Drammeh v Valdez
2016 NY Slip Op 32582(U)
December 20, 2016
Supreme Court, New York County
Docket Number: 450288/2016
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - PART 2

MOMODOU S. DRAMMEH,

Plaintiff,

-against-

MIGUEL E. VALDEZ, NEW YORK CITY TRANSIT AUTHORITY, THE METROPOLITAN TRANSPORTATION AUTHORITY, MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY, ACCESS-A-RIDE, and GVC II, INC.,

Defendants.

DECISION/ORDER
Index No. 450288/2016
Motion Sequence 001

KATHRYN E. FREED, J.S.C.

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

PAPERS	NUMBERED
NOTICE OF MOTION AND AFF. IN SUPP.	1,2 (Exs. A-E)

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

In this personal injury action arising from a motor vehicle accident, defendants Miguel E. Valdez, New York City Transit Authority, The Metropolitan Transportation Authority, Manhattan and Bronx Surface Transit Operating Authority, Access-A-Ride, and GVC II, Inc. move, pursuant to CPLR 602(b), for the joint trial of the captioned action with the action styled *Bintou Keita v The New York City Transit Authority, GVC II, Inc., Miguel E. Valdez, American United Transportation, Inc., and Momodou Drammeh*, Supreme Court, Bronx County Index Number 23033/16E. After a review of the motion papers, as well as the relevant statutes and case law, the motion, which is unopposed, **is granted**.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Plaintiff Momodou S. Drammeh alleges that, on February 3, 2015, he was injured when the vehicle he was driving was involved in an automobile accident on Cruger Avenue between Brady Avenue and Marin Place in The Bronx, New York. Ex. A. At the time of the incident, Bintou Keita ("Keita") was a passenger in the vehicle driven by Drammeh, which was owned by American United Transportation, Inc. ("AUT"). Ex. D. The other car involved in the accident was driven by defendant Miguel E. Valdez ("Valdez") and was owned by defendant GVC II, Inc. ("GVC"). Ex. D.

On August 25, 2015, Drammeh commenced the captioned action ("Action 1") against defendants Valdez, New York City Transit Authority ("NYCTA"), The Metropolitan Transportation Authority ("MTA"), Manhattan and Bronx Surface Transit Operating Authority ("MABSTOA"), Access-A-Ride, and GVC in the Supreme Court, Bronx County. Ex. A. In his complaint, Drammeh alleged that he was injured as a result of the negligence of the foregoing defendants, which owned, operated, maintained or controlled the vehicles involved in the accident. Id. Defendants in Action 1 joined issue in October of 2015 (Ex. A) and then the said action was transferred to this Court by order of the Supreme Court, Bronx County (Salman, J.) dated February 25, 2016 on the ground that actions against the MTA are to be commenced in New York County, where it has its principal offices. Ex. B.

On May 3, 2016, Keita commenced an action in Supreme Court, Bronx County against NYCTA, GVC, Valdez, AUT, and Drammeh under Supreme Court, Bronx County Index Number 23033/16 ("Action 2"). Ex. C. In that action, Keita alleged, inter alia, that he was injured in the accident of February 3, 2016 due to the negligence of the defendants named in Action 2, which owned, operated, maintained or controlled the vehicles involved in the accident. Id. Defendants in Action 2 joined issue in October of 2016. Ex. C.

Defendants Valdez, NYCTA, MTA, and NYCTA s/h/a Access-A-Ride, MABSTOA, and GVC now move, pursuant to CPLR 602(b), to have Action 2 tried jointly with Action 1 in Supreme Court, New York County. There is no opposition to the motion, which was properly served.

POSITION OF THE MOVANTS

The movants argue that Action 1 and Action 2 should be tried jointly in New York County because they arise from the same incident and because Action 1, venued in New York County, was commenced prior to Action 2. They maintain that a joint trial would decrease the chance of inconsistent decisions, further the goal of judicial economy, and avoid issues involving collateral estoppel and issue preclusion.

CONCLUSIONS OF LAW

"Where an action is pending in the supreme court it may, upon motion, remove to itself an action pending in another court and consolidate it or have it tried together with that in the supreme court." CPLR 602(b). Consolidation is generally favored by the courts "in the interest of judicial economy and ease of decision making where there are common questions of law and fact, unless the party opposing the motion demonstrates that consolidation will prejudice a substantial right." *Amcan Holdings, Inc. v Torys LLP*, 32 AD 337, 340 (1st Dept 2006), *citing Amtorg Trading Corp. v Broadway & 56th St. Assoc.*, 191 AD2d 212, 213 (1st Dept 1993); *see also Katan Group, LLC v CPC Resources, Inc.*, 110 AD3d 462 (1st Dept 2013). The burden of demonstrating prejudice is on the party opposing consolidation. *See Geneva Temps, Inc. v New World Communities, Inc.*, 24 AD3d 332, 334 (1st Dept 2005); *Progressive Ins. Co. v Vasquez*, 10 AD3d 518, 519 (1st Dept 2004). However, where a consolidation would result in a party, here Drammeh, being on both sides of the

caption, a joint trial should be ordered instead of consolidation. *See Rogin v Rogin*, 90 AD3d 507, 508 n 1 (1st Dept 2011); *Bass v France*, 70 AD2d 849, 849-850 (1st Dept 1979).

This Court finds that common questions of law and fact exist which would make joining Action 1 and Action 2 for discovery and trial as to liability only appropriate to promote the interests of judicial economy and to avoid the risk of inconsistent determinations. This is because both actions involve claims of personal injury sustained as a result of a motor vehicle collision which occurred on February 3, 2015 on Cruger Avenue between Brady Avenue and Marin Place in The Bronx, New York.

This Court notes that, by failing to oppose the motion, the non-movants, all of whom were served with the instant motion, have failed to establish that they would be prejudiced if the actions were joined for trial.

Movants assert that, because Action 1 was commenced first and is venued in New York County, the trial of the joined actions should be in New York County. Although consolidated actions are generally venued in the county where the earlier action was commenced *(see Parker v Troutman Sanders LLP*, 89 AD3d 638 [1st Dept 2011]), Action 1, the earlier action, was commenced in Bronx County. However, since Action 1 should have been brought in New York County, this Court finds that it is proper to venue both actions in New York County.

Therefore, in light of the foregoing, it is hereby:

ORDERED that the movants' motion for a joint trial is granted, and the above-captioned action shall be jointly tried as to liability only with *Bintou Keita v New York City Transit Authority, et al.*, Supreme Court, Bronx County Index Number 23033/16E; and it is further,

ORDERED that, within 30 days of the entry of this order, movants shall serve a certified copy of this decision and order upon the Clerk of the Supreme Court, 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 *Bintou Keita v New York City Transit Authority, et al.*, Supreme Court, Bronx County Index Number 23033/16E; and it is further,

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 decision and order, movants' counsel shall serve a copy of it with notice of entry upon the General Clerk's Office (60 Centre Street, Room 119), by filing with NYSCEF a completed Notice to the County Clerk - CPLR 8019(c) (NYSCEF Form EF-22, available on the NYSCEF site), together with a Request for Judicial Intervention, for which the Clerk shall not charge a fee; and it is further,

ORDERED that, within 45 days from entry of this decision and order, movants' counsel shall serve a copy of it with notice of entry upon the Clerk of the Trial Support Office (60 Centre Street, Room 158), who is directed to note the joinder of the aforementioned actions; 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 liability of any party 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 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 on the trial calendar for a joint trial; and it is further,

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

DATED: December 20, 2016

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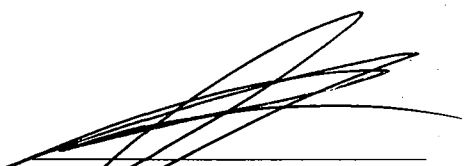

KATHRYN E. FREED, J.S.C.
HON. KATHRYN FREED
JUSTICE OF SUPREME COURT