

SHORT FORM ORDER

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

PRESENT: HON. ROBERT A. BRUNO, J.S.C.

-----x
RICHARD J. ERICKSON,

Plaintiff,

-against-

CROSS READY MIX, INC., and "JOHN DOE", an agent,
servant and/or employee of Cross Ready Mix, Inc.,
TURNER CONSTRUCTION COMPANY, ELITE
READY MIX CORPORATION, and "John Doe" an
agent, servant and/or employee of Elite Ready Mix
Corporation,

Defendants.
-----x

TURNER CONSTRUCTION COMPANY,

Third-Party Plaintiff,

-against-

COMMODORE CONSTRUCTION,

Third-Party Defendant.
-----x

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

-----x
RICHARD J. ERICKSON,

Plaintiff,

-against-

GARY GONYA, M.D., ORLIN & COHEN ORTHOPEDIC
ASSOCIATES, P.C. and SOUTH NASSAU COMMUNITIES
HOSPITAL,

Defendants.
-----x

TRIAL/IAS PART 20
INDEX No.: 011947/05
Motion Date: 01/31/13
Motion Sequence: 025

DECISION & ORDER

INDEX NO.: 02028/09

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Papers Numbered

Sequence #001
Notice of Motion for Summary Judgment 1
Affirmation in Opposition 2
Affirmation in Partial Opposition 3
Reply Affirmation 4

Upon the foregoing papers, Plaintiff's motion pursuant to CPLR §602(a) seeking joint trial and pursuant to CPLR §2221(e) seeking renewal of the Order of Justice Ute Wolff Lally dated June 20, 2011 is determined as set forth below.

This is an action to recover damages for injuries sustained by plaintiff, Richard J. Erickson, as a result of an accident which occurred on November 4, 2003 at a construction site where a commercial building was being renovated, County of Nassau, New York. Plaintiff commenced an action for personal injuries against Defendants alleging violations of Labor Law §§200, 240(1) and 241(6), and common law negligence. Defendant/Third Party Plaintiff, Turner, commenced a third party action against Third Party Defendant Commodore seeking contractual indemnification and subsequently, the actions were consolidated ("Action No. 1"). Thereafter, Plaintiff commenced another action against Defendants Gary Gonya, M.D., Orlin & Cohen Orthopedic Assoc., P.C. and South Nassau Communities Hospital alleging medical malpractice with respect to the treatment of the injuries sustained on November 4, 2003 ("Action No. 2").

A motion to consolidate actions involving common questions of law or fact pursuant to CPLR §602 rests within the sound discretion of the trial court. *Zupich v. Flushing Hosp. & Med. Ctr.*, 156 A.D.2d 677. The motion to consolidate should be granted unless the opposing party succeeds in demonstrating prejudice to a substantial right. *Zupich*, supra. Although the delay of trial may be sufficient reason to deny consolidation (*F&K Supply, Inc. v. Johnson*, 197 A.D.2d 814; *Cronin v. Sordani Skanska Constr. Corp.*, 36 A.D.3d 448), any prejudice may be cured by expeditious completion of discovery. *Callazo v. City of New York*, 213 A.D.2d 270; *Zupich v. Flushing Hospital & Med. Ctr.*, 156 A.D.2d 677. Consolidation is favored in the interests of judicial economy and to prevent the injustice which would result if inconsistent verdicts were delivered in separate trials. See, *Zupich v. Flushing Hosp. & Med. Ctr.*, 156 A.D.2d 677.

Initially, the Court notes that Plaintiff's moving papers are procedurally defective since it fails to provide the relevant pleadings for Action No. 1 and Action No. 2. See, Cardmody-

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Wait2d §17:55.; *Peltz v. Peltz*, 16 Misc.3d 1139(A). However, Defendant, in opposition, cures said defective by providing this Court with the underlying pleadings.

Turning to the merits of Plaintiff's application, the record demonstrates that Plaintiff was allegedly injured as the result of a labor accident on November 4, 2003 and was allegedly further injured as the result of medical malpractice stemming from treatment received for the injuries endured on November 4, 2003. In opposition, Defendant fails to show substantial prejudice if both actions were consolidated for trial. Defendant's blanket argument that Action No. 1 was filed years earlier than the medical malpractice action is unavailing.

Based upon the foregoing, Plaintiff's application seeking consolidation is granted to the extent that a joint trial of Action No. 1 and Action No. 2 determining liability in the labor accident take place first, followed by a joint trial of the damages phase of the labor accident, if liability is found, together with the full medical malpractice action.

With respect to that portion of Plaintiff's motion seeking to renew the Order of Justice Ute Wolff Lally dated June 20, 2011, Plaintiff's motion is denied. Plaintiff's motion fails to provide a complete set of papers including the original moving papers, opposition, reply as well as the exhibits that were originally filed with the underlying motion. In the absence of a complete record, as here, the Court is not presented with the full context for intelligent review and decision in making of an instant application. *All American Moving and Storage, Inc. v. Andrews, et al.*, 21995-2005 NYLJ 1202493241398. It is the responsibility of the moving party to assemble complete papers which document the procedural history of the application and provide a proper foundation for the relief requested. *Lower Main Street, LLC v. Thomas Re & Partners*, 4/5/2005 NYLJ 19 (col. 3).

All matters not decided herein are denied.

This constitutes the Decision and Order of this Court.

Dated: April 1, 2013
Mineola, New York

ENTER:



Hon. Robert A. Bruno, J.S.C.

ENTERED

APR 03 2013

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COURT CLERK'S OFFICE