

**Metropolitan Steel Industries, Inc. v Perini Corporation**

2004 NY Slip Op 30156(U)

August 18, 2004

Supreme Court, New York County

Docket Number: 0104341/2002

Judge: Herman Cahn

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

PRESENT: PERINI CAPRI

PART 49

0104341/2002

METROPOLITAN STEEL INDUSTRIES

VS  
PERINI

SEQ 5

REARGUMENT/RECONSIDERATION

INDEX NO. \_\_\_\_\_

MOTION DATE 8/9/04

MOTION SEQ. NO. 005

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**OTION IS DECIDED IN ACCORDANCE  
- ACCOMPANYING MEMORANDUM  
- SION IN MOTION SEQUENCE .....**

*SO*

Dated: 8/18/04 [Signature]  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 49

-----X

METROPOLITAN STEEL INDUSTRIES, INC.  
d/b/a STEELCO,

Plaintiff,

-against-

Index No. 104341/02

PERINI CORPORATION, AMERICAN HOME  
ASSURANCE COMPANY, FIDELITY AND  
DEPOSIT COMPANY OF MARYLAND and  
LIBERTY MUTUAL INSURANCE COMPANY,

Defendants.

-----X

PERINI CORPORATION,

Third-Party Plaintiff,

-against-

STV, INCORPORATED,

Third-Party Defendant.

-----X

PERINI CORPORATION,

Plaintiff,

-against-

WDF, INC. and FEDERAL INSURANCE COMPANY,

Defendants.

-----X

CAHN, J.

Motion and cross-motion by WDF and Federal Insurance Co., and Metropolitan Steel Industries., Inc. (Steelco), for reargument of the prior motion to consolidate, and upon reargument , denying the motion to consolidate. Perini Corporation opposes the motion to consolidate.

These actions arise from the design and construction of a multi-storied bus depot on 100<sup>th</sup> Street in Manhattan, owned and operated by the Metropolitan Transit Authority. Several separate contracts and sub-contractor claims are at issue.

After the main action had been commenced and was pending in New York County, Perini commenced an action in Westchester County, Perini Corp. v. W D F , Inc. and Westchester Insurance Co., Sup. Ct. Westchester Co., Index No. 12987/2003 (the Westchester action). That action was commenced after the main action. Discovery in the main action is substantially completed, and in fact a note of issue has been filed. In contrast, in the Westchester action discovery remains to be done. In fact, the major reason for considering movant's arguments is their claim that plaintiff seeks damages of \$10,000,000 from them, and they have not had an opportunity to have meaningful discovery.

If the actions remain consolidated, either the parties to the Westchester action will not have an adequate opportunity to have discovery, or the resolution of the main action by trial will be unduly delayed. Neither of these options is acceptable.

The motion for consolidation was considered by the court at two separate times. The first was at oral argument on the motion to consolidate. After hearing oral argument, the court denied the branch of the motion seeking consolidation, from the bench, on the record. When the motion was formally submitted together with other motions, the court inadvertently again considered it

and came to the opposite conclusion. In this the court, erred, and now vacates that branch of its written decision dated June 14, 2004 which directed consolidation. Instead, the court now again denies that branch of the motion which sought consolidation. In all other respects, the June 14, 2004 decision shall remain in effect.

The Court has considered the fact that both the main action and the Westchester action basically arise out of the same construction project, and that Perini is a party to both actions. However, the issues in the different actions are largely separate, and it would not be just to either require the parties to the main action to delay resolution of their action, or to require the defendants in the Westchester action to proceed to trial without a proper opportunity to conduct discovery.

The motion and cross-motion to reargue are granted. Upon reargument, the Court vacates that branch of its prior decision which granted the motion to consolidate the Westchester action into the main action, and instead denies that branch of the original motion. The said decision is adhered to in all other respects.

Settle order. The proposed order shall contain a provision requiring transfer of the Westchester action to the Supreme Court, Westchester County, under index number 12987/2003.

Date: August 18, 2004

Enter:

  
\_\_\_\_\_  
J.S.C.