

**Fabian v New York City Tr. Auth.**

2016 NY Slip Op 30104(U)

January 21, 2016

Supreme Court, New York County

Docket Number: 156014/2014

Judge: Michael D. Stallman

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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

PRESENT: Hon. MICHAEL D. STALLMAN
Justice

PART 21

ANGEL FABIAN and CARLOS GRULLON,

INDEX NO. 156014/2014

Plaintiffs,

MOTION DATE 1/21/16

MOTION SEQ. NO. 002

- v -

NEW YORK CITY TRANSIT AUTHORITY, HERBERT L. PAULLING, CBT PARATRANSIT, INC., RUBEN PIMENTAL-ESTRELLA, and CITY CAR & LIMOUSINE SERVICES INCORPORATED,

Defendants.

The following papers, numbered 54-67, were read on this motion for joint trial

Notice of Motion —Affirmation — Exhibits A-F—Affidavit of Efiling—Affidavit of Service No(s). 54-63

Affirmation in Opposition—Affirmation of Service No(s). 64-65

Reply Affirmation—Affidavit of Efiling No(s). 66-67

Upon the foregoing papers, it is ORDERED that defendants' motion for a joint trial is granted, and the above-captioned action shall be jointly tried as to liability only with Paulling v City Car & Limousine Services Inc. et al., Index No. 23443/2014E, Supreme Court, Bronx County; and it is further

ORDERED that, within 30 days from entry of this order, defendants' counsel shall serve a certified copy of this decision and order upon the Clerk of the Supreme Court of Bronx County, who, upon payment of the proper fees, shall transfer to the Clerk of the Supreme Court, New York County, all of the papers on file in the action Paulling v City Car & Limousine Services Inc. et al., Index No. 23443/2014E, Supreme Court, Bronx County; and it is further

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

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**ORDERED** that the Clerk of the Supreme Court, New York County, upon receipt of a copy of this order with notice of entry, shall, without further fee, assign an index number to the matter transferred pursuant to this order; and it is further

**ORDERED** that, within 45 days from entry of this order, defendants' counsel shall serve a copy of it with notice of entry upon the General Clerk's Office (60 Centre St Room 119), together with a Request for Judicial Intervention, for which the Clerk shall not charge a fee; and it is further

**ORDERED** that the General Clerk's Office shall assign the transferred matter to the undersigned; and it is further

**ORDERED** that there shall be consolidated pre-trial proceedings, including disclosure, of all issues; and it is further

**ORDERED** that there shall be coordinated motion practice of any summary judgment motion to be made on the issue of the liability of either:

- (1) Ruben Pimental-Estrella,
- (2) City Car & Limousine Services Incorporated,
- (3) City Livery Leasing Inc.,
- (4) Herbert L. Paulling,
- (5) CBT Paratransit, Inc., or
- (6) New York City Transit Authority,

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and any such motion for summary judgment must be served upon every party in all actions joined for trial. A party named in more than one action need only be served once; and it is further

**ORDERED** that every party has the opportunity to respond to such summary judgment motion, even if not named as a party in the action in which the summary judgment motion was made; and it is further

**ORDERED** that all such summary judgment motions will be made returnable or adjourned to the same return date; and it is further

**ORDERED** that upon payment of the appropriate calendar fees and the filing of notes of issue and statements of readiness in each of the above actions, the General Clerk's Office shall place the aforesaid actions upon the trial calendar for a joint trial.

Defendants move for joint trial and joint discovery of this action with *Paulling v City Car & Limousine Services Inc. et al.*, Index No. 23443/2014E, Supreme Court, Bronx County. Defendant Paulling opposes the motion, arguing that a joint trial would confuse the jury as to damages, that Paulling deserves a jury of his peers, i.e., a jury of Bronx jurors, and that travelling to New York County (where he is named as a defendant in this action) would be a hardship to Paulling.

The motion is granted. Both actions involve common issues of fact and law, because they involve a motor vehicle collision on February 3, 2014 near Broadway and West 130<sup>th</sup> Street in Manhattan. A 2013 Toyota allegedly operated by Pimental-Estrella, allegedly made contact with a 2008 Ford. City Car & Limousine Incorporated was allegedly the title owner or lessee of the Toyota vehicle; City Livery Leasing Inc. was the alleged registered owner. The Ford vehicle was allegedly leased to the New York City Transit Authority and operated by Paulling, an

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employee of CBT Paratransit, Inc. Fabian and Grullon were allegedly passengers in Pimental-Estrella's Toyota. A joint trial only as to liability avoids the risk of inconsistent determinations at trial and does not present the risk of jury confusion posed by Paulling.

Paulling's remaining arguments in opposition are without merit.

Dated: 1/26/16  
New York, New York

[Signature], J.S.C.

1. Check one:.....

2. Check if appropriate:..... MOTION IS:

3. Check if appropriate:.....

- CASE DISPOSED
- NON-FINAL DISPOSITION
- GRANTED  DENIED  GRANTED IN PART  OTHER
- SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

**MICHAEL D. STALLMAN**  
J.S.C.