

Anthony T. Rinaldi, LLC v Lexin NY 815 LLC

2020 NY Slip Op 33995(U)

November 20, 2020

Supreme Court, New York County

Docket Number: 650071/2020

Judge: Laurence L. Love

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LAURENCE L. LOVE PART IAS MOTION 63M

Justice

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ANTHONY T. RINALDI, LLC,

Plaintiff,

- v -

LEXIN NY 815 LLC, AAREAL CAPITAL CORPORATION,
NEW YORK CITY ENVIRONMENTAL CONTROL BOARD,
SCHEAR CONSTRUCTION LLC, SCIENTIFIC AIR
CONDITIONING AND HEATING LLC, ABC COMPANIES,
JOHN DOES,

Defendants.

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INDEX NO. 650071/2020
MOTION DATE 10/02/2020
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 35, 36

were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

Upon the foregoing documents, it is

The following read on plaintiff's, Anthony T. Rinaldi, LLC ("Rinaldi"), motion for consolidation, CPLR 602(a), of this action 1) *Rinaldi v. Lexin NY 815 LLC, et. al.*, index no. 650071/2020 with 2) *TRV Mechanical Contractors LLC. v. The Rinaldi Group, LLC, et. al.*, index no. 655005/2018; and 3) *JM3 Construction LLC. v. The Rinaldi Group, LLC, et. al.*, index no. 651676/2018.

The three actions involve a construct project at the Hyatt House Hotel, 101 West 28th Street, NY, NY.

This action, *Rinaldi v. Lexin*, index no. 650071/2020, has causes of action for 1) breach of contract, 2) account stated, and 3) foreclosure of lien, in the amount of \$1,937,791.88. Rinaldi was the construction manager, Lexin was the owner in fee simple of the premises, and the two parties entered into a written contract where Rinaldi agreed to manage the construction project.

The second action, *TRV Mechanical Contractors, LLC. v. The Rinaldi Group, LLC.*, states causes of action for 1) breach of contract, 2) quantum meruit, and 3) unjust enrichment, in the sum of \$291,369.96. Rinaldi made a third-party complaint against Lexin NY 815 LLC a/k/a 815 NY Lender LLC, Aareal Capital Corporation, New York City Environmental Control Board, Schear Construction LLC, Construction Staffing Solutions LLC, Scientific Air Conditioning and Heating LLC, ABC Companies 1 – 10, and John Does 1 – 10. The third-party complaint has causes of action for 1) breach of contract, 2) account stated, and 3) foreclosure of lien, in the amount of \$1,937,791.88.

The third action, *JM3 Construction LLC v. The Rinaldi Group, LLC, and Lexin Capital, LLC*, index no. 651676/2018, has causes of action for 1) breach of contract, 2) quantum meruit, and 3) accounts stated in the sum of \$212,577.61. Defendant Rinaldi was contractor and plaintiff JM3 was subcontractor for a project sum of \$2,200,000 which \$212,577.61 remains outstanding. A May 18, 2020 decision has Lexin Capital, LLC dismissed from this 651676/2018 action.

CPLR 602(a) states,

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.

It is well settled that there is a preference for consolidation in the interest of judicial economy where there are common questions of law and fact, unless the party opposing the motion demonstrates that consolidation will prejudice a substantial right (see *Geneva Temps, Inc. v. New World Communities, Inc.*, 24 A.D.3d 332, 334 [1st Dept 2005]).

Plaintiff's memorandum of law in support states, "the [t]here [a]ctions involve the same construction project, related causes of action, overlapping parties, and many of the same witnesses."

Lexin NY 815 LLC argues against consolidation on the grounds of 1) there being no meaningful common question of law or fact involving different subcontractors, different contracts, different scopes of work; 2) prejudice because Lexin NY 815 already obtained a court order granting dismissal of JM3 Construction LLC's claims; and 3) the Rinaldi Group commenced a mechanic's lien foreclosure in *Rinaldi v. Lexin*, index no. 650071/2020.

In a consolidation application courts look to see if the movant has established a "plain identity between the issues involved in the two controversies" (see *Matter of Vigo S.S. Corp. v. Marship Corp. of Monrovia*, 26 N.Y.2d 157, 161 [1970]). The court examines "the very allegations of [a plaintiff's complaint] and [a defendant's] response to it" (*Id.*). "It can't as a rule be made before issue has been joined – the pleadings are all in – in the several actions affected because not until then can the court know whether the actions present common issues" (see *Siegel, N.Y. Prac. § 128 [6th ed.]*).

Lexin NY 815 states, "consolidation of the suit between JM3 and TRG would fundamentally prejudice Lexin 815. Consolidation would return Lexin 815 to a suit involving JM3 and render moot the relief it sought and obtained by court order. The mere fact that the JM3 dispute arose from the same construction project is outweighed by the substantial right that Lexin 815 obtained via court order."

The New York Lien Law typically requires foreclosing lienors to name all necessary parties in one action when pursuing a claim, which includes all "lienors having liens, notices of

which have been filed against the same real property prior to the filing of the notice of lis pendens in such action” (see NY Lien Law 44[1]).

ORDERED that plaintiff’s motion to consolidate is DENIED.



11/20/2020
DATE

LAURENCE L. LOVE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE