

Elhajjam v Mayorga

2019 NY Slip Op 31252(U)

May 2, 2019

Supreme Court, New York County

Docket Number: 156471/2016

Judge: Adam Silvera

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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:	<u>HON. ADAM SILVERA</u>	PART	IAS MOTION 22
	<i>Justice</i>		
-----X		INDEX NO.	<u>156471/2016</u>
HAMID ELHAJJAM,		MOTION DATE	<u>03/29/2019</u>
Plaintiff,		MOTION SEQ. NO.	<u>003</u>
- v -			

PAUL MAYORGA, MICHAEL PARVEZ, ELIZABETH HARALAMPOPOULOS, CONSOLIDATED EDISON COMPANY OF NEW YORK INC., MONIKA MICHAEL AS ADMINISTRATOR OF THE ESTATE OF MICHAEL PARVEZ,

Defendant.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80 were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

Upon the foregoing documents, it is ordered that plaintiff Hamid Elhajjam’s motion to consolidate is granted. Plaintiff moves to consolidate this personal injury action with two other actions currently pending in the Supreme Court, Bronx County (Celin Alava and Wellington Henriquez v Paul S. Mayorga, Elizabeth Haralampopoulos and Michael Parvez, index no. 28396/17, and Wendy Mateo v Paul Mayorga, Elizabeth Haralampopoulos and Michael Parvez, index no. 21978/18), arguing that the three actions arise out of the same accident and have common parties. CPLR §602(a) states that “[w]hen actions involving a common question of law or fact are pending before a court, the court, upon motion ... may order the actions consolidated”.

It is undisputed that the actions arise out of the same motor vehicle accident and involve many of the same parties. In partial opposition, plaintiffs in the second action, Celin Alava and Wellington Henriquez, argue that they do not object to a consolidation so long as discovery in the third action does not delay their action, and that venue should remain in Bronx County. The

three actions clearly have common questions of law, namely which party or parties are liable for the injuries of plaintiffs in all three actions. Here, there is a risk of inconsistent verdicts if the three actions are not consolidated. Thus, plaintiff's motion to consolidate is granted to the extent that these actions are joined for discovery and trial. Each action shall maintain separate pleadings, captions, and index numbers, with separate certificates of readiness and notes of issue. The Appellate Division, First Department, has held that "[w]here two actions involving identical issues are pending in separate counties, the actions should be consolidated pursuant to CPLR 602 in the county where the first action was commenced absent special circumstances". *Harrison v Harrison*, 16 AD3d 206, 207 (1st Dep't 2005). Here, no special circumstances have been established, and it is undisputed that the motor vehicle accident occurred in New York County. Thus, venue shall remain in New York County where the instant action was filed first in time.

Accordingly, it is

ORDERED that the motion is granted and the actions *Celin Alava and Wellington Henriquez v Paul S. Mayorga, Elizabeth Haralampopoulos and Michael Parvez*, index no. 28396/17, and *Wendy Mateo v Paul Mayorga, Elizabeth Haralampopoulos and Michael Parvez*, index no. 21978/18, pending in the Supreme Court, Bronx County, shall be consolidated in this Court with *Hamid Elhajjam v. Paul S. Mayorga, Monika Michael as Administrator of the Estate of Michael Parvez, Elizabeth Haralampopoulos and Consolidated Edison Company of New York, Inc.*, Index No. 156471/16, New York County; and it is further

ORDERED that a separate index number be given to each of the actions *Celin Alava and Wellington Henriquez v Paul S. Mayorga, Elizabeth Haralampopoulos and Michael Parvez*, as well as *Wendy Mateo v Paul Mayorga, Elizabeth Haralampopoulos and Michael Parvez*, being

transferred from the Supreme Court, Bronx County, to this Court upon payment of the appropriate fees, if any, and it is further

ORDERED that, within 30 days from entry of this order, counsel for the movant shall serve a certified copy of this order upon the Clerk of the Supreme Court, Bronx County, and shall pay the appropriate fee, if any, for such transfer and shall contact the staff of said Clerk to arrange for the effectuation of the transfer in an efficient manner; and it is further

ORDERED that service upon the Clerk of the Supreme Court, Bronx County shall be made in accordance with any applicable protocol or other procedures of said county; and it is further

ORDERED that the Clerk of the Supreme Court, Bronx County, shall transfer the documents on file under Index Nos. 28396/17 and 21978/18 to the Clerk of this Court for the purpose of consolidation; and it is further

ORDERED that the Clerk of the Supreme Court, Bronx County and the Clerk of this court shall coordinate the transfer of the documents being transferred so as to ensure an efficient transfer and to minimize insofar as practical the reproduction of such documents, including with regard to any documents that may be in digital format; 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 for joint discovery and trial; and it is further

ORDERED that such service upon the Clerk of the Court shall be made in hard-copy

format if the case pending in this county is a hard-copy case or, if this case is an e-filed one, 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 this court's website at the address 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 transferred from the Supreme Court, Bronx County in the consolidated case file under the New York County 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 so as 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 upon 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 discovery shall proceed expeditiously; and it is further

ORDERED that all counsel are directed to appear for a previously scheduled compliance conference on May 24, 2019 at 9:30am, in room 106 of 80 Centre Street, New York, NY.

This constitutes the Decision/Order of the Court.

5/2/19
DATE


ADAM SILVERA, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED
<input checked="" type="checkbox"/>	GRANTED
<input type="checkbox"/>	DENIED
<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	FIDUCIARY APPOINTMENT

OTHER

APPLICATION:

CHECK IF APPROPRIATE:

REFERENCE