

Sicha v 351-353 21st St. Realty, LLC

2023 NY Slip Op 32990(U)

August 28, 2023

Supreme Court, New York County

Docket Number: Index No. 157945/2021

Judge: Frank P. Nervo

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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. FRANK P. NERVO PART 04

Justice

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ANGEL SICHA,

Plaintiff,

- v -

351-353 21ST STREET REALTY, LLC, 150 E. 37 STREET
CONDO, CHARLES H. GREENTHAL MANAGEMENT,
CORP.,

Defendant.

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INDEX NO. 157945/2021

MOTION DATE 05/09/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46

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

This matter was recently transferred to Part IV.

Defendant 150 East 37th Street Condo and Charges H. Greenthal Management Corp. seek an order consolidating a subsequent matter, Index No. 715202/2022, with this matter, under Index No. 157945/2021. The motion is wholly unopposed.

Consolidation rests within the discretion of the Court and is appropriate where two actions involve “a common question of law or fact” (CPLR § 602[a]); the burden is on a party resisting consolidation to show that

consolidation would be prejudicial. (*Vigo S. S. Corp. v. Marship Cop.*, 26 NY2d 157 [1970]). Courts are inclined to award consolidation where it promotes efficiency and judicial economy. (*Amcan Holdings, Inc. v. Torys LLP*, 32 AD3d 337 [1st Dept 2006]). Where consolidation would be inappropriate due to a party's role as both a plaintiff and defendant in the proposed consolidated action, but the claims underlying the actions arise from the same facts or occurrence, joint trial is appropriate (*Bass v. France*, 70 AD2d 849 [1st Dept 1979]).

Here, the two matters involve common questions of law and fact. Indeed, the two actions arise out of the same incident. Judicial economy is not best served by the actions proceeding separately. No party has appeared in opposition to this application.

Accordingly, it is

ORDERED that the motion is granted without opposition and the action *Sicha-Zuniga v. New Amsterdam Restoration Corp. et al*, Index No. 715202/2022, pending in the Supreme Court, Queens County, shall be consolidated in this Court with *Sicha v. 351-353 21st Street Realty et al*, Index No. 157945/2021, New York County; and it is further

ORDERED that the consolidation shall take place under New York County Index No. 157945/2021 and the consolidated action shall bear the following caption:

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

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ANGEL SICHA,

Plaintiff,

-against-

351-353 21ST STREET REALTY, LLC, 150 E. 37 STREET CONDO, CHARLES H. GREENTHAL MANAGEMENT CORP., NEW AMSTERDAM RESTORATION CORP. and AMSTERDAM RESTORATION LLC,

Defendants.

-----X

150 E. 37 STREET CONDO and CHARLES H. GREENTHAL MANAGEMENT CORP.,

Third-Party Plaintiffs,

-against-

NEW AMSTERDAM RESTORATION CORP., AMSTERDAM RESTORATION LLC, and JAMES S. CONSTRUCTION CORP.,

Third-Party Defendants.

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; 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, Queens 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, Queens 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, Queens County, shall transfer the documents on file under Index No. 715202/2022 to the Clerk of this Court for the purpose of consolidation; and it is further

ORDERED that the Clerk of the Supreme Court, Queens 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, who shall consolidate the documents in the actions hereby consolidated and shall mark his records to reflect the consolidation; 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); 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, Queens County in the consolidated case file under the Queens 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, 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 hard-copy format if the case pending in this county is a hard-copy case or, if the case pending here is an e-filed one, shall be made in accordance with the procedures set forth in the aforesaid *Protocol*; and it is further

ORDERED that counsel for the parties shall familiarize themselves with the Part IV Rules confer regarding outstanding discovery; and it is further

ORDERED that to the extent agreement can be reached on outstanding discovery, counsel shall file (via NYSCEF with courtesy copy to chambers in

accordance with the Part Rules) a single joint proposed discovery order within 60 days of this order; and it is further

ORDERED that to the extent agreement cannot be reached on all outstanding discovery, contemporaneously with the proposed discovery order above, counsel shall file (via NYSCEF with courtesy copy to chambers in accordance with the Part Rules) a single joint letter to judge, in accordance with the Part Rules, advising of the dispute and providing the parties' respective positions and objections; and it is further

ORDERED that the Court will consider only a complying single joint proposed order, and if necessary joint letter, from counsel and will not consider competing individual discovery letters; and it is further

[continued on following page]

ORDERED that the failure to timely file a single joint proposed order, and if necessary joint letter, in compliance with the aforementioned directives may constitute waiver of outstanding discovery, and counsel are reminded of the Part Rules, available on the Court’s website or in Courtroom 327 at 80 Centre Street.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT

8/28/2023
DATE


HON. FRANK P. NERVO

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE