

DiPietro v Wasserstein Enters. L.L.C.

2023 NY Slip Op 33927(U)

November 1, 2023

Supreme Court, New York County

Docket Number: Index No. 160977/2019

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12

Justice

-----X
ROBERT DIPIETRO, JESSICA DIPIETRO,
Plaintiff,

INDEX NO. 160977/2019
MOTION DATE N/A
MOTION SEQ. NO. 002

- v -

WASSERSTEIN ENTERPRISES L.L.C., METROPOLITAN
ARTS & ANTIQUES PAVILION LTD., PALM BEACH
JEWELRY & ANTIQUE SHOW, INC.,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X
WASSERSTEIN ENTERPRISES L.L.C., METROPOLITAN
ARTS & ANTIQUES PAVILION LTD., PALM BEACH
JEWELRY & ANTIQUE SHOW, INC.

Third-Party
Index No. 595017/2023

Plaintiff,

-against-

SELECT EXPOSITION SERVICES

Defendant.

-----X
The following e-filed documents, listed by NYSCEF document number (Motion 002) 61, 62, 63, 64, 65,
66, 67, 68, 69

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

In this personal injury action, defendants move pursuant to CPLR Section 602 to consolidate this action with the action *Robert DiPietro and Jessica DiPietro v. New York City Jewelry & Watch Show, Inc.*, pending in Supreme Court, New York County, under index number 151802/2022 for joint trial and discovery. Plaintiffs do not oppose.

Pursuant to CPLR 602:

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.

Further, "...it is well settled that there is a preference for consolidation in the interest of judicial economy where there are common questions of law and fact, unless the party opposing the motion demonstrates that consolidation will prejudice a substantial right." *See Geneva Temps, Inc. v New World Communities, Inc.*, 24 AD3d 332, 334 (1st Dept 2005).

Here, it is undisputed that both actions arise from the same alleged trip and fall over a piece of Masonite that occurred at 125 W 18th Street, New York, New York on October 23, 2019. The actions involve similar witnesses and the defendants in each action are sued in their alleged capacities as owner and/or manager of the subject property or due to their control of same. Neither action has proceeded to trial, and the trials will involve significantly similar evidence.

Principles of judicial economy strongly support consolidation in this matter. Moreover, plaintiffs do not oppose or otherwise argue that consolidation should not be effectuated.

Accordingly, it is

ORDERED that the motion is granted, without opposition, and the above-captioned action is consolidated in this Court with *DiPietro and DiPietro v New York Jewelry and Watch Show, Inc.*, Index No. 151802/2022, pending in this Court; and it is further

ORDERED that the consolidation shall take place under Index No. 160977/2019 and the consolidated action shall bear the following caption:

[Remainder of page intentionally left blank]

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

-----X
ROBERT DiPIETRO and JESSICA DiPIETRO,

Index No.: 160977/2019

Plaintiffs,

- against -

WASSERSTEIN ENTERPRISES, L.L.C.,
METROPOLITAN ARTS & ANTIQUES
PAVILION LTD., PALM BEACH
JEWELRY & ANTIQUE SHOW, INC., and
NEW YORK CITY JEWELRY & WATCH SHOW,
INC,

Defendants.

-----X
WASSERSTEIN ENTERPRISES, L.L.C.,
METROPOLITAN ARTS & ANTIQUES
PAVILION LTD., and PALM BEACH
JEWELRY & ANTIQUE SHOW, INC,

Third-Party Plaintiffs,

-against-

SELECT EXPOSITION SERVICES,

Third-Party Defendant.
-----X

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 counsel for the movant shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed; and it is further

ORDERED that service of this order upon the Clerk of the Court shall be made in hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, 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); and 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, 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 this action is a hard-copy matter or, if it is an e-filed case, shall be made in accordance with the procedures set forth in the aforesaid *Protocol*; and it is further

ORDERED that counsel are directed to appear for a discovery conference on the next available date in Part 12, Room 328 at 80 Centre Street, New York, NY.

This constitutes the decision and order of the court.

11/1/2023
DATE


LESLIE A. STROTH, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: