

Mulvaney v County of Westchester
2018 NY Slip Op 34354(U)
December 12, 2018
Supreme Court, Westchester County
Docket Number: Index No. 67063/2016
Judge: Sam D. Walker
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY
PRESENT: HON. SAM D. WALKER, J.S.C.**

-----X
DEVAN MULVANEY, as Executor of the Estate of
DONALD MULVANEY, deceased, as Executor of
the Estate of LEDELL MULVANEY, deceased,
and as Administrator of the Estate of
KATHERINE MULVANEY, deceased,

DECISION AND ORDER
Index No: 67063/2016
Seq# 4

Plaintiffs,

-against-

COUNTY OF WESTCHESTER and
TOWN OF YORKTOWN,

Defendants

-----X
Town of Yorktown,

Third-Party Plaintiff,

-against-

Empress Ambulance Service, Inc.,

Third-Party Defendant

-----X
The following papers were reviewed on the plaintiff's motion seeking an order pursuant to CPLR 602(a) consolidating this action with another related action:

Notice of Motion/Affirmation/Exhibit A

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Based on the foregoing papers the plaintiff's motion is granted.

Factual and Procedural Background

The plaintiff commenced this action on November 14, 2016, to recover for personal injuries and the wrongful deaths of his father, mother and sister, Donald, Ledell and

Katherine Mulvaney, as a result of a vehicular accident which occurred on August 15, 2015. The plaintiff alleges that the Mulvaney's vehicle was traveling southbound on the Taconic State Parkway, when a BMW SUV owned and operated by Nerim Sinanovic traveling northbound on the Taconic crashed into the center embankment, going airborne and striking the Mulvaney's vehicle.

Prior to the commencement, the plaintiff served the defendants County of Westchester (the "County") and Town of Yorktown (the "Town") with Notices of Claim, pursuant to New York General Municipal Law § 50-e and the Town conducted a 50-h hearing of Devan Mulvaney on August 24, 2016. The County did not conduct a 50-h hearing.

The Town filed a third-party summons and complaint on November 17, 2017, against Empress Ambulance Service, Inc. The plaintiff also filed three additional actions, two of which were joined for purposes of discovery and trial by a Stipulation to Join dated February 22, 2018 and then subsequently discontinued by Stipulations of Discontinuance dated April 27, 2018 and April 30, 2018. The plaintiff commenced the third action on August 15, 2018 and now seeks to consolidate it with this action pursuant to CPLR 602(a) and to amend the caption to reflect the consolidation. There is no opposition to the motion.

DISCUSSION

"Where common questions of law or fact exist, a motion to consolidate or for a joint trial pursuant to CPLR 602(a) should be granted absent a showing of prejudice to a substantial right by the party opposing the motion" (*see Perini Corp. v WDF, Inc.*, 33 AD3d 605, 606 [2d Dept 2006]). Here, both actions involve common questions of law and fact and a consolidated trial would avoid unnecessary duplication of proceedings, save

unnecessary costs and expenses and prevent the injustice which would result from divergent decisions based on the same facts (see *Gutman v Klein*, 26 AD3d 464, 465 [2d Dept 2006]) There was no opposition and therefore, no showing that joint discovery and/or a joint trial would prejudice a substantial right of the other parties.

Accordingly, it is

ORDERED that the motion is granted and it is further

ORDERED that, Index No.62649/2018 shall be consolidated into this action (Index

No. 67063/2016. The caption shall appear as follows:

-----X

DEVAN MULVANEY, as Executor of the Estate of
DONALD MULVANEY, deceased, as Executor of
the Estate of LEDELL MULVANEY, deceased,
and as Administrator of the Estate of
KATHERINE MULVANEY, deceased,
Plaintiffs,

Index No: 67063/2016

-against-

COUNTY OF WESTCHESTER, TOWN OF YORKTOWN,
YORKTOWN HEIGHTS ENGINE COMPANY #1, THE
MILLWOOD FIRE COMPANY NUMBER ONE, INC.,
MOHEGAN VOLUNTEER FIRE ASSOCIATION, INC.,
EMPRESS AMBULANCE SERVICE, INC., MOUNT
KISCO VOLUNTEER AMBULANCE CORPS, INC.,
OSSINING VOLUNTEER AMBULANCE CORPS,
INCORPORATED, PEEKSKILL COMMUNITY
VOLUNTEER AMBULANCE CORP., and SOMERS
VOLUNTEER FIRE DEPARTMENT INC.
Defendants

-----X

Town of Yorktown,
Third-Party Plaintiff,

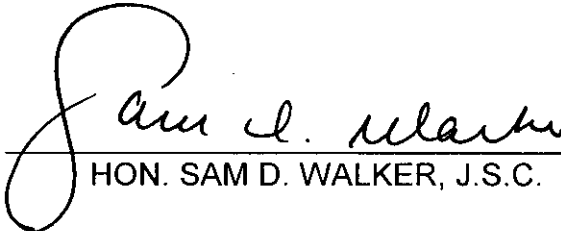
-against-

Empress Ambulance Service, Inc.,
Third-Party Defendant

-----X

The foregoing shall constitute the decision and order of the Court.

Dated: White Plains, New York
December 12, 2018


HON. SAM D. WALKER, J.S.C.