

**Consumer Protection Restoration LLC v Hickory
House Tenants Corp.**

2018 NY Slip Op 34609(U)

July 23, 2018

Supreme Court, Rockland County

Docket Number: Index No. 031285/2018

Judge: Paul I. Marx

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT : STATE OF NEW YORK
COUNTY OF ROCKLAND
HON. PAUL I. MARX, J.S.C.**

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

-----X
CONSUMER PROTECTION RESTORATION LLC, and
PRESTIGE REALTY GROUP INC.,

DECISION AND ORDER

Plaintiff,

Index No.: 031285/2018

-against-

HICKORY HOUSE TENANTS CORP. and NATIONAL
BILLING AND FUNDING LLC,

Motion Date: June 20, 2018
Motion Sequence # 1

Defendants.
-----X

**SUPREME COURT : STATE OF NEW YORK
COUNTY OF ROCKLAND
HON. SHERRI EISENPRESS, A.J.S.C.**

Index No.: 031554/2018

-----X
In the Matter of the Application of Hickory House Tenants
Corporation For an Order directing Consumer Protection
Restoration, LLC and Prestige Realty Group Inc., Lienors, to
deliver the itemized statement of Labor and Material and the
Terms of the Contract required by Lien Law Section 38
-----X

**SUPREME COURT : STATE OF NEW YORK
COUNTY OF NASSAU**

-----X
DB INSURANCE COMPANY, LTD (U.S. BRANCH),

Interpleader Plaintiff,

-against-

HICKORY HOUSE TENANTS CORP., NATIONAL
BILLING AND FUNDING LLC, PRESTIGE REALTY
GROUP INC., and CONSUMER PROTECTION
RESTORATION LLC,

Interpleader Defendants.
-----X

NATIONAL BILLING AND FUNDING LLC,

Third Party Plaintiff,

-against-

STERN AGENCY INC., and ADAM STERN,

Third Party Defendants.

Nassau County

Index No.: 603147/2018

The following papers numbered 1 to 6 were read on the application brought by Order to Show Cause by Defendant Hickory House Tenants Corp. in this Court under *Consumer Protection Restoration LLC and Prestige Realty Group Inc. v Hickory House Tenants Corp. and National Billing and Funding, LLC*, Index No. 031285/2018 seeking to consolidate this action with another proceeding in this court, *In the Matter of the Application of Hickory House Tenants Corp., etc.*, Index No. 031554/2018, which is pending before Hon. Sherri Eisenpress, AJSC, and a third action pending in Supreme Court, Nassau County, *DB Insurance Co., Ltd. v Hickory House Tenants Corp., et al.*, Nassau County Index No. 603147/2018:

Order to Show Cause/Affirmation of Wayne A. Gavioli, Esq./Exhibits A-K 1-2
Affirmation of Oisin Lambe, Esq. in Partial Opposition 3

Memorandum of Law of DB Insurance Co. Ltd in Partial Opposition	4
Affirmation of Alexander M. Levy, Esq. in Opposition	5
Affirmation of Harpreet Kaur, Esq. in Opposition	6

Upon the foregoing papers it is ORDERED that the application of Defendant Hickory House Tenants Corp. is denied for the reasons which follow.

Pursuant to CPLR §602(a), a court may order actions involving a common question of law or fact to be consolidated or jointly tried. CPLR §602(a) provides as follows:

(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.

The decision whether to consolidate or jointly try pending actions rests within the sound discretion of the court in which the application is made. *See TT Enterprises v Gralnick*, 127 AD2d 651, 652 [2nd Dept 1987] (citing *Leung v Sell*, 115 AD2d 929 [3rd Dept 1985]). Where the actions involve a common question of law or fact, the motion should be granted unless there will be prejudice to a substantial right of the party opposing the motion. *See Mas-Edwards v. Ultimate Servs., Inc.*, 45 AD3d 540, 540 [2nd Dept 2007] (citing *Perini Corp. v. WDF, Inc.*, 33 AD3d 605, 606 [2nd Dept 2006]).

Upon review of all three actions, it appears that the three actions stem from a fire loss which occurred at the Hickory House apartment complex located at 248-260 North Main Street in Rockland County, New York. The three actions differ, however, as to the questions of fact and law involved in each.

The instant action, which is assigned to this Court, seeks to recover on a mechanic's lien for work allegedly performed or to be performed to restore the premises following the fire loss.

The second Rockland County action, which is assigned to Judge Eisenpress, has concluded. That was a special proceeding brought by Hickory House pursuant to Lien Law § 38 for the single purpose of obtaining itemized statement of lien from Consumer Protection Restoration and Prestige Realty. By Order dated April 6, 2018, Judge Eisenpress ordered each entity to serve such statements within 20 days after service of a copy of the Order with notice of entry. On April 27, 2018, both

entities complied with the Order. There being no further objections filed therein, the matter was marked disposed.

Accordingly, consolidation of this action with the special proceeding assigned to Judge Eisenpress is denied.

Turning now to whether the Nassau County interpleader action should be consolidated with the instant action and removed to this Court, the undersigned can discern no reason why the two actions should be joined or consolidated. Consolidation effectuates “a total fusion of the actions. They take on one caption and culminate in one judgment—which pronounces on the rights of all the parties involved—and in but a single bill of costs.” *See* Siegel, NY Prac § 127, at 227 [5th ed]. The plaintiffs in the two actions are different and, indeed, the Nassau County plaintiff is not a party to this action, nor should it be. The Nassau County action is an interpleader action that centers on the insurance coverage provided by DB Insurance to Hickory House for the fire that occurred at its premises on March 11, 2017. The instant action concerns the work that was performed or should have been performed at the premises after the fire. It is apparent that an insurance coverage action and a breach of contract and mechanic’s lien action present disparate factual and legal issues.

This Court does not believe that the claims asserted in the Nassau County action by National Billing and Funding, LLC, one of the Defendants herein, or any claims made in that action by Hickory House furnish a basis for consolidation of the actions.

This Court agrees with DB Insurance that consolidation would entirely defeat the purpose of its interpleader action and lead to confusion and unnecessary expense, tending to reduce the funds available to satisfy any claims.

Accordingly, it is ORDERED that the motion for consolidation is denied.

The foregoing constitutes the Decision and Order of the Court.

Dated: July 23, 2018
New City, New York

ENTER

HON. PAUL I. MARX, J.S.C.