

**Watkins v CNY Constr. 701 LLC.**

2019 NY Slip Op 31139(U)

April 18, 2019

Supreme Court, New York County

Docket Number: 158913/2018

Judge: William Franc Perry

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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. W. FRANC PERRY PART IAS MOTION 23EFM**

*Justice*

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MALCOLM WATKINS,

Plaintiff,

- v -

CNY CONSTRUCTION 701 LLC., OLIVIERO CONSTRCTION  
CORP.

Defendants.

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INDEX NO. 158913/2018  
MOTION DATE 02/15/2019  
MOTION SEQ. NO. 001

**DECISION AND ORDER**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16

were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL

In this action, defendants, CNY Construction 701 LLC, and Oliviero Construction Corp., (defendants) move to consolidate this personal injury action alleging violations of the labor law, with an action pending in this court under index number 150835/2017, filed by the same plaintiff, alleging damages resulting from the same incident that occurred on October 20, 2015. Plaintiff has submitted partial opposition to the motion, related to discovery.

Defendants motion to consolidate this action with the first action filed by plaintiff under index number 150835/2017, is granted. Both actions arise out of an accident involving the same plaintiff that allegedly occurred on October 20, 2015. Review of the pleadings, indicates that the alleged claims in each of the actions concern the same basic facts and alleged violations of law. Specifically, both actions allege that the same plaintiff was injured during the course of his employment when he was struck by a piece of wood falling from approximately 30 feet above him, and both allege negligence and a violation of Labor Law Sections 200, 240, and

241 against the defendants. (NYSCEF Doc. Nos. 5-8). In fact, the same law firm represents all defendants in both actions. Moreover, plaintiff has failed to demonstrate that any prejudice would result from consolidating these actions under one index number. Any concerns that plaintiff has raised concerning discovery, can be addressed at the next scheduled status conference.

As these actions were commenced by the same plaintiff and share common questions of law and fact, consolidation is warranted. *Yoon Jung Kim v. Gahee An*, 150 A.D.3d 590, 594, 55 N.Y.S.3d 210 (1st Dep't 2017); *Karg v. Kern*, 125 A.D.3d 527, 529, 4 N.Y.S.3d 184 (1st Dep't 2015); *Plot Realty LLC v. DeSilva*, 45 A.D.3d 312, 313, 847 N.Y.S.2d 1 (1st Dep't 2007); *Geneva Temps, Inc. v. New World Communities, Inc.*, 24 A.D.3d 332, 334, 806 N.Y.S.2d 519 (1st Dep't 2005). Accordingly, it is

ORDERED that the motion is granted and the above-captioned action is consolidated in this Court with Malcolm Watkins vs. 701 Seventh Property Owner LLC, Index No. 150835/2017, pending in this Court; and it is further

ORDERED that the consolidation shall take place under Index No. 150835/2017 and the consolidated action shall bear the following caption:

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MALCOLM WATKINS,

Plaintiff,

Index No. 150835/207

-against-

701 SEVENTH PROPERTY OWNER LLC,  
CNY CONSTRUCTION 701-LLC., and  
OLIVIERO CONSTRUCTION CORP.

Defendants.

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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, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the Court (60 Centre Street, Room 141 B), who shall consolidate the documents in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that counsel for the movant shall file notice on the County Clerk, pursuant to CPLR §8019(c) directing that an entry be made to the case docket reflecting the consolidation hereby directed; and it is further

ORDERED that service of this order upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/suptctmanh](http://www.nycourts.gov/suptctmanh)); and it is further

ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents being consolidated in the consolidated case file under the index number of the consolidated action in the New York State Courts Electronic Filing System or make appropriate notations of such documents in the e-filing records of the court to ensure access to the documents in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is hereby directed to reflect the consolidation by appropriately marking the court's records; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the aforesaid *Protocol*; and it is further

ORDERED that counsel are directed to appear for a status conference in Room 307, 80 Centre Street, New York, New York, on April 30, 2019, at 9:30 AM.

4/18/2019

DATE

W. FRANC PERRY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE