

STATE OF NEW YORK LITIGATION COORDINATING PANEL

PANEL CASE NUMBER 001/2002

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H&P LUMBER AND MATERIAL, INC.
d/b/a KING LUMBER,

Action No. 1

Plaintiff,

Supreme Court, Westchester County
Index No. 19792/2001

- against -

133 MONTGOMERY STREET ASSOCIATES,
LTD., 100 WOODRUFF AVENUE ASSOCIATES,
LTD and D'ALESSIO ENTERPRISES, LLC,

Defendants.

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H&P LUMBER AND MATERIAL, INC.
d/b/a KING LUMBER,

Action No. 2

Plaintiff,

Supreme Court, Westchester County
Index No. 19793/2001

- against -

121 MONTGOMERY ASSOCIATES, LTD.
and D'ALESSIO ENTERPRISES, LLC,

Defendants.

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H&P LUMBER AND MATERIAL, INC.
d/b/a KING LUMBER,

Action No. 3

Plaintiff,

Supreme Court, Westchester County
Index No. 03824/2002

- against -

MICHAEL D'ALESSIO,

Defendant.

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H&P LUMBER AND MATERIAL, INC.
d/b/a KING LUMBER,

Action No. 4

Plaintiff,

Supreme Court, Bronx County
Index No. 28694/2001

- against -

3100 TREMONT ASSOCIATES
and D'ALESSIO ENTERPRISES, LLC,

Defendants.
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DECISION

Counsel for all parties in the four actions listed above have submitted a joint letter application, pursuant to Section 202.69 of the Uniform Rules for the Trial Courts and the Interim Procedures of the Litigation Coordinating Panel (dated May 29, 2002), seeking consolidation of the actions in Westchester County.

It appears that the four actions are related and would most efficiently be processed together. In view of this, and given the agreement of all parties, the application shall be granted and an appropriate Order of Coordination issued.

The Panel notes, however, that the application asks that the four actions “be consolidated for all purposes in Westchester County” (Emphasis added) It appears that the parties may well be seeking consolidation of the four cases into one pursuant to CPLR 602 rather than coordination of pretrial proceedings pursuant to Section 202.69. If this is indeed so, then the parties may effectuate a formal consolidation in lieu of enforcement of the Panel’s Order. Consolidation can be accomplished by appropriate application (for which a stipulation and proposed order may suffice) to the Honorable Louis A. Barone, who is the Justice assigned to Action No. 3, the only one of the four actions in which a Request for Judicial Intervention has been filed. The proposed order would provide for consolidation of the four actions into one under a single index number (presumably the number of Action No. 3), provide for a single caption for the consolidated action (listing the plaintiff on one side and the defendants from all four actions together on the other), direct the Clerk of Bronx County to transfer venue of the Bronx action to Westchester County for purposes of consolidation and transfer the file to the Clerk of Westchester County, and direct the Clerk of Westchester County to combine the four case files into one under the consolidated caption and index number. The Order of Coordination issued herewith is without prejudice to an application for consolidation pursuant to CPLR 602.

The Clerk of the Panel shall forthwith transmit a copy of this Decision and the accompanying Order to counsel for the parties, Justice Barone, and the Honorable Francis A. Nicolai, Administrative Judge of the Ninth Judicial District, who would appoint the Coordinating Justice pursuant to Section 202.69 (c) (1) in the event that the parties do not seek consolidation.

This constitutes the Decision of the Panel.

Dated: September 17, 2002



HON. HELEN E. FREEDMAN
Presiding Justice, First Department

HON. RAYMOND E. CORNELIUS
Justice, Fourth Department

HON. E. MICHAEL KAVANAGH
Justice, Third Department

HON. JOSEPH J. MALTESE
Justice, Second Department