

SCAN

**SHORT FORM ORDER  
SUPREME COURT - STATE OF NEW YORK**

Present: Hon. Thomas Feinman  
Justice

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JERMAINE MAXWELL,

Plaintiff(s),

- against -

THOMAS CLINTON,

Defendant(s).  
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Index No. 5888/03

Motion Date:

Cal No.

SEQ. #002

The following papers read on this motion \_\_\_\_\_

- Order to Show Cause ..... N/A
- Affirmation in Opposition ..... N/A
- Replying Affirmation..... N/A
- Sur-Reply ..... N/A

The defendant, Clinton Thomas sued herein as Thomas Clinton, moves unopposed pursuant to 602(a) and (b) for an order granting joint discovery and a joint trial.

There are three actions that the defendant seeks to consolidate all of the actions concerning the instant motion involve the same four car motor vehicle accident that occurred in Queens County on July 20, 2002. Action #1 was commenced on or about April 15, 2003; Action #2 was commenced on or about April 29, 2003; and Action #3 was commenced on or about May 15, 2003. On October 28, 2003, the Hon. Orin R. Kilzes of the Queens County Supreme Court ordered Action #2 and Action #3 combined for a joint trial in Queens County.

“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 matters in issue, [and] may order the actions consolidated, . . .” CPLR 602. As a general rule, the venue of the action first commenced is deemed the place of joint trial. (See, *Velasquez v. Pine Grove Resort Ranch Inc.*, 77 Misc2d 329, 354 NYS2d 65 [Sup. Ct. Ulster County 1974]; *Maciejko v. Jarvis*, 99 AD2d 799, 472 NYS2d 133 [2<sup>d</sup> Dept 1984]; *Rae v. Hotel Governor Clinton, Inc.*, 23 AD2d 564, 256 NYS2d 741 [2d Dept 1965]). The defendant has clearly demonstrated the existence of “common questions of law and fact”.

Once the court determines that "common issues of law and fact" are pending before a court, the party resisting the proposed joint trial or consolidation has the burden of showing that a consolidation of the actions would be prejudicial to a "substantial right." (*Vigo S.S. Corp. v. Marship Corp.*, 26 NY2d 157, 309 NYS2d 165 [1970]).

A review of the affidavit of service indicates all parties were served with the instant motion. No opposition has been submitted by any party to any of the three actions. Accordingly, as no prejudice has been alleged, action #1, action #2 and action #3 shall be joined for discovery and trial. Accordingly, all of the actions shall proceed in the Supreme Court, Nassau County. (*See Kramer Levin c. International 800*, 190 AD2d 538, 593 NYS2d 211 [1<sup>st</sup> Dept 1993]), under action #1.

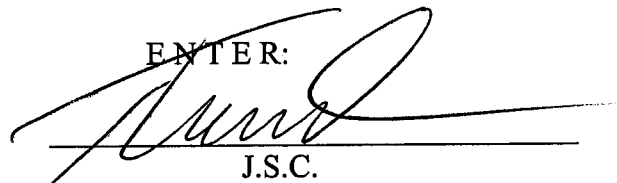
The Clerk of Queens County is directed to transfer the files for action #2 under Queens County Supreme Court Index Nos. 10754/03 and 12396/03 to the Nassau County Clerk.

The movants shall file an RJI, pay the required fees, and all parties are directed to appear at a Preliminary Conference (See: 22 NYCRR 202.12) to be held at Part 30 of the Supreme Court on the 28<sup>th</sup> day of April, 2004, at 9:30 A.M. This directive, with respect to the date of the Conference, is subject to the right of the Clerk to fix an alternate date should scheduling require.

Opening and closing statements shall be subject to the discretion of the trial court.

Finally, the attorney for movants shall serve a copy of this Order, with Notice of Entry, on all attorneys, who have appeared in actions #1, #2, and #3 on the Preliminary Conference Calendar Clerk, and on the Clerk of Queens County.

ENTER:



J.S.C.

Dated: March 23, 2004

cc: Weissman & Weissman, Esqs.  
Harold Solomon, Esq.  
Bongiorno & Bongiorno, L.L.P.  
Brand & Brand, Esqs.  
Monique Georges, Defendant Pro Se  
Blue Bird Home Furnishings, Defendant Pro Se  
Morris Spence, Defendant Pro Se  
Jessica Tracy, Defendant Pro Se

**ENTERED**

**MAR 25 2004**

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**

TF:dc