

Abreu v 1690-1692 Holdings, LLC
2021 NY Slip Op 30108(U)
January 6, 2021
Supreme Court, Kings County
Docket Number: 508642/2020
Judge: Francois A. Rivera
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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 6th day of January 2021

HONORABLE FRANCOIS A. RIVERA

-----X

ORLANDO PICHARDO ABREU,

Plaintiff,

DECISION & ORDER

Index No. 508642/2020

-against

1690-1692 HOLDINGS, LLC, BETTERBUILT BUILDERS INC., RESPONSIVE GROUP LLC, ROCKFORD HOLDINGS GROUP, LLC and CITI SAFETY ON NY, LLC,

Defendants.

-----X

BETTERBUILT BUILDERS INC.,

Third-Party Plaintiff,

-against

SILVERCUP SCAFFOLDING 1 LLC and GWT ENTERPRISES, INC.,

Third-Party Defendants.

-----X

Recitation in accordance with CPLR 2219(a) of the papers considered on the notice of motion of third-party defendant Silvercup Scaffolding 1 LLC (hereinafter Silvercup), filed on October 21, 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 *Orlando Richardo Abreu v Silvercup Scaffolding I LLC*, pending in Supreme Kings and bearing Index Number 516362/2020 (hereinafter Action

KINGS COUNTY CLERK
2021 JAN 11 PM 12:36

No. 2) for all purposes. The motion is unopposed.

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

BACKGROUND

On May 29, 2020, plaintiff Orlando Pichardo Abreu (hereinafter Abreu) commenced the instant action, Action No. 1, by filing a summons and verified complaint with the Kings County Clerk's office. On July 9, 2020, Betterbuilt Builders Inc. (hereinafter Betterbuilt) filed an answer. On July 24, 2020, Abreu filed a supplemental summons and amended verified complaint. On August 10, 2020, Betterbuilt filed a verified answer to the amended complaint.

On September 11, 2020, defendant Betterbuilt filed a third-party summons and third-party complaint against Silvercup and GWT Enterprises, Inc. On October 5, 2020, Silvercup filed an answer to third party complaint.

The amended verified complaint alleges the following salient facts. On March 25, 2020, Abreu was lawfully working on a construction project at a premise located at 1690 Pacific Street, Brooklyn, NY (hereinafter the subject premise) owned by the defendants. On that date and place, Abreu was seriously injured due to a fall from a ladder while he was working at the subject premise. Abreu alleges that defendants failed to provide him with a safe place to work. In particular, Abreu asserted claims against the defendants alleging violations of Labor Law §§ 240 (1), 241 (6), 200. Abreu claims that the

defendants were negligent, reckless and careless in knowingly permitting suffering and allowing the aforesaid premises to become and remain in a defective, unsafe and dangerous condition; and were further negligent in failing to take suitable precautions for the safety of persons lawfully on the aforesaid premises.

Betterbuilt's third-party complaint asserts four causes of action for common law indemnification, contractual indemnification, contribution and breach of contract against Silvercup and GWT Enterprises, Inc.

On September 9, 2020, Abreu commenced Action No. 2 against Silvercup by filing a summons and verified complaint with the Kings County Clerk's office.

The verified complaint in Action No. 2 alleged the following salient facts. On March 25, 2020, Abreu was lawfully working on a construction project at a premise located at 1690 Pacific Street, Brooklyn, NY owned by Silvercup. On that date and place, Abreu was seriously injured due to a fall from a ladder while he was working at the subject premise. Abreu alleged, inter alia, that Silvercup failed to provide him with a safe place to work and violated Labor Law §§ 240 (1), 241 (6), 200.

LAW AND APPLICATION

By notice of motion filed on October 21, 2020, under motion sequence one, third-party defendant Silvercup moved for an order pursuant to CPLR 602 (a), consolidating Action No. 1 with Action No. 2 for all purposes, including discovery and trial and to amend the caption to reflect the consolidation.

CPLR 602 provides as follows:

Consolidation. (a) Generally. 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. (b) Cases pending in different courts. Where an action is pending in the supreme court it may, upon motion, remove to itself an action pending in another court and consolidate it or have it tried together with that in the supreme court. Where an action is pending in the county court, it may, upon motion, remove to itself an action pending in a city, municipal, district or justice court in the county and consolidate it or have it tried together with that in the county court.

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]). Furthermore, the trial court has broad discretion in determining whether to order consolidation (*Hanover Ins. Group v Mezansky*, 105 AD3d 1000 [2nd Dept 2013]).

Here, the verified complaints in both Action No. 1 and Action No. 2 involve the same plaintiff, the same accident, the same location and the same alleged violations of the New York State Labor Law. The trial of each action would necessarily require testimony of the same witnesses, presentation of the same evidence and an evaluation of the same set of circumstances and operative facts. Since the actions arise out of the same accident and involve common questions of law and fact, consolidation pursuant to CPLR 602 (a) is not only appropriate, but also, will serve the interest of justice, judicial economy, and avoid the potential inconsistent verdicts (*Rhoe v Reid*, 166 AD3d 919 [2nd Dept 2018]).

Moreover, no party has opposed the motion or claimed that any prejudice would be caused by consolidating the two actions.

CONCLUSION

The motion of third-party defendant Silvercup Scaffolding 1 LLC for an order pursuant to CPLR 602 (a) consolidating the instant action with the personal injury action entitled *Orlando Richardo Abreu v Silvercup Scaffolding I LLC*, pending in Supreme Kings under Index No. 516362/2020 for discovery and trial is granted.

The foregoing constitutes the decision an order of this Court.

*Researched and drafted with the assistance of Asmaa Hamdan, Senior at John Jay College of Criminal Justice

ENTER

Francis A. Rivera

J.S.C.

KINGS COUNTY CLERK
2021 JAN 11 PM 12:36