

SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. F. DANA WINSLOW,

Justice

ELIZABETH KLOEPFER, as mother and natural guardian of BRITTANY KLOEPFER, an infant and ELIZABETH KLOEPFER, individually,

**TRIAL/IAS, PART 9
NASSAU COUNTY**

**MOTION DATE: 4/18/07
MOTION SEQ. NO. 001**

Plaintiffs,

- against -

INDEX NO.: 017265/06

DANIELLE S. PERILLO, JOSPEH PERILLO, PARAMJIT K. GAKHAL and JASVIR SINGH GAKHAL,

Defendants.

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

SUPEET GAKHAL, an infant, by her father and Natural guardian, JASVIR SINGH GAKHAL, PARAMJIT K. GAKHAL and JASVIR SINGH GAKHAL, individually,

Plaintiffs,

- against -

INDEX NO.: 3999/07

JOSEPH PERILLO and DANIELLE S. PERILLO,

Defendants.

The following papers read on this petition (numbered 1-2):

- Notice of Motion to Consolidate.....1**
- Affirmation in Opposition.....2**

Motion of defendants DANIELLE S. PERILLO and JOSPEH PERILLO pursuant to CPLR §602, to consolidate the action entitled *Elizabeth Kloepfer, as mother and natural guardian of Brittany Kloepfer, an infant and Elizabeth Kloepfer individually v. Danielle S. Perillo, Joseph Perillo, Paramjit K. Gakhal and Jasvir Singh Gakhal*, currently pending in the Supreme Court of the State of New York, County of Nassau, under the index number 017265/06

("Action No.1") with the action entitled *Supeet Gakhal, an infant, by her father and natural guardian, Jasvir Singh Gakhal, Paramjit K. Gakhal and Jasvir Singh Gakhal individually*, currently pending in the Supreme Court, State of New York, County of Queens, under the index number 3999/07 ("Action No.2") is determined as follows.

Both Action No.1 and Action No.2 arise out of a two-car automobile accident that occurred on November 4, 2005 at or near the intersection of Hillside Avenue and 266th Street, in the County of Queens, New York. At the time of the accident, infant plaintiff in Action No.1, Brittany Kloepfer, was a passenger in the vehicle owned by defendant Joseph Perillo, and operated by defendant Danielle Perillo. Infant plaintiff in Action No.2, Supeet Gakhal, was a passenger in the vehicle owned by Jasvir Singh Gakhal, defendant in Action No.1 and plaintiff in Action No.2, and operated by Paramjit J. Gakhal, defendant in Action No.1 and plaintiff in Action No.2. On or about October 20, 2006, Kloepfer, a resident of Nassau County, commenced Action No.1 in Nassau County. On or about February 26, 2007, Plaintiff Gakhal, a resident of Queens County, commenced Action No.2 in Queens County. Danielle Perillo and Joseph Perillo, defendants in both actions, were and still are residents of Nassau County.

Defendants Danielle Perillo and Joseph Perillo now seek to consolidate, or to join for trial, the two actions in Nassau County. The Gakhals, plaintiffs in Action No.2, oppose consolidation and joint trial, arguing that "both matters are properly suited in the counties designated for each of them." The Gakhal plaintiffs also argue that the change of venue to Nassau County will inconvenience them.

The Court finds that there are common questions of law and fact which warrant joining these actions for trial. *See CPLR §602(a)*. With respect to venue, the general rule is that consolidated actions which were commenced in different counties should be placed in the county in which the first action was commenced. *Spector v. Zuckerman*, 287 AD2d 704; *Strasser v. Neuringer*, 137 AD2d 750; *TT Enterprises v. Gralnick*, 127 AD2d 651. The Gakhal plaintiffs ask this Court to depart from the general rule based upon their claim that travel to Nassau for court appearances would impose a hardship upon them, their treating physicians, and eyewitnesses to the accident. Normally the convenience of parties is not dispositive to a determination of venue in consolidated actions. *O'Brien v. Vassar Brothers Hospital*, 207 AD2d 169. On the other hand, the convenience of material witnesses can influence the court's determination of venue. *Government Employees Insurance Co. v. Uniroyal Goodrich Tire Co.*, 242 AD2d 765. However, the inconvenience of potential witnesses is not a substantial concern where the respective counties are contiguous. *Gray v. Serbalik*, 264 AD2d 934; *Velasquez v. C.F.T., Inc.*, 240 AD2d 178. Here, the counties of Queens and Nassau are contiguous, therefore no substantial prejudice would result. Accordingly, it is

ORDERED, that defendants' motion to consolidate Action No.1 and Action No.2 pursuant to *CPLR §602* is **granted**, insofar as both actions shall be joined for trial purposes only, and Action No.2 shall be removed from Queens County, to be tried together with Action No.1 in Nassau County, and it is further

ORDERED, that the caption is amended to read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

ELIZABETH KLOEPFER, as mother and natural
guardian of BRITTANY KLOEPFER, an infant
and ELIZABETH KLOEPFER, individually,

Plaintiffs,

- against -

INDEX NO.: 017265/06

DANIELLE S. PERILLO, JOSPEH PERILLO,
PARAMJIT K. GAKHAL and JASVIR SINGH
GAKHAL,

Defendants.

SUPEET GAKHAL, an infant, by her father and
Natural guardian, JASVIR SINGH GAKHAL,
PARAMJIT K. GAKHAL and JASVIR SINGH
GAKHAL, individually,

Plaintiffs,

- against -

INDEX NO.: 3999/07

JOSEPH PERILLO and DANIELLE S. PERILLO,

Defendants.

and it is further

ORDERED, that the Clerk of the Supreme Court, County of Queens, is directed to turn
over all of the files in Action No.2 to the Clerk of the Supreme Court, County of Nassau.

This constitutes the Order of the Court.

ENTER:

Dated: 6/30, 2007


J.S.C.

ENTERED

AUG 10 2007

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**