

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. MANUEL J. MENDEZ PART 13
Justice

NEW YORKERS FOR STUDENTS' EDUCATIONAL RIGHTS (NYSER), RUBNELIA AGOSTINE, MIRIAM ARISTY-FARER, KATHRYN BARNETT, AVA CAPOTE, MILAGROS ARICA, G. CHANGLERTH, MONA DAVIDS, ROLANDO GARITA, SARA HARRINGTON, SONJA JONES, NICOLE IORIO, HEIDI MOULLESSEAU-KUNZMAN, GRETCHEN MULLINS-KIM, ELLEN TRACHTENBERG, HEIDI TESKA-PRINCE, and ANDY WILLARD,

Plaintiff(s),

- against -

INDEX NO. 650450 /14
MOTION DATE 07-29-2014
MOTION SEQ. NO. 002
MOTION CAL. NO.

THE STATE OF NEW YORK, ANDREW CUOMO, as governor of the State of New York, NEW YORK STATE BOARD OF REGENTS, and JOHN B. KING, Jr., as President of the University of the State of New York, and Commissioner of Education, Defendant(s).

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

The following papers, numbered 1 to 5 were read on this motion to Consolidate : PAPERS NUMBERED

Table with 2 columns: Description of papers and PAPER NUMBERED. Rows include Notice of Motion/ Order to Show Cause, Answering Affidavits, and Replying Affidavits.

Cross-Motion: Yes X No

Upon a reading of the foregoing cited papers, it is Ordered that Plaintiffs' motion to Consolidate is granted.

Plaintiffs' motion seeks to consolidate actions it brought against the defendants. Plaintiff alleges consolidation is proper because both actions (1) have the same central issue (New York State's failure to provide students the opportunity for a sound basic education); (2) seek to compel the State to comply with the orders of the Court of Appeals in the CFE cases; (3) will likely require consideration of the same factual evidence; (4) Raise the same core legal issues; (5) are based on the same set of facts and (6) seek the same relief. Finally plaintiffs argue that consolidation will serve the interest of judicial economy.

Defendants oppose the motion for consolidation and argue that (1) the motion is premature as no answer has been served in either action; (2) there is an extreme difference in scope and breadth between the two actions in that the issues in the Aristy-Farer action are an extremely minor subset of the issues at stake in the NYSER action (3) the actions are in different procedural stages and (4) defendants would be prejudiced if they are not allowed to litigate the Aristy-Farer action separately.

Pursuant to CPLR §602, consolidation lies within the sound discretion of the Court, but is generally favored where there are common questions of law or fact, unless the party opposing the motion demonstrates prejudice of a substantial right in a specific, non-conclusory manner. The burden is on the party opposing the motion to demonstrate prejudice (In Re New York City Asbestos Litigation —N.Y.S.2d—, 2014 N.Y. Slip Op 05054 ([1st. Dept. 2014]; Champagne v. Consolidated R.R. Corp., 94 A.D.2d 738, 462 N.Y.S.2d 491 [2nd. Dept. 1983]; Progressive Insurance Company v. Vasquez, 10 A.D.3d 518, 782 N.Y.S.2d 21 [1st. Dept. 2004]; *Amcan Holdings, Inc. v. Torys LLP*, 32 A.D. 3d 337, 821 N.Y.S. 2d 162 (N.Y.A.D. 1st Dept. 2006).

It is usually sufficient, to warrant consolidation of actions, if evidence admissible in one action is admissible or relevant in the other (*Maigur v. Saratogian, Inc.*, 47 A.D.2d 982, 367 N.Y.S.2d 114 [3rd. Dept. 1975]). Where it is evident that common issues are presented, the fact that answers have not been served does not preclude the granting of consolidation (*Cushing v. Cushing*, 85 A.D.2d 809, 445 N.Y.S.2d 636 [3rd. Dept. 1981]). Consolidation of actions is appropriate where it will avoid unnecessary duplication of trials, save unnecessary costs and expense and prevent injustice which would result from divergent decisions based on the same facts (*Chinatown Apartments, Inc., v. New York City Transit Authority*, 100 A.D.2d 824, 474 N.Y.S.2d 763 [1st. Dept. 1984]).

Judicial economy would be served by consolidating these actions since (1) the central issue in both actions is the same, in essence, the failure of the State of New York to provide students the opportunity for a sound basic education, a right guaranteed to them by the constitution of the State of New York; (2) some of the plaintiffs in the Aristy-Farer action are also plaintiffs in the NYSER action; (3) both actions involve the same defendants; (4) the attorneys for the parties are the same; (5) the actions involve the same legal issues and similarity of facts, requiring consideration of the same or similar factual evidence. These commonalities favor consolidation which is in the interests of justice and judicial economy. *Flaherty v. RCP Assocs.*, 208 A.D. 2d 496 (N.Y. App. Div. 2d Dep't 1994).

Accordingly, it is ORDERED that Plaintiffs' motion is granted and it is further

ORDERED that the county clerk shall convert the action entitled MIRIAM ARISTY-FARER, ET AL, v. THE STATE OF NEW YORK, ET ANO., Index No. 100274/13, to e-filing upon service of a copy of this order with notice of entry and an 8019[c] form, and it is further

ORDERED that the action filed under index number 650450/2014 is consolidated for all purposes into the action filed under index number 100274/2013 upon conversion to e-filing, and it is further

ORDERED, that the consolidated action shall bear the following caption:

NEW YORKERS FOR STUDENTS' EDUCATIONAL RIGHTS (NYSER), RUBNELIA AGOSTINE, MIRIAM ARISTY-FARER, KATHRYN BARNETT, AVA CAPOTE, MILAGROS ARICA, G. CHANGLERTH, MONA DAVIDS, ROLANDO GARITA, SARA HARRINGTON, SONJA JONES, NICOLE IORIO, HEIDI MOULLESSEAU-KUNZMAN, GRETCHEN MULLINS-KIM, ELLEN TRACHTENBERG, HEIDI TESKA-PRINCE, ANDY WILLARD, NATASHA CAPERS, JACQUELINE COLSON, HAWA JAGANA, NICOLE JOB, HECTOR NAZARIO, CHRIS OWENS, SAM PRIOZZOLO, PATRICIA PADILLA, LYNN SANCHEZ, and ROBERT JACKSON,
Plaintiff,

-against-

THE STATE OF NEW YORK, ANDREW CUOMO, as governor of the State of New York, NEW YORK STATE BOARD OF REGENTS, and JOHN B. KING, Jr., as President of the University of the State of New York, and Commissioner of Education,
Defendants,

And it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that movant is directed to serve a copy of this order with notice of entry on the General Clerk's office (Room 119), who is hereby directed to mark the court's records to reflect this consolidation.

ENTER:

MANUEL J. MENDEZ
J.S.C.

Dated: August 12, 2014

MANUEL J. MENDEZ
J.S.C.

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE