

Paramount Bldrs. Contr. Corp. v Nationwide Mut. Fire Ins. Co.
2018 NY Slip Op 30032(U)
January 8, 2018
Supreme Court, New York County
Docket Number: 652674/2017
Judge: Manuel J. Mendez
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. MANUEL J. MENDEZ PART 13
Justice

PARAMOUNT BUILDERS CONTRACTING CORP.,
 Plaintiff,

INDEX NO. 652674/2017
 MOTION DATE 12/20/2017
 MOTION SEQ. NO. 002
 MOTION CAL. NO. _____

- against -

NATIONWIDE MUTUAL FIRE INSURANCE COMPANY,
RGB GROUP INC., 132 W26 OWNER LLC, FLATIRON REAL
ESTATE ADVISORS, JACK ANCONA and STEVEN ANCONA,
 Defendants.

The following papers, numbered 1 to 9 were read on this motion to Consolidate :

PAPERS NUMBERED

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

1- 3

Answering Affidavits — Exhibits _____ cross motion _____

4 - 6; 7; 8

Replying Affidavits _____

9

Cross-Motion: Yes X No

Upon a reading of the foregoing cited papers, it is Ordered that Defendant RGB Group Inc.'s ("RGB") motion to consolidate four (4) separate actions pursuant to CPLR §602, is granted.

Defendant RGB's motion seeks to consolidate four (4) separate actions derived from the same occurrence. The actions involve common questions of law and fact arising from alleged negligent construction and/or excavation work performed at or near 132 West 26th Street, New York, NY (the "Construction Project"). The Construction Project caused damages to the surrounding properties.

The First Action titled Privilege Underwriters Reciprocal Exchange a/s/o Gabriella Santorelli and Gabriella Santorelli, individually v Paramount Builders Contracting Corporation, *et. al.*, Index No.: 55044/2016 was commenced in Westchester County on April 18, 2016 for damages to the building Plaintiffs resided in as a result of the Construction Project. The Second Action titled 132 W26 Owner, LLC v Paramount Builders Contracting Corp., *et. al.*, Index No.: 152814/2017 was commenced in New York County on March 7, 2017 for damages due to negligence and breach of contract as a result of the Construction Project. The Third Action titled Pacific Indemnity Insurance Company a/s/o Tina D. Difelicianantonio and Jane Wagner v Paramount Builders Contracting Corp., *et. al.*, Index No.: 153848/2017 was commenced on April 26, 2017 for damages to the apartment the subrogors resided in as a result of the Construction Project. This action titled Paramount Builders Contracting Corp. v Nationwide Mutual Fire Insurance Company, *et. al.*, Index No.: 652674/2017, was commenced in New York County on May 16, 2017 ("Fourth Action"). The Fourth Action seeks a declaratory judgment that Defendant Nationwide, under its policy of insurance issued to Defendant RGB, is obligated to defend and indemnify the Plaintiff for all claims arising from the Construction Project.

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

Action 4 Defendant RGB now moves to consolidate four (4) separate actions pursuant to CPLR §602. Action 2 Plaintiff 132 W26 Owner LLC and Action 1 Plaintiffs Privileged Underwriters Reciprocal Exchange a/s/o Gabriella Santorelli and Gabriella Santorelli, individually, have opposed the motion.

Pursuant to CPLR §602, consolidation lies within the discretion of the court and is generally favored where there are common questions of law or fact, unless the party opposing the motion demonstrates prejudice of a substantial right. The burden is on the opposing party to demonstrate prejudice (*Amcan Holdings, Inc. v Torgs LLP*, 32 AD3d 337, 821 NYS2d 162 [1st Dept. 2006]). "Special circumstances" may warrant the court, in its discretion, to place the venue elsewhere from the County the action was commenced in (*Brown v COPD Best Way Express, Inc.*, 99 AD3d 746, 952 NYS2d 220 [2nd Dept. 2012]).

A review of the record indicates that judicial economy would be served by consolidating the actions in Westchester County since the First Action was commenced in Westchester County and discovery has already been ongoing in the First Action. Three of the four actions are currently venued in New York County. W26 Owner and Privileged Underwriters have both failed to demonstrate how consolidation of these actions would prejudice them in any way. Consolidation is favored by the courts in serving the interests of justice and judicial economy (*Flaherty v RCP Assocs.*, 208 AD2d 496, 616 NYS2d 801 [2nd Dept. 1994]).

Accordingly, it is ORDERED, that Defendant RGB Group Inc.'s motion to consolidate four (4) actions pursuant to CPLR §602 is granted, and it is further,

ORDERED, that the actions titled Privilege Underwriters Reciprocal Exchange a/s/o Gabriella Santorelli and Gabriella Santorelli, individually v Paramount Builders Contracting Corporation, *et. al.*, Index No.: 55044/2016, 132 W26 Owner, LLC v Paramount Builders Contracting Corp., *et. al.*, Index No.: 152814/2017, Pacific Indemnity Insurance Company a/s/o Tina D. Difelicianantonio and Jane Wagner v Paramount Builders Contracting Corp., *et. al.*, Index No.: 153848/2017, and the action titled Paramount Builders Contracting Corp. v Nationwide Mutual Fire Insurance Company, *et. al.*, Index No.: 652674/2017, is consolidated in the Supreme Court, Westchester County under Index Number 55044/2016, and it is further,

ORDERED, that the venue for the three New York County actions is changed from the Supreme Court, New York County to the Supreme Court, County of Westchester, and it is further,

ORDERED, that the caption is amended to reflect the consolidation, and it is further,

ORDERED, that the consolidated action shall bear the following caption:

PRIVILEGE UNDERWRITERS RECIPROCAL EXCHANGE, a/s/o Gabriella Santorelli and GABRIELLA SANTORELLI, individually,

Plaintiffs,

-Against-

Index: 55044/2016

PARAMOUNT BUILDERS CONTRACTING CORPORATION and 132 W26 OWNER LLC,
Defendants.

PARAMOUNT BUILDERS CONTRACTING CORPORATION and 132 W26 OWNER LLC,
Third-Plaintiffs,

-Against-

**SKYLINE ENGINEERING, LLC, RGB GROUP INC., AVISHAY I. MAZOR, PE, EUROCRAFT
CONTRACTING LLC, BECKER ENGINEERING, PC, DUBINSKY CONSULTING ENGINEERING,
PC and AGL INDUSTRIES INC.,**

Third-Party Defendants.

132 W26 OWNER LLC,

Plaintiff,

-Against-

**PARAMOUNT BUILDERS CONTRACTING CORP, RGB GROUP, INC., AVISHAY I. MAZOR, P.E.
and BECKER ENGINEERING, P.C.,**

Defendants.

**PACIFIC INDEMNITY INSURANCE COMPANY, a/s/o TINA D. DIFELICIAANTONION and JANE
WAGNER,**

Plaintiffs,

-Against-

PARAMOUNT BUILDERS CONTRACTING CORP. and 132 W26 OWNER LLC,
Defendants.

PARAMOUNT BUILDERS CONTRACTING CORP.,

Third-Party Plaintiff,

-Against-

**SKYLINE ENGINEERING, LLC, RGB GROUP INC., AVISHAY I. MAZOR, PE, EUROCRAFT
CONTRACTING LLC, BECKER ENGINEERING, PC, DUBINSKY CONSULTING ENGINEERING,
PC and AGL INDUSTRIES INC.,**
Third-Party Defendants,

PARAMOUNT BUILDERS CONTRACTING CORP.,

Plaintiff,

-Against-

**NATIONWIDE MUTUAL FIRE INSURANCE COMPANY, RGB GROUP INC., 132 W26 OWNER
LLC, FLATIRON REAL ESTATE ADVISORS, JACK ANCONA, and STEVEN ANCONA,**
Defendants.

and it is further,

**ORDERED, that the pleadings in the actions hereby consolidated shall stand as
the pleadings in the consolidated action; and it is further,**

ORDERED, that within thirty (30) days from the date of entry of this Order Defendant RGB Group Inc. is directed to serve a copy of this order with Notice of Entry on all parties, and on the New York County Clerk's Office pursuant to e-filing protocol, and a separate copy of this Order with Notice of Entry shall be served pursuant to e-filing protocol on the Trial Support Clerk located in the General Clerk's Office at genclerk-ords-non-mot@nycourts.gov who are hereby directed to mark the Court's records to reflect the consolidation and amendment to the caption and to transfer the papers on file in this action to the Clerk of the Supreme Court, County of Westchester upon service of a copy of this order with notice of entry and payment of the appropriate fees.

ENTER:

**MANUEL J. MENDEZ
J.S.C.**

Dated: January 8, 2018


**MANUEL J. MENDEZ
J.S.C.**

Check one: ☒ **FINAL DISPOSITION** ☐ **NON-FINAL DISPOSITION**

Check if appropriate: ☐ **DO NOT POST** ☐ **REFERENCE**