

Prima Contr. Ltd v EDA Contrs. Inc.

2017 NY Slip Op 33263(U)

August 4, 2017

Supreme Court, Nassau County

Docket Number: 601767-17

Judge: Timothy S. Driscoll

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ORIGINAL

**SUPREME COURT-STATE OF NEW YORK
SHORT FORM ORDER**

Present:

HON. TIMOTHY S. DRISCOLL
Justice Supreme Court

-----x
PRIMA CONTRACTING LTD,

**TRIAL/IAS PART: 12
NASSAU COUNTY**

Plaintiff,

Index No: 601767-17

-against-

**Motion Seq. No. 1
Submission Date: 6/30/17**

**EDA CONTRACTORS INC.,
U.S. SPECIALTY INSURANCE COMPANY,**

Defendants jointly and severally.

-----x

The following papers having been read on this motion:

- Notice of Motion, Affirmation in Support and Exhibits.....x**
- Affirmation in Opposition and Exhibits.....x**
- Reply Affirmation and Exhibits.....x**

This matter is before the Court for decision on the motion filed by Defendants EDA Contractors, Inc. (“EDA”) and U.S. Specialty Insurance Company (“U.S. Specialty”) (“Defendants”) on May 1, 2017 and submitted on June 30, 2017. For the reasons set forth below, the Court denies the motion. The Court directs counsel for the parties to appear before the Court for a Preliminary Conference on September 7, 2017 at 9:30 a.m.

BACKGROUND

A. Relief Sought

Defendants move for an Order 1) dismissing the above-captioned action (“Instant Action”) in its entirety; and 2) releasing the surety bond back to EDA.

Plaintiff Prima Contracting Ltd (“Prima” or “Plaintiff”) opposes the motion.

B. The Parties’ History

The Verified Complaint to Foreclose a Discharge of Mechanic’s Lien Bond (“Complaint”) (Ex. E to Smith Aff. in Supp.), which contains a single cause of action for lien

foreclosure, alleges as follows: ¹

Plaintiff is a New York corporation that provides operation, design and construction services. Defendant EDA is a Pennsylvania corporation engaged in providing exterior envelopes to commercial, institutional and industrial buildings. Exterior envelopes provided include wall panels, accessories, roofing, waterproofing, air and vapor barriers, and vegetative roof systems. U.S. Specialty is a Texas corporation that is in the business of writing specialty insurance products.

This is an action brought by Prima to foreclose on a bond discharging a mechanic's lien. Plaintiff alleges that it was not paid for services that it provided at Adelphi University ("Adelphi") and is now foreclosing on the discharge bond for an unpaid sum of \$132,323.00, plus interest, attorney's fees, and punitive damages in the Court's discretion. Prima is the obligee on the Discharge of Mechanic's Lien Bond, EDA is the principal on the Discharge of Mechanic's Lien Bond, and U.S. Specialty is the surety on the Discharge of Mechanic's Lien Bond.

Adelphi was the owner in fee of premises located at 1 South Avenue, Garden City, New York. On or before October 14, 2015, Prima, as general contractor, entered into an agreement pursuant to which it was to provide panel re-staining services to EDA on a project ("Project") located at Adelphi, with the knowledge and consent of the owner. Pursuant to the agreement, Prima agreed to provide the re-staining for the agreed sum of \$132,323.00. Prima performed under the agreement by furnishing the re-staining to EDA, thereby earning the sum of \$132,323.00, no part of which has been paid to Prima, despite demand.

On or about July 7, 2016, Prima filed a Notice of Mechanic's Lien in the sum of \$143,855.03 with the State of New York, Nassau County, Clerk's Office ("Nassau County Clerk") in connection with the improvements made to Adelphi. Prima filed its Notice of Mechanic's Lien based on labor provided on the Project in the amount of \$132,323.00, as well as approximately \$10,000.00 in work performed outside of the agreement for panels that needed to be re-stained, with the cost of labor determined based on prior dealings on a per-panel basis. Prima's Mechanic's Lien was served, and proof of service of said lien was filed with the Nassau County Clerk.

¹ The Summons and Complaint annexed as Exhibit E to the Smith Affirmation in Support contain the incorrect index number of the Instant Action, specifically 60167/2017. The correct index number is 601767-17

On or about August 2, 2016, EDA executed a Discharge of Mechanic's Lien Bond in the sum of \$158,240.53 with the Nassau County Clerk, to discharge the lien from the Premises. Defendant's Discharge of Mechanic's Lien was served, and proof of service of said lien was filed with the Nassau County Clerk. The Discharge of Mechanic's Lien Bond names Prima as obligee, EDA as Principal and U.S. Specialty as Surety.

By reason of the foregoing, and by filing and docketing of the Discharge of Mechanic's Lien Bond and affidavits of service regarding the Discharge of Mechanic's Lien Bond, Prima acquired a good valid, and subsisting lien on the Discharge Bond. Defendant U.S. Specialty is the surety on the undertaking to discharge Prima's Notice of Lien and, for that reason, is made a party hereto. No person has any subsequent liens or claims against said bond by way of judgment, mortgage or otherwise. Accordingly, Plaintiff alleges, Plaintiff is entitled to equitably foreclose its lien to recover the unpaid sum of \$132,323.00.

Plaintiff seeks judgment 1) determining and adjudging Prima to have a valid and subsisting lien on the interest of EDA in the Discharge of Mechanic's Lien Bond; 2) in favor of Prima for the enforcement of said lien against the Discharge Bond, in form only for the purpose of satisfying the condition of said bond; 3) declaring the surety liable and awarding Prima judgment in the sum of \$132,323.00 against the surety; 4) in favor of Prima in the sum of \$132,323.00 with interest; 5) adjusting and determining the equities of all parties to the Instant Action and determining the validity, extent and priority of the claims and liens to be asserted herein; 6) directing EDA to pay over to Plaintiff the amount adjudicated as the amount of its lien and claim herein, with interest, and granting Plaintiff judgment for any deficiency, together with the costs and disbursements of the Instant Action; and 7) if it is determined that Plaintiff did not have a valid and subsisting lien, granting Plaintiff a personal judgment against EDA in the sum of \$132,323.00 with interest thereon, together with the costs and disbursements of the Instant Action.

In support of the motion, counsel for Defendants ("Defendants' Counsel") affirms that Defendants seek dismissal of the Complaint, and the release of the bond back to EDA, because Prima willfully overstated the lien amount, in violation of New York State Lien Law ("Lien Law") § 39, and because EDA has no privity of contract with Plaintiff and, therefore, Plaintiff cannot foreclose on its mechanic's lien bond. Alternatively, Defendants ask the Court to consolidate the Instant Action with a related matter formerly pending in the Supreme Court of Queens County ("Related Action") involving Prima and EDA that was recently transferred from

the Supreme Court of Queens County to Nassau County, initially assigned Queens County Index Number 710802-16. Defendants' Counsel provides a copy of the complaint in the Related Action ("Related Complaint") (Ex. D to Smith Aff. in Supp.). In the Related Action, titled *Prima Contracting Ltd. v. Taktl LLC, Adelphi University, EDA Contractors Inc.*, the plaintiff, Prima, alleges that it filed the Related Action for equitable relief and for account stated, unjust enrichment and *quantum meruit*, alleging that "by failing, refusing or neglecting to comply with specific contractual obligations[,] the defendants are liable to plaintiff for an unpaid sum of \$132,323.00 plus interest, attorney's fees, and punitive damages as the Court sees fit" (Related Comp. at ¶ 1).

Defendants' Counsel provides the following chronology of the relevant events: 1) on or about October 14, 2015, Prima and Taktl, LLC ("Taktl") entered into a contract pursuant to which Prima would provide panel re-staining service to Taktl for use at the Project; 2) on or about February 23, 2016, a second contract was entered into between Prima and Taktl for additional panel re-staining services (collectively with the October 14, 2015 contract referred to as the "Contracts"); 3) EDA was the general contractor in this matter, and EDA never had a contract with Prima; 4) on or about July 7, 2016, Prima filed a Notice of Mechanic's Lien against EDA and Taktl in connection with the panel re-staining services provided for the Project in the amount of \$143,855.03;² 5) EDA, at the insistence of its client, bonded the lien amount with U.S. Specialty; 6) thereafter, on or about August 2, 2017, EDA executed a Discharge of Mechanic's Lien Bond to discharge the lien from the Adelphi property; and 7) on or about September 8, 2016, Prima filed the Related Complaint which involves the same services, dates of services and monetary amount for work performed at the Project.

Defendants' Counsel notes that, notwithstanding the similarity between the Instant and Related Actions, counsel for Plaintiff certified in the Complaint, dated March 1, 2017, that "there is not to his knowledge presently pending any other action at law concerning the facts and causes of action set forth and raised herein and that there is no indispensable party to this action who has not been joined." Defendants' Counsel affirms that on or about October 5, 2016, Adelphi, a defendant in the Related Action, filed a demand for change of venue to Nassau County,

² \$143,855.05 in original (Smith Aff. in Supp. at ¶ 7) *but see* Notice of Mechanic's Lien (Ex. C to Smith Aff. in Supp.) reflecting claim in the amount of \$143,855.03.

which was granted on or about February 1, 2017.³ On or about March 2, 2017, Plaintiff filed the Instant Action. Defendants' Counsel submits that Prima willfully overstated the lien amount in the Complaint and had no privity of contract with EDA and, therefore, dismissal of the Instant Action, or consolidation of the Related Action with the Instant Action, is appropriate.

In support of its counterclaim against Prima in the Related Action (Ex. G to Smith Aff. in Supp.), Taktl alleges as follows:

1) on or about October 12, 2015, after the scope of installed panels at the Premises requiring color remediation increased from the 407 estimated in August 2015 to 629 in October 2015, Prima agreed to perform the work for \$60,121.00; 2) on or about February 23, 2016, Prima and Taktl entered into a second agreement pursuant to which Prima agreed to perform similar remediation work on an additional 340 panels on the property for \$53,547.00, which included a line item of \$10,500.00 for equipment rental, which was ultimately provided by EDA instead of Prima; 3) consequently, the total contract price for the Project was \$103,168.00; 4) on or about July 7, 2016, however, Prima filed a "vastly exaggerated and unlawful mechanic's lien" in connection with the Project in the amount of \$143,855.05; 5) Prima and Taktl had ongoing contractual relationships involving not only the Project, but other projects; 6) in connection with those projects, Prima owed Taktl certain payments as a result of labor, drawings, materials, and hardware provided to Prima; 7) in total, the amount owed by Prima to Taktl equals \$182,282.86, and this amount has not been paid by Prima; and 8) the outstanding amount owed by Prima to Taktl exceeds any amount owed by Taktl to Prima. Taktl's counterclaim alleges that Prima is liable for Willful Exaggeration of Lien/Violation of New York State Lien Law.

In opposition, counsel for Plaintiff ("Plaintiff's Counsel") disputes Defendants' contention that Prima has willfully overstated the lien amount. Plaintiff's Counsel affirms that on October 14, 2015, the first contract related to the Project was approved by Taktl and EDA. This contract paid Prima \$60,121.00 for panel re-staining services on a project at Adelphi. In support, Plaintiff's Counsel provides copies of the October 2015 email exchange between Prima

³ The Court has obtained, through the court website, a copy of an April 28, 2017 order issued by the Hon. Frederick D.R. Sampson of Queens County Supreme Court in the Related Action. In that order, which addressed a motion for a default judgment against EDA for a sum certain of \$132,323.00, Judge Sampson directed that "Pursuant to the Short Form Order dated February 1, 2017, the venue was changed in the underlying action to Nassau County from Queens County. Accordingly, the instant application is denied without prejudice to renewal in the appropriate venue."

and Taktl (Ex. A to Freeman Aff. in Opp.), which was also submitted by Defendants in support of their motion. Plaintiff's Counsel affirms that on November 16, 2015, this contract was amended to include additional panels at the cost of \$18,655.00. In support, Plaintiff's Counsel provides an email exchange dated September 28, 2016 from George Ouvina ("Ouvina") at Prima to Plaintiff's Counsel and Michael Phillipone at Prima (Ex. B to Freeman Aff. in Opp.) which states "Sorry forgot to mention. 287 additional panels as per 11/16/15 - Cost: \$18,655.00 - Price sent to TAKTL 12/11/15."

Plaintiff's Counsel affirms that on October 27, 2015, an invoice was submitted for a second round of samples on the Project that was approved at the cost of \$6,656.13. In support, he provides an invoice on Prima stationery dated October 27, 2015 in that amount (Ex. C to Freeman Aff. in Opp.). Plaintiff's Counsel affirms that on February 23, 2016, Taktl and EDA approved a second contract with Prima for panel re-staining at the cost of \$53,547.00. In support, he provides a February 2016 email exchange between Prima and Taktl (Ex. D to Freeman Aff. in Opp.) which includes Ouvina's representation that Prima "can propose to do the 340 additional panels including equipment for \$53,547.00."

Plaintiff's Counsel affirms that while working on the Project, Prima performed approximately \$4,875.92 in additional work for unforeseen panels that needed to be re-stained, and the cost of this labor was determined based on previous dealings on a per-panel basis. In support, he provides extensive email exchanges between Taktl and Prima (Ex. E to Freeman Aff. in Opp.). Those include a November 16, 2015 email from Drew Cuturilo at Taktl to Ouvina which includes the statement "I need the list of additional panels and the cost breakdown for the add ons when you get a chance."

Plaintiff's Counsel affirms that Prima was not paid on the Project. As a result, Prima filed a Notice of Mechanic's lien in the sum of \$143,855.03 on July 7, 2016. On August 2, 2016, EDA executed a Discharge of Mechanic's Lien in the sum of \$158,240.53 with the Nassau County Clerk (Ex. F to Freeman Aff. in Opp.). Plaintiff's Counsel affirms that the Mechanic's Lien was filed to ensure that Prima was compensated for the services that it provided. EDA bonded the lien at the insistence of its client and, Plaintiff submits, now bears the burden of paying Prima for services provided.

Plaintiff's Counsel affirms that on September 9, 2016, Prima filed the Related Action, to collect for the alleged breach of contract, and the Related Action was transferred to Nassau County. Plaintiff's Counsel affirms that the parties in the Related Action attempted, unsuccessfully, to resolve the Related Action through mediation. Plaintiff's Counsel affirms that Plaintiff anticipates amending the pleadings to include the property owners and contractors on those five additional projects. Plaintiff's Counsel affirms that Prima initiated the Instant Action, separately from the Related Action, to avoid further complicating the Related Action, and to focus solely on the issue of foreclosure. Plaintiff submits that EDA, by bonding the mechanic's lien, is obligated to pay Prima for its labor and materials, and this obligation is unrelated to the contractual issues raised in the Related Action. Plaintiff submits that it did not willfully overstate the lien amount, and further contends that it is irrelevant whether Prima has privity of contract with EDA.

C. The Parties' Positions

Defendants submit that dismissal of the Complaint is appropriate because the evidence is conclusive that Plaintiff willfully exaggerated the lien. Defendants contend that the total amount of the Contracts is \$101,723.81, citing Exhibits A and B to the Affirmation in Support of Defendants' Counsel. Exhibit A contains emails between Prima to Taktl, including an October 12, 2015 email in which Prima's representative advises Taktl's representative that Prima "can perform the work for \$60,121.00...based on the latest drawings of 629 panels." Exhibit B *inter alia* contains an email exchange that includes a February 23, 2016 email from Prima to Taktl stating "After review and consideration of the work we can propose to do the 340 additional panels including equipment for \$53,547.00." Exhibit B also contains a document dated February 22, 2016, involving an entity called Sunbelt Rentals, Inc., which lists Adelphi as the "Job Site," Prima as the "Customer" and contains the word "Quote" on two separate pages. Defendants submit that Prima has not provided, and cannot provide, evidence of any additional sums being due, and that Prima improperly filed a lien against Taktl, EDA and Adelphi in the amount of \$143,855.05. Thus, Defendants submit, Prima willfully overstated the lien amount by \$42,131.24, or approximately 40% of the total price of the Contracts. Defendants note that, in both the Instant and Related Actions, Prima seeks damages in the sum of \$132,323.00, but filed a lien in the amount of \$143,855.05. Defendants contend, further, that the \$132,323.00 figure is

overstated because Prima added approximately \$18,000 which was already included in the February 23, 2016 contract, and intentionally failed to subtract the \$10,500.00 cost of machinery which was included in the contract price but was paid for by EDA (*see* Related Comp. at ¶ 11; Demand Letter, Ex. F to Smith Aff. in Supp.). Defendants suggest that Prima has inflated the sums due because, as per Taktl's counterclaims in the Related Action, Prima "tried to tack extra costs from other jobs onto the lien here and got caught" (Smith Aff. in Supp. at ¶ 32).

Defendants also submit that Prima has no legal claims against EDA because there was no privity of contract between the parties. Defendants contend that, because EDA did not enter into a written contract with Prima for its services, there is no privity between the parties and, therefore, Prima cannot foreclose on the Mechanic's Lien Bond filed by EDA.

Defendants submit, further, that the Court should dismiss the Instant Action on the grounds that it is duplicative of the Related Action. In the Instant Action, Prima is seeking discharge on a bond related to monies allegedly owed for work done per an agreement with Taktl. Defendants submit, however, that Prima already filed an action seeking payment of the exact same sums, in the Related Action. Moreover, should Prima prevail in the Related Action, the bond would be released to Prima as a result, obviating any need for the Instant Action. In addition, if both Actions continue, there may be inconsistent results, and the potential for prejudice to one or more parties. Defendants contend that dismissal is warranted, particularly in light of Prima's failure to disclose, in the Instant Action, the existence of the Related Action.

Finally, Defendants submit that the Court should consolidate the Instant and Related Actions. Defendants contend that these cases involve common questions of law and fact, and that the interests of judicial economy and consistency of verdicts would be served by having a single trial.

Plaintiff opposes the motion submitting that 1) Defendants' assertion that Plaintiff willfully exaggerated the lien ignores the fact that the contracts, change orders, emails and invoices provided support the conclusion that Prima performed work in addition to the work contemplated by the original agreement; 2) with respect to the remaining \$4,875.92, this was additional work performed by Prima, without a contract in place, because there were additional panels that required re-staining; 3) there is no merit to Defendants' argument that Prima may not foreclose on the bonded lien filed by EDA because Prima was not in privity of contract, both

because the Instant Action is not based on breach of contract but, rather, is an action to foreclose a lien, and in light of the language in the Discharge of Mechanic's Lien Bond (Ex. F to Freeman Aff. in Opp.) stating that EDA, as Principal, and U.S. Specialty, as Surety, "are held and firmly bound unto" Prima, as Obligee, in the sum of \$158,240.53, which gives Prima the right to foreclose; 4) the Instant and Related Actions are not duplicative because they share only one common defendant, EDA, and do not contain identical causes of action; Plaintiff submits that the Instant Action is strictly a foreclosure matter that does not involve the parties, contracts and additional parties that Prima anticipates adding to the Related Action; and 5) consolidation of the Instant and Related Actions is not warranted because they do not share common questions of law, as the Related Action is a breach of contract and negligence action, while the Instant Action requires an evaluation of the Lien Law.

In reply, Defendants submit *inter alia* that 1) Plaintiff has willfully exaggerated the lien, as evidenced by Plaintiff's inability to explain why it filed a lien for \$143,855.05 but only seeks damages in the amount of \$132,323.00; 2) Plaintiff's reliance on a November 16, 2015 email between Plaintiff and its counsel is improper, as this document has no bearing on the agreement between the parties; 3) the October 27, 2015 invoice on which Plaintiff relies is also of no evidentiary value, as there is no proof that it was sent to Taktl and, therefore, no proof that it constituted a contract; and 4) even assuming, *arguendo*, that the \$18,655.00 and \$6,656.13 in alleged oral contracts counted towards the total price, and that the Court disregarded evidence regarding the \$10,500 worth of equipment that was paid for by EDA, Plaintiff's total still falls \$4,857.92 short and, therefore, the Court should conclude that Plaintiff willfully exaggerated the lien.

RULING OF THE COURT

A. Dismissal Standards

In considering a motion to dismiss for failure to state a cause of action pursuant to CPLR § 3211(a)(7), the court must accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. *Bivona v. Danna & Associates, P.C.*, 123 A.D.3d 956, 957 (2d Dept. 2014), quoting *Alva v. Gaines, Gruner, Ponzini & Novick, LLP*, 121 A.D.3d 724 (2d Dept. 2014) (internal quotation marks omitted) and citing *Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994).

A motion to dismiss a cause of action pursuant to CPLR § 3211(a)(1) may be granted only if documentary evidence utterly refutes the plaintiff's factual allegations, thereby conclusively establishing a defense as a matter of law. *Bivona v. Danna & Associates, P.C.*, 123 A.D.3d at 957, citing *Indymac Venture, LLC v. Nagessar*, 121 A.D.3d 945 (2d Dept. 2014), quoting *Whitebox Concentrated Convertible Arbitrage Partners, L.P. v. Superior Well Servs., Inc.*, 20 N.Y.3d 59, 63 (2012).

Pursuant to CPLR § 3211(a)(4), a court has broad discretion in determining whether an action should be dismissed on the ground that there is another action pending between the same parties for the same cause of action. *Jadron v. 10 Leonard Street, LLC*, 124 A.D.3d 842, 843 (2d Dept. 2015) citing, *inter alia*, *Whitney v. Whitney*, 57 N.Y.2d 731, 732 (1982). A court may dismiss an action pursuant to CPLR § 3211(a)(4) where there is a substantial identity of the parties, the two actions are sufficiently similar, and the relief sought is substantially the same. *Jadron v. 10 Leonard Street, LLC*, 124 A.D.3d at 843 citing, *inter alia*, *Scottsdale Ins. Co. v. Indemnity Ins. Corp. RRG*, 110 A.D.3d 783, 784 (2d Dept. 2013). It is not necessary that the precise legal theories presented in the first action also be presented in the second action. *Jadron v. 10 Leonard Street, LLC*, 124 A.D.3d 843, quoting *Matter of Willmus*, 101 A.D.3d 1036, 1037 (2d Dept. 2012). The critical element is whether both suits arise out of the same subject matter or series of alleged wrongs. *Jadron v. 10 Leonard Street, LLC*, 124 A.D.3d at 843 citing, *inter alia*, *Scottsdale Ins. Co. v. Indemnity Ins. Corp. RRG*, 110 A.D.3d at 784.

B. Willful Exaggeration of Lien

Lien Law § 39-a provides, in relevant part, that a willfully exaggerated lien may be voided by the court and the person filing such a notice of lien shall be liable in damages to the owner of the property. *Garrison v. All Phase Structure Corp.*, 33 A.D.3d 661, 662 (2d Dept. 2006). The burden is on the opponent of the lien to show that the amounts set forth were intentionally and deliberately exaggerated. *Id.*, quoting *Fidelity N.Y. v. Kensington-Johnson Corp.*, 234 A.D.2d 263 (2d Dept. 1996) (internal quotation marks omitted), and citing *Perma Pave Contr. Corp. v. Paerdegat Boat & Racquet Club*, 156 A.D.2d 550, 552 (2d Dept. 1989); *Minelli Constr. Co. v. Arben Corp.*, 1 A.D.3d 580, 581 (2d Dept. 2003).

A claim under Lien Law § 39-a is subject to summary disposition where the evidence concerning whether or not the lienor wilfully exaggerated the lien is conclusive. *On the Level Enterprises, Inc. v. 49 East Houston LLC*, 104 A.D.3d 500 (1st Dept. 2013), citing *Northe Group, Inc. v. Spread NYC, LLC*, 88 A.D.3d 557 (1st Dept. 2009).

C. Application of these Principles to the Instant Action

The Court denies the motion to dismiss based on its conclusion that, in consideration of the documentation provided by Plaintiff in support of its contention that Prima performed work in addition to that contained in the initial agreement, Defendants have not met their burden of demonstrating, as a matter of law, that Prima has willfully exaggerated its lien. The Court also concludes that, in light of the fact that Plaintiff is seeking to foreclose a lien, rather than asserting a breach of contract claim, the lack of privity between Prima and EDA is not fatal to Plaintiff's claim.

The Court notes that it appears that no Request for Judicial Intervention has been filed in Nassau County in the Related Action and, accordingly, the Court declines to address Defendants' applications to dismiss the Instant Action as duplicative of the Related Action, or to consolidate the Instant Action and Related Action. The Court also notes that Plaintiff's Counsel represents that Prima intends to amend its pleadings in the Related Action (*see* Freeman Affirmation in Opp. at ¶ 12). Should any party in the Related Action make a motion in the Related Action, or request a Preliminary Conference in the Related Action, counsel shall make reference in the Request for Judicial Intervention, in the section titled "Related Action," to the Instant Action, and to the fact that it is assigned to this Court.

All matters not decided herein are hereby denied.

This constitutes the decision and order of the Court.

The Court reminds counsel for the parties of their required appearance before the Court for a Preliminary Conference on September 7, 2017 at 9:30 a.m., as directed herein.

ENTER

DATED: Mineola, NY

August 4, 2017

HON. TIMOTHY S. DRISCOLL

J.S.C.

ENTERED

AUG 09 2017

NASSAU COUNTY
COUNTY CLERK'S OFFICE