

**Castillo v Central Park Tower Condominium**

2024 NY Slip Op 34003(U)

November 12, 2024

Supreme Court, New York County

Docket Number: Index No. 158801/2022

Judge: Judy H. Kim

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. JUDY H. KIM PART 04**

*Justice*

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ANGEL CASTILLO,

Plaintiff,

- v -

CENTRAL PARK TOWER CONDOMINIUM, BROADWAY  
57TH/58TH RETAIL INVESTOR, LLC, NORDSTROM, INC.,  
LENLEASE (US) CONSTRUCTION INC., EXTELL  
DEVELOPMENT COMPANY D/B/A BROADWAY TRIO LLC,  
EXTELL DEVELOPMENT COMPANY, BROADWAY TRIO  
LLC,

Defendants.

-----X

CENTRAL PARK TOWER CONDOMINIUM, EXTELL  
DEVELOPMENT COMPANY D/B/A BROADWAY TRIO LLC,  
EXTELL DEVELOPMENT COMPANY, BROADWAY TRIO LLC

Third-Party Plaintiffs,

-against-

STRAUSS-CREATIVE FINISHES, INC.

Third-Party Defendant.

-----X

**INDEX NO.** 158801/2022  
**MOTION DATE** 09/06/2024  
**MOTION SEQ. NO.** 002

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595587/2023

The following e-filed documents, listed by NYSCEF document number (Motion 002) 91, 92, 93, 94, 95  
were read on this motion to CONSOLIDATE.

Upon the foregoing documents, plaintiff's motion to consolidate is granted without  
opposition.

On October 14, 2022, plaintiff commenced this action alleging that on or about September  
20, 2021, while acting within the scope of his employment at the construction site at 217 W. 57th  
Street, New York, NY, he was caused to fall and sustain serious and personal injuries due to the

negligence of defendants. Plaintiff subsequently commenced an action in the Supreme Court of New York, Queens County under Index Number 160124/2023, Angel Castillo v Smitell LLC, Smitell Retail LLC, Smitell Development Group LLC and Smitell Legacy LLC (the “Queens Action”). Plaintiff now moves to consolidate the Queens County Action within the instant action.

Plaintiff’s motion is granted. “Consolidation is generally favored in the interest of judicial economy ... where cases present common questions of law and fact, unless the party opposing the motion demonstrates that a consolidation will prejudice a substantial right” (Raboy v McCrory Corp, 210 AD2d 145 [1st Dept 1994] quoting Amtorg Trading Corp v Broadway & 56th St Assoc, 191 AD2d 212, 213 [1st Dept 1993]) and it is undisputed that the Queens Action and the instant action arise from the same workplace accident and present common questions of law and fact. Since this action was commenced prior to the Queens Action and the events at issue in both actions occurred in this county, New York County is the proper venue for the consolidated action (See Harrison v Harrison, 16 AD3d 206, 207 [1st Dept 2005] “[w]here two actions involving identical issues are pending in separate counties, the actions should be consolidated pursuant to CPLR § 602 in the county where the first action was commenced absent special circumstances”).

Accordingly, it is

**ORDERED** that plaintiff’s motion is granted and the action Angel Castillo v Smitell LLC, Smitell Retail LLC, Smitell Development Group LLC and Smitell Legacy LLC, pending in the Supreme Court, Queens County under index number 160124/2023, shall be consolidated within the present action; it is further

**ORDERED** that the consolidation shall take place under Index Number 158801/2022 and the consolidated action shall bear the following caption:

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

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ANGEL CASTILLO,

Index No.: 158801/2022

Plaintiff,

-against-

CENTRAL PARK TOWER CONDOMINIUM, BROADWAY  
57TH/58TH RETAIL INVESTOR, LLC, NORDSTROM, INC.,  
LENDLEASE (US) CONSTRUCTION INC., EXTELL  
DEVELOPMENT COMPANY D/B/A BROADWAY TRIO LLC,  
EXTELL DEVELOPMENT COMPANY, BROADWAY TRIO LLC,  
SMITELL LLC, SMITELL RETAIL LLC,  
SMITELL DEVELOPMENT GROUP LLC and  
SMITELL LEGACY LLC,

Defendants.

-----X

CENTRAL PARK TOWER CONDOMINIUM, EXTELL  
DEVELOPMENT COMPANY D/B/A BROADWAY TRIO  
LLC, EXTELL DEVELOPMENT COMPANY and  
BROADWAY TRIO, LLC,

Third-Party Index No. 595587/2023

Third-Party Plaintiff,

-against-

STRAUSS-CREATIVE FINISHES, INC.,

Third-Party Defendants.

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and it is further

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

**ORDERED** that the Clerk of the Supreme Court, Queens County, shall transfer the documents on file in Angel Castillo v Smitell LLC, Smitell Retail LLC, Smitell Development Group LLC and Smitell Legacy LLC, Index No. 160124/2023, to the Clerk of this Court for the purpose of consolidation; and it is further

**ORDERED** that the Clerk of the Supreme Court, Queens County and the Clerk of this Court shall coordinate the transfer of the documents being transferred so as to ensure an efficient

transfer and to minimize insofar as practical the reproduction of such documents, including with regard to any documents that may be in digital format; and it is further

**ORDERED** that, within thirty days from entry of this order, counsel for plaintiff shall serve a certified copy of this order upon the Clerk of the Supreme Court, Queens County, and shall pay the appropriate fee, if any, for such transfer and shall contact the staff of said Clerk to arrange for the effectuation of the transfer in an efficient manner; and it is further

**ORDERED** that service upon the Clerk of the Supreme Court, Queens County shall be made in accordance with any applicable protocol or other procedures of said county; and it is further

**ORDERED** that, within thirty days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the Court, who shall consolidate the documents in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

**ORDERED** that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents transferred from the Supreme Court, Queens County in the consolidated case file under the index number of this action in the New York State Courts Electronic Filing System or make appropriate notations of such documents in the e-filing records of the court so as to ensure access to the documents in the consolidated action; and it is further

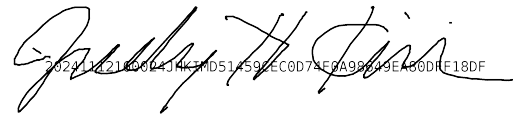
**ORDERED** that, within thirty days from entry of this order, plaintiff shall serve a copy of this order with notice of entry upon the Clerk of the General Clerk's Office, who is hereby directed to reflect the consolidation by appropriately marking the court's records; and it is further

**ORDERED** that such service upon the Clerk of the Court shall be made in hard-copy format if the case pending in this county is a hard-copy case or, if this case is an e-filed one, shall

be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on this court’s website); and it is further

**ORDERED** that counsel are directed to appear for a status conference in Part 4 (80 Centre Street, room 308) on January 10, 2025, at 10:00 am.

This constitutes the decision and order of the Court.



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11/12/2024

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE