

Fanny v City of New York

2023 NY Slip Op 31666(U)

May 17, 2023

Supreme Court, New York County

Docket Number: Index No. 156930/2020

Judge: Judy H. Kim

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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. JUDY H. KIM **PART** **05RCP**

Justice

-----X

DORIS FANNY,

Plaintiff,

- v -

THE CITY OF NEW YORK, ALLIE GARAGE CORP.,
LAWRENCE A. RICE, PARK SOUTH TOWER
ASSOCIATES, LLC,

Defendants.

-----X

PARK SOUTH TOWER ASSOCIATES, LLC,

Third-Party Plaintiff,

-against-

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,

Third-Party Defendant.

-----X

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595690/2022

The following e-filed documents, listed by NYSCEF document number (Motion 003) 67, 68, 69, 70, 71, 72

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

Upon the foregoing documents, plaintiff’s motion to transfer the action Doris Fanny v. Consolidated Edison Company of New York, Inc.—currently pending in New York State Supreme Court, Bronx County, under Index No. 813577/ 2022 (the “Bronx Action”)—to New York State Supreme Court, New York County and, consolidate it within the instant action is granted.¹

¹ Plaintiff’s motion also seeks to transfer another action from New York State Supreme Court, Bronx County, i.e. Doris Fanny v. Allie Garage Corp., Index No.: 812327/ 2022. However, this action was discontinued without prejudice on February 28, 2023, approximately six weeks after the instant motion was filed.

“Consolidation is generally favored in the interest of judicial economy ... where cases present common questions of law and fact, unless the party opposing the motion demonstrates that a consolidation will prejudice a substantial right” (Raboy v McCrory Corp, 210 AD2d 145 [1st Dept 1994] quoting Amtorg Trading Corp v Broadway & 56th St Assoc, 191 AD2d 212, 213 [1st Dept 1993]). In this case, the Bronx Action and the instant action arise from the same incident and present common questions of law and fact. “Where 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” (Laureano v Rand, 2019 NY Slip Op 33440[U] [Sup Ct, New York County 2019] quoting Harrison v Harrison, 16 AD3d 206, 207 [1st Dept 2005]). As this action was commenced prior to the Bronx Action and the accident at issue occurred in New York County, the Court exercises its power pursuant to CPLR §510 and changes the venue of the Bronx Action to New York County and, upon transfer, consolidates this actions within the instant action.

In light of the foregoing, it is

ORDERED that the motion is granted and the action captioned Doris Fanny v. Consolidated Edison Company of New York, Inc., Index No. 813577/2022 pending in the New York State Supreme Court, Bronx County, shall be consolidated in this Court within the instant action; and it is further

ORDERED that, upon consolidation, Park South Tower Associates, LLC’s third-party action against Consolidated Edison Company of New York, Inc. is converted to a cross-claim; and it is further

ORDERED that consolidation shall take place under New York County Index No. 156930/2020 and the consolidated action shall bear the following caption:

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK

-----X
 DORIS FANNY,

Plaintiff,

-against-

THE CITY OF NEW YORK, ALLIE GARAGE CORP.,
 LAWRENCE A. RICE, PARK SOUTH TOWER
 ASSOCIATES, LLC, ALLIE GARAGE CORP. and
 CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Defendants.
 -----X

and it is further

ORDERED that, within thirty 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 in Doris Fanny v. Consolidated Edison Company of New York, Inc. Index No. 813577/2022 to the Clerk of Court of the Supreme Court, New York County, 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

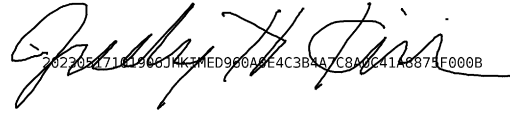
ORDERED that, within thirty days from entry of this order, movant shall serve a copy of this decision and order with notice of entry on the Clerk of the Court (60 Centre Street, Room 141 B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who shall consolidate the documents in the actions hereby consolidated and shall mark their records to reflect the consolidation; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office 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/supctmanh); 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 plaintiff shall serve a copy of this decision and order, with notice of entry, on all defendants herein and in the Bronx Action, within ten days of the date of this decision and order.

This constitutes the decision and order of the Court.


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5/17/2023
DATE

HON. JUDY H. KIM, 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