

Remache v 347 W. 16th St. LLC
2012 NY Slip Op 31658(U)
June 15, 2012
Supreme Court, New York County
Docket Number: 111946/2010
Judge: Louis B. York
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

LOUIS B. YORK
J.S.C.

PRESENT: _____
Justice

PART 2

Index Number : 111946/2010
REMACHE, GUIDO
vs.
347 WEST 16
SEQUENCE NUMBER : 002
CONSOLIDATION/JOINT TRIAL

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

**MOTION IS DECIDED BY THE COURT
WITH ACCOMPANYING MEMORANDUM DECISION**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

FILED

JUN 21 2012

NEW YORK
COUNTY CLERK'S OFFICE

Hey, J.S.C.

LOUIS B. YORK

Dated: 6/15/12

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 2

_____ X

GUIDO REMACHE,

Plaintiff,

Index No. 111946/2010

-against-

347 WEST 16 STREET LLC, BENEDICT
PROPERTIES LLC and LOYAL STARS
CONSTRUCTION INC.,

Defendant .

_____ X

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LOUIS B. YORK, J.:

Currently, defendants 347 West, LLC s/h/a 347 West Street, LLC (movants) move to consolidate this case (Remache I) with Guido Remache v. BRG Management LLC, Index No. 113713/2011 (Remache II). The Court denies this motion for numerous reasons, which it sets forth below.

Movants are correct that where common questions of law and fact are present courts often grant consolidation. However, this is not the only factor at issue, and this does not eliminate the courts' discretion to determine whether consolidation is proper. Instead, the court's discretion "should be accorded great deference." Amcan Holdings, Inc. v. Torys LLP, 32 A.D.3d 337, 339, 821 N.Y.S.2d 162, 165 (1st Dept. 2006) as long as the Court considers the appropriate factors.

Among other factors, the Court must consider judicial economy. Where both cases are at similar stages of discovery and involve the same parties and questions of fact and law, it is proper to consolidate. See, e.g., 43rd St. Deli v. Paramount Leasehold, L.P., 89 A.D.3d 573, 932

N.Y.S.2d 694 (1st Dept. 2011)(where, in addition, full relief was only available in one of the actions). However, where “[t]he two actions are at completely different stages of discovery,” denial of consolidation is appropriate because it would unduly delay the resolution of the older action. Barnes v. Cathers and Dembrosky, 5 A.D.3d 122, 122, 771 N.Y.S.2d 895, 895 (1st Dept. 2004). Thus, where one case is ready for trial and the other is not, the First Department has regularly upheld the trial court’s decision to deny consolidation. See, e.g., Ambac Assur. Corp. v. Countrywide Home Loans, Inc., 94 A.D.3d 445, 456, 91 N.Y.S.2d 492, 492 (1st Dept. 2012); Dias v. Berman, 188 A.D.2d 331, 331, 591 N.Y.S.2d 163, 163 (1st Dept. 1992). This is true even if there are common questions of law and fact. See Ahmed v. C.D. Kobsons, Inc., 73 A.D.3d 440, 441, 904 N.Y.S.2d 366, 367 (1st Dept. 2010); Abrams v. Port Auth. Trans-Hudson Corp., 1 A.D.3d 118, 119, 766 N.Y.S.2d 429, 430 (1st Dept. 2003).

Here, the two cases are at completely different stages of discovery. The parties filed the request for judicial intervention in Remache I – a 2010 case – over 16 months ago, and the parties have appeared in Court and by phone for several discovery conferences. The last court-ordered deposition date was April 2, 2012, and the parties did not seek to extend that date. Also, the discovery deadline was April 20, 2012, and the parties did not seek extra time for discovery or seek to extend the April 23, 2012 Note of Issue deadline. Pursuant to the terms of the written discovery orders – the preliminary conference order of March 30, 2011, and the September 14, 2011 and November 16, 2011 compliance conference orders – and to the terms of the unwritten telephone conference orders as well, unless the parties seek extensions of these dates in a timely fashion and/or for good cause, the deadlines are not extended. Moreover, absent a showing of good cause, the discovery is deemed waived. Movants have not shown good cause or even

alleged that discovery is outstanding. Moreover, they did not seek Court assistance at any point between the last Court conference, on March 7, 2012, and the Note of Issue deadline, April 23, 2012. This motion was not made until after the discovery and Note of Issue deadlines.

Therefore, all discovery in Remache I is deemed complete and the action must be placed on the trial calendar within 30 days of the date of entry of this order.

Remache II, on the other hand, is a brand new lawsuit involving a new defendant. There has not yet been a request for judicial intervention in that matter, and there is no indication in movants' papers or in the court computer system that the defendant in that action has answered. The alleged accident occurred in December of 2008 and the earlier action was commenced in February of 2011; yet, Remache II was not commenced until December of 2011. There is no explanation as to why it took so long to identify and include the management company when the owners already were in the case and subject to discovery. It appears that no discovery has been conducted in this second action, and there is no indication as to whether movants have a relationship with the management company such that the need for additional discovery will be limited. There also is no explanation as to why it took from December of 2011 to May of 2012 for movants to make this motion, even though there have been three court conferences in Remache I since the commencement of Remache II.

Therefore, the Court concludes that consolidation would unduly delay Remache I. The Court notes that the parties' failure to make this motion or seek extensions in a timely fashion, and movants' failure to provide in its motion papers explanations about the state of discovery, the reasons for their delay, and the relationship between themselves and the defendant in Remache II, also contributed to this Court's determination. The Court further notes that Remache II has not


been activated through the purchase of a request for judicial intervention and that, as previously stated, it appears that the defendant in that action has not answered yet. Absent any explanation to the contrary about the status of the two cases or any assurances that discovery can be streamlined, the Court must conclude that consolidation would impede efficient litigation.

Accordingly, it is

ORDERED that the motion is denied although unopposed.

Dated: June 15, 2012

Enter:



LOUIS B. YORK, J.S.C.

FILED

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**LOUIS B. YORK
J.S.C.**