

Pecoraro v Carnegie Hall Corp.
2020 NY Slip Op 31818(U)
June 11, 2020
Supreme Court, New York County
Docket Number: 151435/2019
Judge: Barbara Jaffe
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. BARBARA JAFFE PART IAS MOTION 12EFM

Justice

-----X

FRANK PECORARO,

Plaintiff,

- v -

THE CARNEGIE HALL CORPORATION,

Defendant.

-----X

THE CARNEGIE HALL CORPORATION,

Third-party Plaintiff,

-against-

TRANSEL ELEVATOR & ELECTRIC, INC.

Third-party Defendant.

-----X

**DECISION + ORDER ON
MOTION**

INDEX NO. 151435/2019

MOTION DATE _____

MOTION SEQ. NO. 002

Third-Party
Index No. 595580/2019

The following e-filed documents, listed by NYSCEF document number (Motion 002) 26-33
were read on this motion to Consolidate.

By notice of motion, submitted on default, defendant moves pursuant to CPLR 602(a) for
an order consolidating this action with one filed by plaintiff against nonparty The City of New
York, pending in this court under index number 160517/2018.

By summons and complaint dated November 12, 2018, plaintiff commenced the other
action against City, alleging that on August 15, 2017, he was injured while working at a
construction site located at 881 7th Avenue in Manhattan. Plaintiff advances causes of action for
negligence and violation of the Labor Law. (NYSCEF 30).

By summons and complaint dated February 11, 2019, plaintiff commenced this action

against defendant, alleging the same facts and causes of action alleged against City. (NYSCEF 28). By third-party summons and complaint dated July 2, 2019, defendant commenced a third-party action against third-party defendant Transel Elevator & Electric, Inc. d/b/a TEI Group, alleging that it is liable to it for indemnification, contribution, and breach of contract. (NYSCEF 29).

Defendant contends that as both actions concern the same accident and causes of action, consolidation is warranted. Moreover, it argues, discovery remains outstanding in both actions, so there will be no delay should the actions be consolidated. (NYSCEF 27).

Pursuant to CPLR 602(a),

[w]hen actions involving a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all the matters in issue, may order the actions consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

And, “[t]here is a preference to join cases for discovery and trial in the interests of judicial economy and ease of decision-making where there are common questions of law and fact.” (*Lema v 1148 Corp.*, 176 AD3d 653, 654 [1st Dept 2019]).

As plaintiff advances the same causes of action arising from the same accident in both actions, and no party opposes or claims prejudice, consolidation is warranted. (*Geneva Temps, Inc. v New World Communities, Inc.*, 24 AD3d 332, 334 [1st Dept 2005]).

Accordingly, it is hereby

ORDERED, that the motion is granted and the above-captioned action is consolidated in this Court with *Frank Mario Pecoraro v The City of New York*, Index No. 160517/2018, pending in this Court; it is further

ORDERED, that the consolidation shall take place under Index No. 160517/2018 and the consolidated action shall bear the following caption:

-----X
FRANK MARIO PECORARO,

Plaintiff,

- v -

THE CITY OF NEW YORK and THE CARNEGIE
HALL CORPORATION,

Defendants.

-----X
THE CARNEGIE HALL CORPORATION,

Third-Party Plaintiff,

-against-

TRANSEL ELEVATOR & ELECTRIC, INC. d/b/a TEI
GROUP,

Third-Party Defendant.
-----X

It is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; 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; it is further

ORDERED that counsel for the movant shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed; 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/supctmanh); 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 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 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*.

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BARBARA JAFFE, J.S.C.

6/11/2020

DATE

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