

<b>Vega v City of New York</b>
2013 NY Slip Op 30172(U)
January 23, 2013
Supreme Court, New York County
Docket Number: 114966/09
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

HON. KATHRYN FREED  
PRESENT: JUSTICE OF SUPREME COURT

PART 5

Justice

Index Number : 114966/2009  
VEGA, RENEE  
vs.  
CITY OF NEW YORK *CAL: # 171*  
SEQUENCE NUMBER : 001  
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

**FILED**  
JAN 30 2013  
NEW YORK  
COUNTY CLERK'S OFFICE

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION / ORDER**

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

Dated: 1-23-13  
JAN 23 2013

  
\_\_\_\_\_, J.S.C.  
HON. KATHRYN FREED  
JUSTICE OF SUPREME COURT

- 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: Part 5

-----X  
RENEE VEGA,

Plaintiff,

DECISION/ORDER  
Index No.: 114966/2009  
Seq. No.: 001

-against-  
THE CITY OF NEW YORK,

PRESENT:  
Hon. Kathryn E. Freed  
J.S.C.

Defendants.

-----X  
HON. KATHRYN E. FREED:

RECITATION, AS REQUIRED BY CPLR §2219(a), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION.

PAPERS

NUMBERED

NOTICE OF MOTION AND AFFIDAVITS ANNEXED.....	<b>FILED</b>
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED.....	
ANSWERING AFFIDAVITS.....	
REPLYING AFFIDAVITS.....	
EXHIBITS.....	
STIPULATIONS.....	
OTHER.....	<b>JAN 30 2013</b>
	<b>NEW YORK</b>
	<b>COUNTY CLERK'S OFFICE</b>

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THIS MOTION IS AS FOLLOWS:

Plaintiff seeks an Order of consolidation pursuant to CPLR§ 602(a), consolidating Action #1 and Action #2, on the grounds that they arise out of the same occurrence, and they share common questions of law and fact. No opposition has been submitted by defendant.

After a review of the instant motion, all relevant statutes and caselaw, the Court grants the motion.

Factual and procedural background:

Action#1 was commenced against defendant City on October 23, 2009. Action #1 culminated

from plaintiff's desire to recover damages for personal injuries she sustained as she was roller blading on Columbia Street on April 27, 2009, wherein she tripped and fell upon a "negligently maintained portion of the street." Action #2 was commenced against Con Edison Co. of N.Y., Inc., and Consolidated Edison Company on April 25, 2012. Action #2 seeks to recover damages for the same accident as Action #1. During the discovery phase of Action #1, plaintiff discovered that Con Ed had a permit to perform construction on the Street at of about the location of the alleged defect on Columbia Street that allegedly caused plaintiff to trip and fall.

Now, plaintiff argues that the two actions warrant consolidation because they arise out of a common question of fact-plaintiff's trip and fall due to a defect on Columbia Street. Plaintiff also argues that consolidation would not cause defendant any prejudice and is necessary to avoid a multiplicity of lawsuits that would burden the court.

Conclusions of law:

CPLR§ 602(a) permits the consolidation of actions which involve common questions of fact; and generally vests discretion with the trial judge to determine whether to order consolidation. "Consolidation is appropriate where it will avoid unnecessary duplication of trials, save unnecessary costs and expense and prevent the injustice which would result from divergent decisions based on the same facts....." ( Chinatown Apts., Inc. v. New York City Tr. Auth., 100 A.D.2d 824 [1<sup>st</sup> Dept. 1984] ). Indeed, joint trials are favored in that they will foster judicial economy, quicken the disposition of cases ( Matter of City of Rochester v. Levin, 57 A.D.2d 700 [4<sup>th</sup> Dept. 1977] ), and potentially encourage settlements ( In Re New York City Asbestos Litigation, 188 A.D.2d 214 [1<sup>st</sup> Dept. 1993], *lv granted* 81 N.Y.2d 707 [1993] ).

Where consolidation is sought, the party opposing it bears the burden of demonstrating prejudice to a substantial right ( *see* American Home Mtge. Servicing, Inc. v. Sharrocks, 92 A.D.3d 620, 622 [2d Dept. 2012]; Viafax Corp. v. Citicorp Leasing, Inc., 54 A.D.3d 846, 950 [2d Dept. 2008] ). While consolidation is favored where it advances judicial economy, it should not be ordered where the issues raised in the two actions are “essentially different, or there is an insufficient identity of the factual or legal issues involved in the actions” ( *see* 1 N.Y. Jur 2d, Actions § 62 ). Moreover, the prejudice inherent in delay may also militate against consolidation, when the actions sought to be consolidated are at markedly different stages ( *see* 1 N.Y. Jur 2d, Actions § 64; *see also* Ahmed v. C.D. Kobsons, Inc., 73 A.D.3d 440, 441 [1<sup>st</sup> Dept. 2010] ).

In the case at bar, the Court finds that consolidation of Action #1 and Action #2 would be appropriate and advantageous, given the fact that they involve the same set of facts and probable witnesses, and are clearly not at markedly different stages.

Therefore, in accordance with the foregoing, it is hereby

ORDERED that plaintiff’s motion is granted and the above-captioned action is consolidated in this Court with Renee Vega vs. Con Edison Co. Of N.Y., Inc., and Consolidated Edison Company under Index No. 114966/09 and the consolidated action shall bear the following caption:

RENEE VEGA,

Plaintiff,

-against-

THE CITY OF NEW YORK, CON EDISON CO. OF N.Y., INC.,  
and CONSOLIDATED EDISON COMPANY,

Defendants.

Index No. 114966/09

And it is further

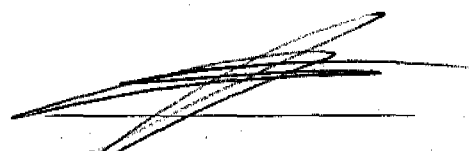
ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that upon service on the Clerk of the Court of a copy of this order with notice of entry, the Clerk shall consolidate the papers in the actions hereby consolidated and shall mark his/her records to reflect the consolidation, and it is further

ORDERED that a copy of this order with notice of entry shall also be served upon the Clerk of the Trial Support Office ( Room 158), who is hereby directed to mark the court's records to reflect the consolidation.

ENTER:

DATED: January 23, 2013  
JAN 23 2013



Hon. Kathryn E. Freed  
J.S.C.  
HON. KATHRYN FREED  
JUSTICE OF SUPREME COURT

**FILED**

JAN 30 2013

NEW YORK  
COUNTY CLERK'S OFFICE