

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

PRESENT: HON. KAREN SMITH

PART 62

Index Number : 104427/2008  
 PORTA, JOHN DELLA  
 VS.  
 EAST 51ST ST. DEVELOPMENT CO.,  
 SEQUENCE NUMBER : 002  
 CONSOLIDATE/JOINT TRIAL

INDEX NO. \_\_\_\_\_  
 MOTION DATE 7/10/08  
 MOTION SEQ. NO. \_\_\_\_\_  
 MOTION CAL. NO. \_\_\_\_\_

this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... Memorandum  
 Answering Affidavits — Exhibits Memoranda  
 Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED  
1-2  
3-10  
11-12

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

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed memorandum decision and order

**FILED**  
 AUG 18 2008  
 NEW YORK  
 CLERK'S OFFICE

Dated: 8/11/08

K.S.S.  
**HON. KAREN SMITH** J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
 Check if appropriate:  DO NOT POST  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 62

-----X  
JOHN DELLA PORTA and DEBRA DELLA PORTA,

Plaintiffs,

-against-

Index No.: 104427/2008

Motion Seq.: 002

Motion Date: 07/10/2008

EAST 51<sup>ST</sup> STREET DEVELOPMENT COMPANY, LLC.,  
RELIANCE CONSTRUCTION GROUP, RCG GROUP, INC.,  
JOY CONTRACTORS, INC., NEW YORK CRANE &  
EQUIPMENT CORPORATION AND STROH  
ENGINEERING SERVICES, P.C.,

Defendants.

**DECISION AND ORDER**

**FILED**  
AUG 18 2008  
NEW YORK  
COUNTY CLERK'S OFFICE

-----X  
**PRESENT: KAREN S. SMITH, J.S.C.:**

Defendant, East 51<sup>st</sup> Street Development Company, LLC ("E 51<sup>st</sup> Street")'s motion to consolidate this action with certain other pending actions is granted to the extent set forth below.

This personal injury action was commenced by an individual and his spouse for injuries he allegedly sustained in a crane collapse which occurred on March 15, 2008. In addition to the injuries involved in this case, this widely publicized incident resulted in injuries, fatalities and property damage to other individuals and entities who are not parties to the above-captioned litigation. E. 51<sup>st</sup> Street is the property owner/developer of the real property which was under construction and being served by the crane involved in the accident. E 51<sup>st</sup> Street now moves to consolidate this action with all other actions related to the accident. In addition to the parties papers and pleadings in this matter, the Court has considered the Administrative Order of the Hon. Jacqueline W. Silberman dated July 1, 2008 in connection herewith and consulted with Justice Silbermann and Justice Edmead in order to clarify the intent of Justice Silbermann's Order so that the directives of the order may best be effectuated.

The intent of Justice Silbermann's order is that all cases related to the crane collapse accident be handled by one Justice so that the court could avoid the possibility of inconsistent rulings and redundant discovery proceedings. Additionally, Justice Silbermann determined that the two pending contract actions between the construction manager ("Reliance") as plaintiff and E 51<sup>st</sup> Street and two named principals of E 51<sup>st</sup> Street, as defendants, (the "Reliance Cases") should be administered by a single justice for the same reasons but did not link these two cases with the tort cases stemming from the crane collapse. Therefore, Justice Silberman directed that all pending and future tort claims cases related to this action be administered by Justice Smith regardless of whether the City of New York was made a party to the particular case and that the Reliance Cases be administered by Justice Edmead. However, at the time of the order, Justice Silberman was apparently not aware that Reliance's contract with E 51<sup>st</sup> Street contained indemnification provisions which are relevant to the crane collapse tort cases and any determination of the respective liabilities of these parties to each other. Therefore, after consideration of Justice Silbermann's Administrative Order and consultation with Justice Silbermann and Justice Edmead, it is this Court's determination that the Reliance Cases should be considered in the context of the instant motion seeking consolidation of the cases growing out to the crane collapse accident.

Pursuant to CPLR §602, upon the motion of a party to an action, the court is granted broad discretion to order consolidation or joint trial of actions involving common questions of law or fact regardless of whether they are pending before the same judge or even in the same county and to make such orders as the court deems appropriate. Here, it is clear that the actions involved will have common questions of law and fact. Additionally, it appears to the court that

the interests of justice will best be served by avoiding inconsistent determinations and redundant discovery. Therefore, the court finds that all of the currently pending tort cases should be consolidated for purposes of joint discovery and joint trial. However, the court has concerns that consolidating the Reliance cases with the pending tort cases for purposes of trial may lead to juror confusion and prejudice to one or more parties to the pending actions. At the current juncture, the court believes it is premature to reach a final conclusion on this issue but is convinced that the Reliance cases should be consolidated with the pending tort cases for purposes of joint discovery. Finally, This court perceives that it would not be appropriate for it to reach a conclusion as to whether any potential future cases (ie; which have not yet been filed) should be consolidated with the instant cases. That determination will depend upon a variety of factors including the status of the proceedings in the instant cases at the time the other cases are commenced. Additionally, the parties currently before the court would be prejudiced if the court were to stay the instant proceedings merely upon the speculation that future proceedings will be filed. Therefore, the question of the consolidation of any future proceeding with the instant matters will have to await a application for such relief by the parties such potential proceedings if and when the need arises. Accordingly, it is;

ORDERED: that *Delle Porta v E 51<sup>st</sup> Street, et al* (Index No. 104427/2008), *Gallone v E 51<sup>st</sup> Street et al* (Index No. 108831/2008), *Mazza v E 51<sup>st</sup> Street et al* (Index No. 107756/2008), *White v E 51<sup>st</sup> Street* (Index No. 105656/2008), *Rapetti v E 51<sup>st</sup> Street* (Index No. 107688/2008) and *Gallego v E 51 St Street et al* (Kings County Index No 13504/2008) are consolidated for purposes of joint discovery and trial, and it is further;

ORDERED: that, upon service of a copy of this order, together with notice of entry

hereof, upon the appropriate division of the Clerk's Office of Kings County, the Clerk of the Court shall transfer the file for the case of *Gallego v E 51 St Street et al* (Kings County Index No 13504/2008) to the Clerk of the New York County Supreme Court and it is further;

ORDERED: that, upon the service of a copy of this order together with Notice of Entry hereof, on the appropriate division of the New York County Clerk's Office at 60 Centre Street, New York, New York and receipt of the file from Kings County, the New York County Clerk's Office shall open a file for the matter of *Gallego v E 51 St Street et al* and assign it a New York County Index Number, without charging an additional fee for the purchase of the Index Number, and it is further;

ORDERED: that *Reliance v E 51 St Street et al* (Index No. 601342/2008), and *Reliance v Kennelly & Schaoul* (Index No. 601373/2008) are consolidated with the actions listed above for purposes of joint discovery with leave to submit a motion seeking consolidation for purposes of a joint trial no later than sixty days after the filing of the notes of issue in these matters, and it is further;

ORDERED: that, upon service of a copy of this order, together with notice of entry hereof, on each of the Motion Support Office and the Trial Support Office for the Supreme Court, New York County at 60 Centre Street, New York, New York the two cases mentioned in the paragraph above shall be reassigned to the Hon. Karen S. Smith from the Hon. Carol Edmead and it is further;

ORDERED: that counsel for all parties involved in the cases set forth in this order shall appear for a discovery conference before the Hon. Karen S. Smith on September 11, 2008 at 9:30AM in Room 280 at 80 Centre Street, New York, New York, and it is further;

ORDERED: that counsel for E 51<sup>st</sup> Street shall serve a copy of this order upon all counsel for all parties involved in the actions set forth above to advise them of the date and time of the conference.

The foregoing constitutes the decision and order of this court.

Dated: August 11, 2008

ENTER:

  
\_\_\_\_\_  
Hon. Karen S. Smith, J.S.C.

**FILED**  
AUG 18 2008  
NEW YORK  
CLERK'S OFFICE