

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

JAMES DOVE,)
) C.A. No. 07C-08-044 (JTV)
 Plaintiff,)
)
 v.)
)
 MICHAEL PETIT DEMANGE,)
)
 Defendant,)

DAVID LEE and VANESSA)
 STEPHENS LEE, husband and wife,) C.A. No. 07C-02-022 (JTV)
)
 Plaintiffs,)
)
 v.)
)
 MICHAEL PETIT DEMANGE,)
)
 Defendant.)

Submitted: May 9, 2008
Decided: August 29, 2008

Andrea G. Green, Esq., Doroshow, Pasquale, Krawitz & Bhaya, Millsboro,
Delaware. Attorney for Plaintiff James Dove.

Edward C. Gill, Esq., Georgetown, Delaware. Attorney for Plaintiffs David and
Vanessa Lee.

Brian T. McNelis, Esq., Young & McNelis, Dover, Delaware. Attorney for
Defendant Michael Petit Demange.

*Upon Consideration of Plaintiff Dove's
Motion To Consolidate*
GRANTED

VAUGHN, President Judge

ORDER

Upon consideration of the motion of plaintiff James Dove to consolidate the above-captioned actions, the opposition of plaintiffs David Lee and Vanessa Stephens Lee, the position of the defendant, Michael Petit DeMange, and the record of the case, it appears that:

1. The plaintiff in *Dove v. Petit Demange* moves to consolidate the above-captioned actions pursuant to Rule 42(a). The plaintiffs in *Lee v. Petit Demange* object to consolidation. The defendant does not object to consolidation. Both actions arise out of a single motor vehicle accident which occurred on December 23, 2005.

2. The Lees filed their complaint on February 16, 2007. Their trial was originally scheduled for March 2008. Mr. Dove filed his complaint on August 30, 2007, and no trial has been scheduled.

3. On December 23, 2005, three vehicles were involved in the accident. David Lee was operating a vehicle on U.S. Route 13 southbound approximately 200 feet north of Thomas Harmon Drive in Camden, Delaware. Vanessa Lee was his passenger. The Lees' vehicle was stopped at a red light. Stopped behind the Lees was a vehicle operated by Charles Potzer, Jr., in which James Dove was a passenger. The defendant allegedly rear-ended Mr. Potzer's vehicle. As a result of the defendant's alleged negligence, Mr. Potzer's vehicle collided with Mr. Lee's vehicle. Mr. Dove and Mr. and Mrs. Lee claim to have suffered serious injuries as a result of the accident.

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4. The defendant's liability coverage is \$50,000 per person and \$100,000 per accident.

5. Plaintiff Dove urges consolidation on the grounds that he may suffer prejudice if the Lees proceed to trial first because their recovery may diminish or even exhaust the available per accident insurance coverage. He contends that judicial time and resources would be saved if the trials were to be consolidated.

6. Plaintiffs Lee contend that the injuries suffered by the three plaintiffs vary tremendously. They argue that consolidation would be prejudicial to them because the jury would unfairly compare Mr. Dove's injuries, which included two surgeries, with their injuries, which, although serious, did not involve surgery. They contend that each of the three plaintiffs have separate damage claims and that requiring them to present their claims in one case will confuse the jury, lengthen the process, and not be in the interest of judicial economy. They contend that the defendant's negligence is clear and that the only issue is damages.

7. Motions to consolidate are governed by Superior Court Civil Rule 42(a), which states:

When actions involving a common question of law or fact are pending before the Court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

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8. The purpose of this rule is to "give the court broad discretion to decide how cases on its docket are to be tried so that the business of the court may be dispatched with expedition and economy while providing justice to the parties."¹ Consolidation is not improper when each case involves some differences in question of law or fact. Even so, "[a]lthough the [] courts generally take a favorable view of consolidation, the mere fact that a common question is present, and that consolidation is therefore permissible under Rule 42(a), does not mean that the trial court judge must order consolidation."² Consolidation is really nothing more than a case management tool.³

9. I am satisfied that there are, or least at this point appear to be, common questions of fact or law which pertain to both cases. Despite the Lee's contention that the only issue is each plaintiff's respective damages, negligence and proximate cause have not been determined, and it is not clear that there is no question of fact arising from the accident which affects both cases. In addition, it appears that the parties' competition for the same source of payment of any judgment or settlement may present common questions of law or fact. I am also satisfied that consolidation can be managed without causing any genuine prejudice to either party.

10. I order the cases consolidated so that they can be jointly managed. I make

¹ *Olsen v. Motive Enters.*, 2003 WL21733137, at *4 (Del. Super.).

² *Id.* (second alteration in original).

³ *Id.*

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no decision as to whether or not they will be jointly tried. I recommend to counsel that they contact the Court to schedule a pre-trial conference, which can also serve as a scheduling conference, to address how the cases will move forward.

11. Therefore, Plaintiff Dove's Motion For Consolidation is ***granted***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

President Judge

oc: Prothonotary
cc: Order Distribution
File