

SCA&F

SHORT FORM ORDER
SUPREME COURT - STATE OF NEW YORK

Present:

HON. F. DANA WINSLOW,

Justice

BENJAMIN VAN DINE, an infant under the age of eighteen years, by his father and natural guardian, MICHAEL VAN DINE, MICHAEL VAN DINE, individually and LINDA VAN DINE,

**TRIAL/IAS PART 7
NASSAU COUNTY**

Plaintiffs,

**MOTION DATE: 5/8/08
MOTION SEQ.: 003, 004**

- against -

MATTHEW E. BURAK, a minor, NORMAN BURAK, EILEEN BURAK, MANUAL A. SANMARTIN, a minor, RITA SANMARTIN and "JOHN" SANMARTIN, a fictitious first name used to represent the father of Manuel A. Sanmartin,

**ACTION NO. 1
INDEX NO.: 016828/05**

Defendants.

PATRICK SORGER, PATRICK SORGER and LOUISE SORGER,

Plaintiffs,

- against -

MANUEL A. SANMARTIN, RAFAEL SANMARTIN, RITA SANMARTIN, MATTHEW E. BURAK, NORMAN BURAK and EILEEN BURAK, individually, jointly and severally,

**ACTION NO. 2
INDEX NO.: 7262/06**

Defendants.

NATIONWIDE MUTUAL FIRE INSURANCE COMPANY,

Plaintiff

-against-

**MATTHEW E. BURAK, NORMAN BURAK,
EILEEN BURAK, BENJAMIN VAN DINE,
an infant under the age of eighteen years, by
his father and natural guardian, MICHAEL
VAN DINE, and MICHAEL VAN DINE,
individually, LINDA VAN DINE, PATRICK
SORGER, PATRICK SORGER, and LOUISE
SORGER,**

**ACTION NO. 3
INDEX NO.: 014574/06**

Defendants.

The following papers read on this motion (numbered 1-3):

Notice of Motion (003).....	1
Notice of Motion (004).....	2
Affirmation in Partial Support.....	3

Upon the foregoing papers, the motion by plaintiffs in action #1 and defendants in Action #3, Benjamin Van Dine, an infant under the age of eighteen years by his father and natural guardian, Michael Van Dine, Michael Van Dine individually and Linda Van Dine ("Van Dine") to consolidate the above actions for joint discovery only, and the motion by defendants Rita Sanmartin and "John" (Rafael) Sanmartin, defendants in Action No. 1 and Action No. 2 for an order pursuant to CPLR § 602(a) for a joint trial, without consolidation, of Action No. 1 and Action No. 2, are hereby determined as follows.

The above actions arise out of an altercation that occurred on January 7, 2005 (the "Incident"). Plaintiff in Action No. 1, Benjamin Van Dine, alleges that defendants Matthew E. Burak and Manuel Sanmartin assaulted him causing personal injuries. Plaintiff in Action No. 2, Patrick Sorger, also alleges that defendants Manuel A. Sanmartin and Matthew E. Burak assaulted him causing personal injuries. Action #3 is a declaratory judgment action whereby plaintiff Nationwide Mutual Fire Insurance Company ("Nationwide") seeks a declaration that it has no obligation to defend or indemnify its insured, defendants Norman and/or Eileen Burak, in connection with the Incident.

Joint trial is generally favored by the courts in the interests of justice and judicial economy. **J & A Vending, Inc. v. J.A.M. Vending, Inc.** 268 AD2d 505; **Megyesi v. Automotive Rentals, Inc.**, 115 A.D.2d 596. Where there are common questions of law and fact, the opposing party bears the burden of proving that joint trial will prejudice a substantial right. **Vigo S. S. Corp. v. Marship Corp.**, 26 NY2d 157; **Mas-Edwards v. Ultimate Services, Inc.**, 45 AD3d 540.

The Court finds that only Action #1 and Action #2 clearly involve common questions of law and fact, in that they arise out of the same Incident, involve many of the same parties and raise similar allegations. Action #3 is a declaratory judgment action seeking a determination as to Nationwide's duty to defend Norman and Eileen Burak pursuant to an insurance policy issued by Nationwide. *See Schorr Brothers Development Corp. v. Continental Insurance Company*, 174 AD2d 722. However, considering that Action #3 arises from the Incident, the Court finds it in the interest of judicial economy to consolidate all three actions for purposes of discovery *only*. Accordingly, it is

ORDERED, that plaintiffs in Action #1 and defendants in Action #3, Benjamin Van Dine, an infant under the age of eighteen years by his father and natural guardian, Michael Van Dine, Michael Van Dine individually and Linda Van Dine's motion to consolidate Actions #1, #2 and #3 for purposes of discovery *only*, is hereby **granted**; and it is further

ORDERED, that the motion by defendants in Actions #1 and #2, Rita Sanmartin and "John" (Rafael) Sanmartin, to consolidate Actions #1 and #2 is hereby **granted** to the extent that the above-entitled Actions #1 and #2 are to be tried jointly without consolidation

ORDERED, that counsel for all parties appear and participate in a compliance conference for the purposes of scheduling pre-trial disclosure and further proceedings, said conference to be held at the Supreme Court, Part 7, 100 Supreme Court Drive, Mineola, New York 11501, on *July 28*, 2008 at 9:30 a.m. or any further adjourn date designated for the conference. The parties must contact chambers one day before the scheduled conference to confirm that there is no trial or other conflict.

Counsel for plaintiff Van Dine shall serve a copy of this Order on all parties within 15 days after entry of this Order in the records of the Nassau County Clerk.

This constitutes the Order of the Court.

ENTER:

Dated:

June 19, 2008

J. Dan Weisbrod
J.S.C.

ENTERED
JUN 27 2008
NASSAU COUNTY
COUNTY CLERK'S OFFICE