

**Summit Development Corp. v Hudson Meridian
Constr. Group LLC**

2013 NY Slip Op 31436(U)

June 21, 2013

Supreme Court, New York County

Docket Number: 650755/09

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: CYNTHIA S. KERN

PART _____

J.S.C.

Index Number : 650755/2009
SUMMIT DEVELOPMENT CORP.,
vs
HUDSON MERIDIAN CONSTRUCTION
Sequence Number : 008
CONSOLIDATE / JOINT TRIAL

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

is decided in accordance with the annexed decision.

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

Dated: 6/21/13

CYNTHIA S. KERN, J.S.C.

1. CHECK ONE: CASE DISPOSED
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

CYNTHIA S. KERN

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

-----X
SUMMIT DEVELOPMENT CORP. d/b/a SUMMIT
WATERPROOFING & RESTORATION CO.,

Plaintiff,

Index No. 650755/09

-against-

DECISION/ORDER

HUDSON MERIDIAN CONSTRUCTION GROUP LLC,
HENRY PHIPPS PLAZA SOUTH ASSOCIATES
LIMITED PARTNERSHIP, INTERSTATE MASONRY
CORP., DUNLOP MASTCLIMBERS LTD., FEDERAL
INSURANCE COMPANY and "JOHN DOE 1" through
"JOHN DOE 10" said parties being lienors who have yet
to perfect their liens and being fictitious and unknown to
Plaintiff,

Defendants.

-----X
HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Affirmations in Opposition.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Plaintiff Summit Development Corp. d/b/a Summit Waterproofing & Restoration Co.
("Summit") commenced the instant action against defendants Hudson Meridian Construction
Group, LLC ("Hudson"), Henry Phipps Plaza South Associates Limited Partnership ("Henry
Phipps"), Interstate Masonry Corp. ("Interstate"), Dunlop Masterclimbers Ltd. ("Dunlop"),
Federal Insurance Company ("Federal") and John Does 1-10 to recover certain sums arising out
of a construction project. Defendants Hudson and Federal now move to consolidate the instant
action with a proceeding pending in Supreme Court, Queens County. For the reasons set forth

below, Hudson's motion is denied.

The relevant facts are as follows. This action arises out of a construction project known as the Rehabilitation of Phipps Plaza South, 444 Second Avenue and 330 East 26th Street, New York, New York (the "project"). Hudson was the general contractor on the project, plaintiff was the subcontractor, Interstate and Dunlop were plaintiff's sub-subcontractors and Henry Phipps is the owner of the premises. Due to disagreements which arose regarding the project, plaintiff commenced the instant action in Supreme Court, New York County on or about December 21, 2009.

There are two related actions that were consolidated for the purposes of discovery: *Summit Development Corp. d/b/a Summit Waterproofing Co. v. Hudson Meridian Construction Group LLC and Federal Insurance Company*, Supreme Court, New York County, Index # 650172/09 and *Summit Development Corp. d/b/a Summit Waterproofing Co. v. Hudson Meridian Construction Group LLC and Henry Phipps Plaza South Associates Limited Partnership*, Supreme Court, New York County, Index # 650239/09. Plaintiff also commenced two separate actions against defendant Dunlop regarding the project. The first, *Summit Development Corp. d/b/a Summit Waterproofing Co. v. Dunlop Mastclimbers Ltd.*, Supreme Court, New York County, Index # 602637/08, is marked settled in the court's records. The second, *Summit Development Corp. d/b/a Summit Waterproofing Co. v. Dunlop Mastclimbers Ltd.*, Supreme Court, New York County, Index # 603706/08 has allegedly been abandoned by those parties in favor of proceeding in the instant action.

In or around June 2011, plaintiff commenced another action regarding the project in Queens County (the "Queens Action") against Interstate and Interstate's principal, Janine Frantellizzi ("Ms. Frantellizzi") entitled *Summit Development Corp. d/b/a Summit Waterproofing & Restoration Co. v. Interstate Masonry Corp., Janine Frantellizzi and Anthony Cervoni*, Index

700293/11 alleging causes of action sounding in fraud. Movants allege that plaintiff did not advise them about the Queens Action until August 2012 when plaintiff's principal had a discussion with Hudson's principal. However, by that time, the Queens Action had been dismissed and it was not until April 24, 2013 that the dismissal was reversed by the Second Department. *See Summit Dev. Corp. v. Interstate Masonry Corp.*, 2013 NY Slip Op 02736 (2d Dept 2013). Hudson and Federal now move to consolidate the Queens Action with the instant action.

CPLR § 602 provides:

(a) Generally. When actions involving a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all the matters in issue, may order the actions consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

However, “[e]ven where there are common questions of law or fact, consolidation is properly denied if the actions are at markedly different procedural stages and consolidation would result in undue delay in the resolution of either matter.” *Abrams v. Port Auth. Trans-Hudson Corp.*, 1 A.D.3d 118, 119 (1st Dept 2003), citing *F & K Supply v. Johnson*, 197 A.D.2d 814 (3d Dept 1993).

In the instant action, Hudson's motion for consolidation must be denied as consolidation would result in undue delay in the resolution of the instant action. The instant action has been pending before this court for almost four years and is nearing the close of discovery. In fact, the court most recently extended the Note of Issue deadline for the sole purpose of concluding a few remaining depositions. Additionally, in the instant action, the parties have exchanged thousands of pages of paper discovery, have responded to numerous interrogatories, have conducted over sixteen days of depositions and have appeared many times before this court. In contrast, the Queens Action is in its infancy and no discovery has taken place as the complaint in the Queens

