

SUPREME COURT - STATE OF NEW YORK

Present:

HON. TAMMY S. ROBBINS

Acting Justice
TRIAL/JAS, PART 47
NASSAU COUNTY

INGEBORG MUELLER, CATHERINE MUELLER,
JOSEPH MUELLER and LAURA MUELLER,

MOTION SUBMIT: 9/28/06
MOTION SEQ. NO. 001

Plaintiff(s)

-against-

ACTION NO. 1
INDEX NO. 020005/05

FREDY TORRES and DONALD MUELLER,

Defendant(s).

DONALD MUELLER,

Plaintiff

ACTION NO. 2
INDEX NO. 000569/06

-against-

FREDY TORRES,

Defendant

Defendant, Fredy Torres ("Torres") moves this court for an Order consolidating the two above-captioned cases for trial. Defendant, Donald Mueller, opposes the motion.

These actions arise out of a two car accident that occurred on July 4, 2005 on Broadway in Massapequa, Nassau County, New York in which the vehicle being operated by Mueller and occupied by plaintiffs Ingeborg Mueller, Catherine Mueller, Joseph Mueller and Laura Mueller, was rear ended by the vehicle being operated by Torres. Torres seeks to consolidate the two above-captioned actions for trial on the basis of judicial economy. Action one was commenced on December 15, 2005 and Action two was commenced on January 20, 2006.

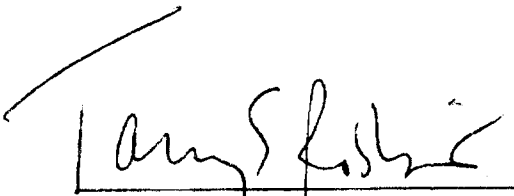
Mueller opposes the motion arguing that if these cases were consolidated, he "would be left with the inequitable burden of prosecuting his own personal injury action while defending his interests in a personal

injury action brought against him at the same time.” Moreover, Mueller argues that a jury will be confused and will question why Mueller’s family brought suit against him.

The court notes that even in the absence of consolidation, a jury will have the very same question since Mueller’s family are the plaintiffs in Action one and Mueller is one of the defendants in the same suit.

The court finds that consolidation of these actions serves “the interests of justice and judicial economy...” in that they arise out of the same accident and involve common questions of law and fact. (see CPLR § 602(a); *Fransen v. Maniscalco*, 265 AD2d 305). “Because the [two] actions in question all arose out the same accident, the interests of judicial economy favor joint trials. (*Mitchel v. Thacker*, 159 AD2d 701). [Mueller] failed to meet [his] burden of demonstrating that [he] would be substantially prejudiced by a joint trial.” (*Fox v. Tioga Construction Company, Inc.*, 1 Misc2d 909(A); see also, *Zimmerman v. Mansell*, 184 AD2d 1084).

Defendant Torres’ motion is granted in its entirety. The above-captioned cases are joined for trial. The caption shall be as depicted above. This matter is set down for a preliminary conference before this court at 9 a..m. on November 9, 2006.


HON. TAMMY S. ROBBINS, A.J.S.C.

Dated: October 26, 2006

ENTERED

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**NASSAU COUNTY
COUNTY CLERK'S OFFICE**