

Crespo v City of New York

2013 NY Slip Op 32561(U)

May 29, 2013

Sup Ct, New York County

Docket Number: 109475/2010

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

HON. KATHRYN FREED
JUSTICE OF SUPREME COURT

PRESENT: _____
Justice

PART 5

Index Number : 109475/2010
CRESPO, MANUEL
vs.
CITY OF NEW YORK
SEQUENCE NUMBER : 002
CONSOLIDATION/JOINT TRIAL

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

Case # 20

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

JUN 03 2013

COUNTY CLERK'S OFFICE
DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

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

Dated: 5-29-13
MAY 29 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
MANUEL CRESPO,

Plaintiff,

-against-

THE CITY OF NEW YORK, THE CITY OF
NEW YORK DEPARTMENT OF
TRANSPORTATION, CONSOLIDATED EDISON,
NEW YORK CITY DEPARTMENT OF
ENVIRONMENTAL PROTECTION, PETROCELLO
ELECTRIC COMPANY, INC., PRIMA PAVING
CORPORATION,

Defendants.

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

DECISION/ORDER
Index No. 109475/2010
Seq. No. 002

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

FILED

JUN 03 2013

-----X
**COUNTY CLERK'S OFFICE
NEW YORK**

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.....1-2.....
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED.....
ANSWERING AFFIDAVITS.....
REPLYING AFFIDAVITS.....
EXHIBITS.....3-7.....
OTHER.....

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

Plaintiff moves for an Order pursuant to CPLR§602(a), directing the consolidation of two separate actions; and granting leave to amend the caption herein and have all prior pleadings deemed amended and served *nunc pro tunc*. Plaintiff also moves for a further discovery conference with all parties. No opposition has been submitted.

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

Factual and procedural background:

The instant matter is a negligence action wherein plaintiff seeks recovery of monetary damages for serious injuries allegedly sustained as a result of an accident occurring on April 22, 2009, wherein he tripped and fell over a street defect on premises either owned, operated, controlled and or being constructed/repared by the various defendants.

Consequently, plaintiff first brought suit in Supreme Court, New York County, under Index No. 109475/2010, against defendants The City of New York, The City of New York Department of Transportation, Consolidated Edison, New York City Department of Environmental Protection, Petrocello Electric Company, Inc., and Prima Paving Corporation. Issue was subsequently joined by the submission of an Answer on behalf of each of the aforementioned defendants. Discovery was exchanged, including various Bills of Particulars and Discovery Responses. Additionally, depositions were conducted, with the exception of follow up examinations of the City of New York Department of Transportation.

Defendant Consolidated Edison Company of New York, s/h/a Consolidated Edison, then filed a Third Party Summons against Safeway Construction Enterprises, Inc. Plaintiff then filed a subsequent Summons and Complaint, under index number 151188/2012, directly against Safeway Construction Enterprises, Inc. Issue was joined by the submission of Answers on behalf of the new defendants to both the Third Party Action and Direct Action. Discovery was exchanged in Action 2. An initial deposition has been conducted of a representative of Safeway Construction Enterprises, Inc., as a third party defendant in the main action. However, a "follow-up" examination of an

individual possessing additional knowledge, identified as Supervisor "Guido Dire," has been requested for production.

Defendant Consolidated Edison Company of New York, s/h/a Consolidated Edison, then filed a Second Third Party Summons against Nico Asphalt Paving, Inc., which filed its Answer in March 2013. Plaintiff asserts that discovery has not been completed in the most recent Second Third Party action, and no Demands for a Bill of Particulars or Discovery have been filed.

Plaintiff's position:

Plaintiff argues that as all of the claims emanate from the same incident, judicial economy dictates that the aforementioned cases proceed jointly. Plaintiff also asserts that the consolidated matter be set down for a discovery conference with all parties, "so that a complete discovery order, inclusive of remaining deposition dates and medical examinations may be issued" (Sach Aff., par. 11).

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 [1st 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 [4th Dept. 197]), and potentially encourage settlements (In Re New York City Asbestos Litigation, 188 A.D.2d 214 [1st 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 [1st Dept. 2010]).

In the case at bar, the Court finds that consolidation of the aforementioned actions 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. Furthermore, the fact that no opposition has been submitted indicates that the other parties fear no potential prejudice accruing from potential consolidation.

Therefore, in accordance with the foregoing, it is hereby

ORDERED that plaintiff’s motion to consolidate is granted and the consolidated action shall reflect the first purchases Index No. 109475/2010, and said consolidated action shall bear the following caption:

MANUEL CRESPO,

Plaintiff,

-against-

THE CITY OF NEW YORK, THE CITY OF NEW YORK DEPARTMENT OF TRANSPORTATION, CONSOLIDATED EDISON, NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION, PETROCELLO ELECTRIC COMPANY, INC., PRIMA PAVING CORPORATION, and SAFEWAY CONSTRUCTION ENTERPRISES, INC.,

Defendants.

-----X
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,

Third Party Plaintiff

-against-

NICO ASPHALT PAVING, INC.,

Third Party Defendant.

-----X

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 said consolidation, and it is further

ORDERED that a copy of this order with notice of entry shall also be served upon the Clerk

* 7]
of the Trial Support Office in Room 158 at 60 Centre Street, who is hereby directed to mark the court's records to reflect said consolidation; and it is further

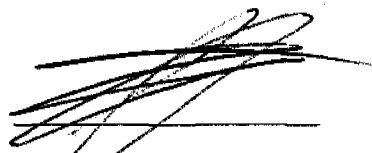
ORDERED that a compliance conference shall be held on June 18, 2013, at 2:00 p.m. All parties are to report to Room 103 at 80 Centre Street on that date; and it is further

ORDERED that this constitutes the decision and order of the Court.

Dated: May 29, 2013

ENTER:

MAY 29 2013



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

FILED

JUN 03 2013

COUNTY CLERK'S OFFICE
NEW YORK