITS PART 07

Justice

-----X

MANUEL MESIAS CUJI VAZQUEZ,
Plaintiff,

- v -

D.H.I. CONSTRUCTION SERVICES, INC., ANDREA
HEALTHCARE LLC, LIPPOLIS ELECTRIC, INC., DENNIS
NOSKIN ARCHITECT, P.C., Z & F CONSULTING, INC.,
CONLON ENGINEERING, LLC, and JOHN DOES,

Defendants.

-----X

INDEX NO. 162276/2024
MOTION DATE 02/13/2026
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 64, 65, 66, 67, 68

were read on this motion to CONSOLIDATE.

No appearance for plaintiff.

Goldberg Segalla, LLP, New York, NY (Reed M. Podell of counsel), for defendant D.H.I. Construction Services, Inc.

Byrne & O'Neill, LLP, New York, NY (Donald A. Pitofsky of counsel), for defendant Conlon Engineering LLC.

Gerald Lebovits, J.:

Pursuant to CPLR 602, defendant DHI Construction Services, Inc (hereafter "DHI") moves under CPLR 602 to consolidate this action, Index No. 162276/2024 (the "New York County Action") with Cuji Vazquez v Mrs Li LLC, Index No. 704887/2022 [Sup Ct, Queens County] (the "Queens County Action") on the basis of common questions of law and fact, and to lay venue of the consolidated action in Queens County.

BACKGROUND

The Queens County Action was commenced in Supreme Court, Queens County, on March 4, 2022, by plaintiffs Manuel Mesias Cuji Vazquez and Ana Chabla against defendant Mrs Li LLC. Cuji Vazquez alleged negligence and violations of Labor Law §§ 200, 240 and 241 (6), arising from his fall off a ladder while working at Mrs Li's property at 91-16 101st Avenue in Queens (the "Premises") on December 27, 2021. (NYSCEF No. 50 at ¶ 10.) Ana Chabla asserted a claim for loss of consortium as Cuji Vazquez's wife. (NYSCEF No. 50 at ¶¶ 12-15.)

On May 23, 2022, Mrs Li commenced a third-party action against DHI (NYSCEF No. 52), which was later discontinued without prejudice following settlement (NYSCEF No. 49 at ¶ 5; NYSCEF No. 53).

The New York County Action was commenced in New York County on December 27, 2024. Cuji Vazquez has sued DHI, Andrea Healthcare LLC, Lippolis Electric, Inc., Dennis Noskin Architect, P.C., Z & F Consulting, Inc., and Conlon. (NYSCEF No. 1.) He has alleged negligence and violations of Labor Law §§ 200, 240 and 241(6) arising from the same December 2021 fall at the Premises. (NYSCEF No. 1 at ¶¶ 73, 75, 79.)

On January 7, 2026, DHI brought this motion to consolidate the New York County and Queens Actions, with the joint place of trial to be Queens County.

DHI argues that the Actions should be consolidated as each Action grew out of the same set of facts occurring on December 27, 2021, at the Premises and that consolidation would not result in prejudice to a substantial right of any party as discovery remains ongoing in both Actions. (NYSCEF No. 49 at 3-4.)

Conlon argues in opposition that the motion to consolidate should be denied (i) on the procedural ground that the motion should have been filed in Queens County pursuant to CPLR 602(b); and, on the merits of the request, that (ii) the Actions involve dissimilar issues or disparate legal theories and (iii) consolidation would result in undue delay of each Action.¹ (NYSCEF No. 64.)

DHI's motion is granted.

DISCUSSION

I. Whether This Motion Was Properly Brought in New York County

When actions involving a common question of law or fact are pending before a single court, CPLR 602 (a) provides that, “a court, upon motion, may order the actions consolidated, may order a joint trial, or may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay”. For cases pending in different courts, CPLR 602 (b) allows a court to remove to itself an action pending in a *different* court for the purposes of consolidation or of joint trial.

Conlon argues that the motion should be denied on procedural grounds: That because the Actions are pending in two different counties, the provisions of CPLR 602 (b) and not those of CPLR 602 (a) apply here. On Conlon's reading of CPLR 602, DHI was required to have filed the motion in the Queens County Action and asked Queens Supreme to remove to itself this action. DHI argues that this court may properly consider the current motion under CPLR 602 (a), because both Actions are pending in the Supreme Court of New York. (NYSCEF No. 67 at ¶¶ 2-4.) This court agrees with DHI.

¹ Plaintiff has not taken a position on the motion.

The New York State Supreme Court is “a single judicial entity.” (*Revona Realty Corp. v Wasserman*, 4 AD2d 444, 446 [3d Dept 1957].) As a result, actions pending before the Supreme Court in different counties fall within the ambit of “actions . . . pending before a court” under CPLR 602 (a). When “two actions are pending in the Supreme Court in different counties, the motion to consolidate may be made in either county.” (*Gomez v Jersey Coast Egg Producers, Inc.*, 186 AD2d 629, 630 [2d Dept 1992].) This motion to consolidate was properly brought here under CPLR 602 (a).

II. Whether the Two Actions Involve Common Questions of Law or Fact

A preference exists for “consolidation in the interest of judicial economy where there are common questions of law and fact, unless the party opposing the motion demonstrates that consolidation will prejudice a substantial right.” (*Kukielka v Santana*, 191 AD3d 532, 533 [1st Dept 2021].) Denial of a motion to consolidate or for a joint trial “may be warranted where common questions of law or fact are lacking, where the actions involve dissimilar issues or disparate legal theories, or where a joint trial would substantially prejudice an opposing party or pose a risk of confusing the jury or rendering the litigation unwieldy.” (*HSBC Bank USA, N.A. v Francis*, 214 AD3d 58, 63 [2d Dept 2023].)

Here, common questions of fact exist in the two actions about the incident which occurred at the Premises on December 27, 2021, from which both Actions arise. As Conlon concedes, the alleged workplace injury asserted by the Plaintiff is common to both Actions. (NYSCEF No. 64 at ¶ 8.)

Additionally, common questions of law exist in both actions about plaintiff’s claims in the two actions for negligence and alleged violations of Labor Law §§ 200, 240 and 241(6) (*i.e.*, the Scaffold Law). Conlon argues the Actions involve dissimilar issues or disparate legal theories, because Conlon (assertedly) comes within the architect/engineer exception to Scaffold Law liability. (NYSCEF No. 64 at ¶ 20.) But as DHI points out on reply (*see* NYSCEF No. 67 at ¶¶ 9-10), plaintiff has brought Scaffold Law claims in both actions; and Conlon is in the same litigating position (defending against Scaffold Law claims based on a statutory argument that is not available to its co-defendants) either way.

Although this action does involve different and more numerous defendants than the Queens County Action, the plaintiff is the same; and the defendants in both Actions are of a class that is potentially subject to liability on Cuji Vazquez’s Labor Law claims. Conlon has not sufficiently shown that consolidated proceedings would be unwieldy or would likely result in jury confusion, as it contends. (*See* NYSCEF No. 64 at ¶¶ 9, 20.)

III. Whether Consolidation Would Result in Undue Delay

Even when common questions of law or fact exist, “consolidation is properly denied if the actions are at markedly different procedural stages and consolidation would result in undue delay in the resolution of either matter.” (*Abrams v Port Auth. Trans-Hudson Corp.*, 1 AD3d 118, 119 [1st Dept 2003].) Conlon argues that the Actions are at markedly different procedural

stages for consolidation purposes, because the Queens County Action has been pending much longer and because the Queens County Action is assertedly much farther along in discovery. (*See* NYSCEF No. 64 at ¶¶ 10-19.) This argument is unpersuasive.

If two actions sought to be consolidated are simply at differing stages of discovery, “mere delay is not a sufficient basis upon which to deny consolidation.” (*Alsol Enterprises, Ltd. v Premier Lincoln-Mercury, Inc.*, 11 AD3d 494, 496 [2d Dept 2004].) Although the Queens County Action was commenced nearly three years before the New York County Action, the docket in the Queens County Action reflects little progress in discovery since early 2023. Thus, the record indicates that the Queens County Action is, at most, marginally ahead of the New York County Action. The two actions are not at fundamentally different procedural stages in a way that would cut against consolidation.

Accordingly, it is

ORDERED that DHI’s motion to consolidate is granted, and this action, *Cuji Vazquez v D.H.I. Construction Services, Inc.*, Index No. 162276/2024 (Sup Ct, NY County) is consolidated for all purposes with *Cuji Vazquez v Mrs Li LLC*, Index No. 704887/2022 [Sup Ct, Queens County]; and it is further

ORDERED that the consolidation shall take place under Index No. 704887/2022 [Sup Ct, Queens County], and the joint place of trial shall be Supreme Court, Queens County; and it is further

ORDERED that the consolidated action shall bear the following caption:

Manuel Mesias Cuji Vazquez and Ana Chabla,

Plaintiffs,

-against-

Mrs Li LLC, D.H.I. Construction Services, Inc.,
Andrea Healthcare LLC, Lippolis Electric, Inc.,
Dennis Noskin Architect, P.C., Z & F Consulting,
Inc., Conlon Engineering, LLC, and John Does,

Defendants;

and it is further

ORDERED that, counsel for movant shall pay the appropriate fee, if any, for such transfer and shall contact the staff of said Clerk to arrange for the effectuation of the transfer in an efficient manner; and it is further

ORDERED that upon service of notice of entry, the Clerk of the Supreme Court, New York County, shall transfer the documents on file under Index No. 162276/2024 to the Clerk of the Supreme Court, Queens County for the purpose of consolidation and shall mark his records to reflect the consolidation; and it is further

ORDERED that the Clerk of the Supreme Court, Queens County and the Clerk of this court shall coordinate the transfer of the documents being transferred so as to ensure an efficient transfer and to minimize insofar as practical the reproduction of such documents, including with regard to any documents that may be in digital format; 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, upon service of notice of entry, the office of the General Clerk shall update its records to reflect the consolidation of this action in Queens County with Index No. 704887/2022; and it is further

ORDERED that movant serve a copy of this order with notice of its entry on all parties; on the office of the County Clerk (using the NYSCEF document type "Notice to the County Clerk - CPLR § 8019 (c)"); and on the office of the General Clerk (using the NYSCEF document type "Service on Supreme Court Clerk (Genl. Clerk) w/Copy of Order").

3/2/2026
DATE


HON. GERALD LEBOVITS
J.S.C.

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"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input checked="" type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE