

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

SCAU

Present:

HON. F. DANA WINSLOW,

Justice

MICHELLE GRANOFF and MATTHEW GRANOFF,

**TRIAL/IAS, PART 5
NASSAU COUNTY**

Plaintiffs,

**MOT. DATE: 11/26/10
MOT. SEQ. NO. 001**

- against -

**CHRISTOPHER J. CAPOBLANCO, and GRAHAM R.
CAPOBLANCO**

INDEX NO.: 12021/10

Defendants.

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

FATEMA ZAPATA,

Plaintiff,

INDEX NO. 2793/10

-against-

**GRAHAM R. CAPOBIANCO, C.J. CAPOBIANCO,
MICHELLE GRANOFF and MATTHEW S. GRANOFF,**

Defendants.

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

Notice of Motion to Consolidate.....1

Motion by defendants GRAHAM R. CAPOBIANCO and CHRISTOPHER J. CAPOBIANCO (or C.J. CAPOBIANCO), to consolidate the action entitled *Michelle Granoff and Matthew Granoff v. Christopher J. Capoblanco, and Graham R. Capoblanco*, currently pending in the Supreme Court of the State of New York, County of Nassau, under the index number 12021/10 (the "Nassau Action") with the action entitled *Fatema Zapata v. Graham R. Capobianco, C.J. Capobianco, Michelle Granoff and Matthew Granoff* currently pending in the Supreme Court, State of New York, County of Queens, under the Index Number 2793/10 (the "Queens Action"). The Court automatically adjourns all motions that are submitted without opposition for one month,

to determine whether or not there was either an administrative delay or excusable neglect. Such adjournment is made without prejudice to the moving party to have the merits of such an adjournment considered in the event that there is a subsequent submission.

Both the Nassau Action and the Queens Action arise out of a three-car automobile accident that occurred on December 1, 2009 on the Long Island Expressway near Exit 40W in the County of Nassau, State of New York (the "Accident"). The Queens Action was commenced on or about March 4, 2010 in Queens County, New York, with venue based upon the residence of plaintiff FATEMA ZAPATA. The Nassau Action was commenced on or about May 25, 2010 in Nassau County, New York, with venue based upon the residence of plaintiffs MICHELLE GRANOFF and MATTHEW GRANOFF.

GRAHAM R. CAPOBIANCO and CHRISTOPHER J. CAPOBIANCO (or C.J. CAPOBIANCO), defendants in both the Nassau Action and the Queens Action, now seek to consolidate, or join for trial, the two actions in Nassau County. The Court has received no opposition to the motion.

The Court finds that, insofar as both actions arise out of the same motor vehicle accident, 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, absent special circumstances, consolidated actions which were commenced in different counties should be placed in the county which has jurisdiction over the action first commenced. *Spector v. Zuckerman*, 287 AD2d 704; *Strasser v. Neuringer*, 137 AD2d 750.

In this case, although the Queens action was the first commenced, the following circumstances warrant placement of the joined action in Nassau County: (i) the Accident occurred in Nassau; (ii) the moving defendants have demonstrated that the convenience of at least one material nonparty witness (the Police Officer who investigated the accident and filed the Police Report) would be served by placing venue in Nassau; (iii) the only Queens resident, plaintiff FATEMA ZAPATA, has interposed no objection to locating the actions in Nassau; (iv) there was no showing that any material nonparty witness would be inconvenienced by placement in Nassau; and (v) there was no showing of compelling circumstances for placement of the actions in Queens. *See Strasser*, 137 AD2d at 751. Accordingly, it is

ORDERED, that defendants' motion to consolidate the Nassau Action and the Queens Action pursuant to **CPLR §602** is **granted**, insofar as both actions shall be joined for trial purposes only, and the Queens Action shall be removed from Queens County, to be tried together with the Nassau Action 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
MICHELLE GRANOFF and MATTHEW GRANOFF,

Plaintiffs,

- against -

CHRISTOPHER J. CAPOBLANCO, and GRAHAM R.
CAPOBLANCO

Action No. 1
INDEX NO.: 12021/10

Defendants.

FATEMA ZAPATA,

Plaintiff,

-against-

GRAHAM R. CAPOBIANCO, C.J. CAPOBIANCO,
MICHELLE GRANOFF and MATTHEW S. GRANOFF,

Action No. 2
INDEX NO. _____
[Nassau County Index No.]

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 the Queens Action to the Clerk of the Supreme Court, County of Nassau.

This constitutes the Order of the Court.

ENTER:

Dated: January 20, 2011

J. F. Anall Winston
J.S.C.

ENTERED

MAY 09 2011

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**