

Thomas v Wolowik
2020 NY Slip Op 32443(U)
July 21, 2020
Supreme Court, Kings County
Docket Number: 522105/18
Judge: Francois A. Rivera
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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 21st day of July, 2020

HONORABLE FRANCOIS A. RIVERA

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JEANETTE THOMAS,

Plaintiff,

DECISION AND ORDER

Index No. 522105/18

- against -

SHNEUR WOLOWIK,

Defendant.

-----X

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion of defendant Shneur Wolowik (hereinafter Wolowik), filed on May 11, 2020, under motion sequence one, for an order pursuant to CPLR 602 (a) consolidating the instant action (hereinafter Action No. 1) with a personal injury action entitled *Ingram v Thomas*, Supreme Kings, Index No. 500285/2020 (hereinafter Action No. 2) for joint trial. The motion is unopposed.

- Notice of Motion
- Affirmation in Support
- Exhibits A-D

BACKGROUND

On November 2, 2018, Jeanette Thomas (hereinafter Thomas) commenced the instant action to recover damages for personal injuries against Wolowik by electronically filing a summons and verified complaint with the Kings County Clerk's Office (hereinafter KCCO). On December 13, 2018, Wolowik joined issue by electronically filing an answer to the complaint with the KCCO.

On January 6, 2020, Derrick Ingram (hereinafter Ingram) commenced an action against Thomas and Wolowik under Index No. 500285/2020 to recover damages for personal injuries by electronically filing a summons and verified complaint with the KCCO. On March 12, 2020, Wolowik interposed and filed an answer to the complaint. On May 11, 2020, Wolowik filed an amended answer to the complaint.

LAW AND APPLICATION

CPLR 602 (a) provides as follows:

When 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.

Where a common question of law or fact exist, a motion to consolidate or a motion 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 (*Cromwell v CRP 482 Riverdale Ave., LLC*, 163 AD3d 626, 627 [2nd Dept 2018]). The trial court has broad discretion in

determining whether to order consolidation (*Hanover Ins. Group v Mezansky*, 105 AD3d 1000 [2nd Dept 2013]). In exercising that discretion, the court must consider that the interests of justice and judicial economy are better served by consolidation in those cases where the actions share material questions of law or fact (*Hanover Ins. Group*, 105 AD3d at 1001). Furthermore, consolidation or joinder for trial is appropriate to avoid unnecessary duplication of trials, save unnecessary costs and expense, and prevent an injustice which would result from divergent decisions based on the same facts (*Robinson v 47 Thames Realty, LLC*, 158 AD3d 780, 781 [2nd Dept 2018]).

By the instant motion, Wolowik, the defendant in Action No. 1, seeks an order pursuant to CPLR 602 consolidating the instant action with Action No. 2 for joint trial. Wolowik is a defendant in both actions. The verified complaints in Action No. 1 and Action No. 2 are both for damages for personal injuries sustained in a motor vehicle collision. Each verified complaint concerns the exact same two car collision.

Both Action No. 1 and Action No. 2 allege that on October 8, 2017, a vehicle operated by Thomas collided with a motor vehicle owned and operated by Wolowik while they were traveling on Linden Boulevard in Kings County.

In Action No. 1, Thomas, as the plaintiff, has claimed that the collision was due to Wolowik's negligent operation of his vehicle. She has also claimed that the collision caused her to sustain serious physical injury. In Action No. 2, Ingram, as plaintiff, has claimed that the collision was caused by defendants Thomas and Wolowik and was due

to their negligent operation of their respective vehicles. Ingram has also alleged that he was a passenger in Jeanette Thomas's vehicle and that the collision caused him to sustain serious physical injury. Inasmuch as both actions arise from the same incident and share common issues of fact and law, consolidation for the purposes of joint discovery and trial would serve the interest of justice and judicial economy and avoid the potential inconsistent verdicts (*Rhoe v Reid*, 166 AD3d 919 [2nd Dept 2018]). Furthermore, the motion is unopposed, thus there is no indication of unfair prejudice to the defendants.

CONCLUSION

The motion of defendant Shneur Wolowik for an order pursuant to CPLR 602 (a) consolidating the instant action with a personal injury action entitled *Ingram v Thomas*, Supreme Kings, Index No. 500285/2020 for joint trial is granted.

The foregoing constitutes the decision and order of this court.

ENTER:

Francis A. Rivera

J.S.C.