

G.A. v Metropolitan Transp. Auth.
2018 NY Slip Op 30554(U)
March 23, 2018
Supreme Court, New York County
Docket Number: 153480/2017
Judge: Lisa A. Sokoloff
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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G.A. AN INFANT BY HER MOTHER
AND NATURAL GUARDIAN GINA SANTIAGO
AND GINA SANTIAGO INDIVIDUALLY,

Plaintiff,
-against-

DECISION AND ORDER

Index #153480/2017

THE METROPOLITAN TRANSPORTATION
AUTHORITY, THE CITY OF NEW YORK,
ACCESS-A-RIDE, and THE NEW YORK
CITY TRANSIT AUTHORITY,

Mot. Seq. 001

Defendant.

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Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered	NYCEF #
Defendant's Motion / Affirmation to Remove/Consolidate	<u>1</u>	9-17
Plaintiff's Opposition/ Affirmation	<u>2</u>	21-25

LISA A. SOKOLOFF, J.

In this personal injury, Defendants Metropolitan Transportation Authority ("MTA"), the City of New York, Access-A-Ride, and the New York City Transit Authority ("Transit"), move pursuant to CPLR § 602(a) and (b) to remove an action pending in the Supreme Court, Bronx County under Index No. 350102/16 ("Bronx action") arising out of the same occurrence, with the same plaintiffs, and with defendants united in interest by the ownership and operation of a motor vehicle, and consolidate the action in New York County for the purposes of discovery and trial.

Plaintiffs do not oppose consolidation, only the change in venue to New York County claiming that venue should be in the county where the first action was commenced

and that joinder in New York County would prejudice the infant plaintiff, a Bronx resident, who suffers from a developmental disability and for whom proximity to the courthouse is a concern.

Background

Plaintiff alleges that on March 10, 2016, plaintiff G.A. was injured in an accident that occurred on Second Avenue near its intersection with 97th Street in Manhattan while a passenger in para-transit vehicle designated "4274," operated by Maria Villafane (sued as Maria Villasana in the Bronx action), owned by Transit, leased to CBT Paratransit, Inc. (sued as Consolidated Bus Transit, Inc. in the Bronx action) ("CBT"), and used in a paratransit program known as "Access-a Ride." Plaintiff commenced the Bronx action, and according to Defendants, upon learning that Transit owned the vehicle in question, commenced the instant action in New York County.

Discussion

According to CPLR § 602(a), when actions involving a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial or order the actions consolidated to avoid unnecessary costs or delay (CPLR § 602(a); *Matter of Progressive Ins. Co. [Vasquez–Countrywide Ins. Co.]*, 10 AD3d 518 [1st Dept 2004]).

Consolidation is favored by the courts in the interest of judicial economy and ease of decision making and minimize the risk of inconsistent verdicts where there are common questions of law and fact, unless the party opposing the motion demonstrates that joining the actions will prejudice a substantial right (*Id.* at 519.; *In re New York City Asbestos Litigation*, 121 AD3d 230 [1st Dept 2014]; *Bernstein v Silverman*, 228 AD2d 325 [1st Dept 1996]).

It is undisputed that plaintiff's actions share common questions of law and facts. Both cases arise out of the same occurrence, have the same plaintiffs, and defendants which are united in interest.

Defendants note that Plaintiffs were within their rights to commence the Bronx action in that county based upon their residence (CPLR § 503), but were required to commence the instant action in New York County based upon the location of accident (CPLR § 505).

An action against the City of New York must be brought in the county within the city in which the cause of action arose (CPLR §504[3]). The same is true of an action against Transit (CPLR §505[b]). Trial of an action against the MTA, a public authority, must be in the county in which the authority has its principal office (CPLR §505[a]). Since the accident occurred at Second Avenue and 97th street and MTA's principal office is located at 2 Broadway, New York County would be the proper venue for trial.

Plaintiff contends, however, that CPLR § 504 does not preclude consideration of the discretionary grounds for the change of venue under CPLR § 510(3) citing *McAdoo v Levinson*, 143 AD2d 819 [2d Dept 1988]). This discretion has been exercised in the face of "compelling countervailing circumstances" such as the convenience of witnesses (*Ruiz v City of New York*, 195 AD2d 327, 328 [1st Dept 1993]). In the absence of compelling circumstances, however, courts should comply with the statutory direction (*Id.* at 328, citing *Powers v East Hudson Parkway Authority*, 75 AD2d 776 [1st Dept 1980]).

Plaintiff contends that proximity to the courthouse is an "immense concern" to the infant plaintiff, a material witness who suffers from cerebral palsy, is restricted to a wheelchair and receives treatment in the Bronx, near her home. Defendants counter that

Plaintiff's home is not in close proximity to the Bronx County Supreme Court and Plaintiff would nevertheless require transportation to the court by a para-transit vehicle. Plaintiff has failed to offer evidence of compelling circumstances that would overcome a statutorily-mandated venue.

The court finds that pursuant to CPLR §§504 and 505, New York County is the proper venue and grants Defendants' motion to remove the Bronx action to Supreme Court, New York County and consolidate Index No. 350102/2016 (the Bronx County action) and Index #153480/2017 (the New York County action), collectively, under index #153480/2017 in New York County.

Accordingly, it is

ORDERED, that Defendants The Metropolitan Transportation Authority, The City Of New York, Access-A-Ride, and The New York City Transit Authority's motion for an Order pursuant to CPLR §§ 602(a) and (b) removing the action under Index No. 350102/2016 from Supreme Court, Bronx County, to Supreme Court, New York County, and consolidating Index No. 350102/2016 with the above captioned action under Index No. 153480/2017 is granted;

ORDERED, that upon service on the Clerk of Supreme Court, Bronx County, of a copy of this Order with Notice of Entry, and/or of the electronic filing of same, as the case may be; and payment of the appropriate fee, if any, the Clerk shall deliver all papers under Index No. 350102/2016 to the Clerk of Supreme Court, New York County; and it is further

ORDERED, that upon removal to Supreme Court, New York County, both actions shall be consolidated for the purposes of discovery and trial; and it is further

ORDERED, that the consolidated action shall bear the following caption:

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G.A. AN INFANT BY HER MOTHER
AND NATURAL GUARDIAN GINA SANTIAGO
AND GINA SANTIAGO INDIVIDUALLY,

Plaintiff,

-against-

THE METROPOLITAN TRANSPORTATION
AUTHORITY, THE CITY OF NEW YORK,
ACCESS-A-RIDE, and THE NEW YORK
CITY TRANSIT AUTHORITY, CONSOLIDATED
BUS TRANSIT, INC. and MARIA VILLASANA

Defendant.

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DECISION AND ORDER

Index #153480/2017

Mot. Seq. 001

This constitutes the decision and order of the court. Any other requested relief not expressly granted is denied.

Dated: March 23, 2018
New York, New York

ENTER:



Lisa A. Sokoloff, J.C.