

Short Form Order

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: HONORABLE PATRICIA P. SATTERFIELD IAS TERM, PART 19

Justice

-----X
JUAN B. ARAUJO,

Plaintiff,

-against-

Index No:6656/08
Motion Date: 7/2/08
Motion Cal. No: 2
Motion Seq. No: 1

LOUIS AMELIA, COMPETITION IMPORTS,
COMPETITION IMPORTS OF HUNTINGTON
and ADESA NEW YORK, LLC.,

Defendants.

-----X

The following papers numbered 1 to 17 read on this motion by defendant Competition Imports of Huntington: (1) for an Order, pursuant to CPLR §510, transferring venue of this matter from Supreme Court, Queens County to Supreme Court, Suffolk County, on the ground that the venue chosen by plaintiff is improper for the purposes of trial of this action; and (2) pursuant to CPLR §602, consolidating the within action, for the purpose of a joint trial, with all those actions that have been previously consolidated in Supreme Court, Suffolk County; and on this cross motion by defendants Louis Amelia and Adesa New York, LLC d/b/a Adesa Long Island, for the same relief.

	PAPERS NUMBERED
Notice of Motion-Affidavit-Exhibits.....	1 - 4
Notice of Cross Motion-Affidavits-Exhibits.....	5 - 8
Affirmations in Opposition-Exhibits.....	9 - 13
Reply Affirmation to Motion-Exhibits.....	14 - 15
Reply Affirmation to Cross Motion.....	16 - 17

Upon the foregoing papers, it is hereby ordered that the motion and cross and motion are resolved as follows:

This is one of approximately ten actions that have been commenced as a result of an incident occurring on July 22, 2005, involving a vehicle operated, out of control, into a group of bystanders who were in attendance at an automobile auction in Brookhaven, New York, a town in Suffolk County. Eight of the ten actions previously were consolidated for purposes of a joint trial by Justice Gary Weber in the Supreme Court, Suffolk County. Defendant Competition Imports of Huntington

now moves, and defendants Louis Amelia and Adesa New York, LLC d/b/a Adesa Long Island cross move for an order transferring venue of this action from the Supreme Court, Queens County to the Supreme Court, Suffolk County, and consolidating the within action, for the purpose of a joint trial, with all actions previously consolidated in Supreme Court, Suffolk County.

Although the place of trial generally is determined by the residency of the parties [see, Doe v. Hall, 36 A.D.3d 651 (2nd Dept. 2007)], where, as here, “common questions of law or fact exist, a motion to consolidate pursuant to CPLR 602(a) should be granted absent a showing of prejudice to a substantial right by the party opposing the motion (citations omitted). In addition, where actions commenced in different counties are consolidated pursuant to CPLR § 602, the venue should be placed in the county where the first action was commenced, unless special circumstances exist (citations omitted).” Nigro v. Pickett, 39 A.D.3d 720 (2nd Dept. 2007); Kally v. Mount Sinai Hosp., 44 A.D.3d 1010 (2nd Dept. 2007); Moor v. Moor, 39 A.D.3d 507 (2nd Dept. 2007); see, also, Best Price Jewelers.Com, Inc. v. Internet Data Storage & Systems, Inc., 51 A.D.3d 839 (2nd Dept. 2008); Gadelov v. Shure, 274 A.D.2d 375 (2nd Dept. 2000); Gomez v. Jersey Coast Egg Producers, Inc., 186 A.D.2d 629 (2nd Dept. 1992). “Consolidation is appropriate where it will avoid unnecessary duplication of trials, save unnecessary costs and expense, and prevent an injustice which would result from divergent decisions based on the same facts (citations omitted).” Viafax Corp. v. Citicorp Leasing, Inc., ___ A.D.3d ___, ___ N.Y.S.2d ___, 2008 WL 4256226 (2nd Dept. 2008); Best Price Jewelers.Com, Inc. v. Internet Data Storage & Systems, Inc., *supra*

A review of the record indicates that the interests of justice and judicial economy would be served by consolidation of this action for joint trial with the actions referenced below, since all actions concern the same parties, the claims arise out of the same circumstances, and the proof with respect to each action will overlap and turn on credibility determinations of the nature of the relationship of the parties. See, Perini Corp. v. WDF, Inc., 33 A.D.3d 605 (2nd Dept. 2006). Plaintiffs opposition fails to demonstrate that any prejudice to a substantial right would result from consolidation. See, CPLR 602(a); Perini Corp. v. WDF, Inc., *supra*.

Accordingly, because the first action was commenced in Suffolk County, and there are no special circumstances which would warrant placement of venue elsewhere, the motion to change the venue of the consolidated actions is granted, and it is hereby

ORDERED, that defendants’ motion and cross motion for an order consolidating this action for the purposes of a joint trial with the actions now pending in the Supreme Court of the State of New York, County of Suffolk is granted, and it is further

ORDERED, that the title of the actions combined for joint trial shall be:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
JUAN B. ARAUJO, Index No: TBA

Plaintiff,

-against-

LOUIS AMELIA, COMPETITION IMPORTS,
COMPETITION IMPORTS OF HUNTINGTON
and ADESA NEW YORK, LLC.,

Defendants.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
HENSLEY McEWEN and WINFRED S. McEWEN, Index No: 23393/07

Plaintiffs,

- against-

ADESA LONG ISLAND, LOUIS AMELIA,
MERCEDES-BENZ OF HUNTINGTON,
COMPETITION IMPORTS OF HUNTINGTON, INC.,
and COMPETITION IMPORTS, INC.,

Defendants.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
NELSON MARTY, Index No: 1714/08

Plaintiff,

- against-

COMPETITION IMPORTS OF HUNTINGTON, INC.
d/b/a MERCEDES-BENZ OF HUNTINGTON,
ADESA NEW YORK, LLC and LOUIS AMELIA,

Defendants.

-----X
-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
AMRO ELNAKIB,

Index No: 26821/06

Plaintiff,

- against-

ADESA, INC., LOUIS AMELIA and MERCEDES-
BENZ OF HUNTINGTON,

Defendants.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
LUIS E. CUERVO and LUCIA CUERVO,

Index No: 18673/05

Plaintiffs,

- against-

ADESA LONG ISLAND, MERCEDES-BENZ OF
HUNTINGTON, COMPETITION IMPORTS, INC.,
and LOUIS AMELIA,

Defendants.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
WEI MING WU,

Index No: 17258/05

Plaintiff,

- against-

ADESA LONG ISLAND, LOUIS AMELIA and
COMPETITION IMPORTS, INC., d/b/a
MERCEDES-BENZ OF HUNTINGTON,

Defendants.

-----X

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
STUART GRUCHIK,

Index No: 4750/07

Plaintiff,

-against-

COMPETITION IMPORTS, INC., COMPETITION
IMPORTS OF HUNTINGTON, INC., ADESA NEW
YORK, LLC and LOUIS AMELIA,

Defendants.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
TERRENCE SMALLING and NANCY SMALLING,

Index No: 18672/05

Plaintiffs,

- against-

ADESA LONG ISLAND, LOUIS AMELIA,
MERCEDES-BENZ OF HUNTINGTON and
COMPETITION IMPORTS, INC.,

Defendants.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
SHERYL FURNEAUX,

Index No: 9952/06

Plaintiff,

- against-

MERCEDES-BENZ OF HUNTINGTON d/b/a
COMPETITION IMPORTS OF HUNTINGTON
and LOUIS AMELIA,

Defendants.

-----X

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
VITO J. INGRASELINO,

Index No: 18798/06

Plaintiff,

- against-

LOUIS AMELIA COMPETITION IMPORTS OF
HUNTINGTON, INC., ADESA NEW YORK, LLC, and
ADESA NEW YORK, LLC d/b/a ADESA LONG ISLAND,

Defendants.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
CARL STATON and LEE STATON,

Index No: 21427/06

Plaintiffs,

- against-

COMPETITION IMPORTS, INC. d/b/a MERCEDES-
BENZ OF HUNTINGTON, LOUIS AMELIA and
ADESA LONG ISLAND,

Defendants.

-----X
and it is further

ORDERED, that the motion for changing the place of trial of the instant action hereby is granted; and it is further

ORDERED, that the place of trial of the instant action shall be changed from the Supreme Court, County of Queens, to the Supreme Court, County of Suffolk; and it is further

ORDERED, that the Clerk of this Court, upon being served with a copy of this order with notice of entry and payment of any required fees, if any, is directed to transfer all papers filed in her office in the instant action pending under Index No.6656/08 to the Clerk of Suffolk County; and it is further

ORDERED, that this action shall be disposed of in the Supreme Court, Suffolk County, as though commenced in that Court; and it is further

ORDERED, that a copy of this Order with Notice of Entry shall be served upon all parties to this action.

Dated: September 29, 2008

.....
J.S.C.

Enter,