

Michilli, Inc. v Aquavit, Inc.

2021 NY Slip Op 31113(U)

March 29, 2021

Supreme Court, New York County

Docket Number: 156676/2020

Judge: Gerald Lebovits

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. GERALD LEBOVITS PART IAS MOTION 7EFM

Justice

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INDEX NO. 156676/2020

MICHILLI, INC.,

MOTION SEQ. NO. 001

Plaintiff,

- v -

AQUAVIT, INC., BRE PARK AVENUE TOWER OWNER LLC, A PLUS PLUMBING CORP., AGGRESSIVE FIRE PROTECTION LLC, APOLLO ELECTRIC NYG, INC., BP MECHANICAL CORP., COMMERCIAL ELECTRICAL CONTRACTORS INC., ECLIPSE CONTRACTING CORP., ELITE INTERIOR CONTRACTING CORP., FUJITEC AMERICA INC., LPA LIGHTING PARTNERS AMERICA, INC., MACKENZIE AUTOMATIC DOORS INC., MORGAN STANLEY MORTGAGE CAPITAL HOLDINGS LLC, and "JOHN DOE NO. 1" through "JOHN DOE NO. 10," defendants being unknown to Plaintiff and having or claiming an interest in or lien upon the improvement known as 65 East 55th Street, New York, New York,

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67,68, 69, 70, 71, 72, 73,74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, and 116

were read on this motion for CONSOLIDATION + STAY.

Schnader Harrison Segal & Lewis LLP, New York, NY (Cynthia A. Murray of counsel), for plaintiff.

Eckert Seamans Cherin & Mellott, LLC, New York, NY (Riyaz G. Bhimani, of counsel), for defendants.

Gerald Lebovits, J.

BACKGROUND

This action concerns a contract dispute between plaintiff, Michilli, Inc., and defendant, Aquavit, Inc., over construction renovations performed at Aquavit’s Manhattan restaurant. Michilli alleges that Aquavit has refused to pay the \$1,875,748.10 balance due to it. In response, Aquavit alleges defects in Michilli’s and various subcontractor’s performance. This payment dispute has given rise to further actions. Nine subcontractors or suppliers hired by Michilli to

perform the renovations have either brought suits seeking to foreclose on liens on the property or been joined as necessary parties.¹ Michilli's instant motion seeks to consolidate five actions for the purpose of joint discovery and trial: (1) *Elite Interior Contracting Corp. v Michilli, Inc.*, et al. (Index No. 657509/2019); (2) *Apollo Electric NYG, Inc. v Michilli, Inc.*, et al., (Index No. 152524/2020); (3) *Eclipse Contracting Corp. v Michilli, Inc.*, et al., (Index No. 153508/2020); (4) *LPA Lighting Partners America, Inc. v Michilli, Inc.*, et al., (Index No 652710/2020); and (5) *BP Mechanical Corp. v Michilli, Inc.*, et al., (Index No. 653338/2020). Each case is currently being litigated in the Supreme Court, and no defendant disputes this court's jurisdictional authority to consolidate these cases for this limited purpose. Only Fujitec America, Inc.—one of Michilli's subcontractors—opposes consolidation (on other grounds). The motion is granted.

Michilli additionally seeks an order to stay the pending action until it and Aquavit complete the arbitration mandated by their original contract. The arbitration hearing is scheduled for May 3, 2021. Only BRE Park Avenue Tower Owner (BRE), which owns the premise where Aquavit's restaurant is located, and Fujitec oppose the stay. That motion is also granted.

Fujitec cross-moves to sever its claims from the related actions should this court grant the above motions. Fujitec's motion is denied.

Discussion

Where separate cases have common questions of law and fact, courts prefer to join cases to ease discovery and trial burdens on both the court system and the various litigating parties. (*E.g. Lema v 1148 Corp.*, 176 AD3d 653, 654 [1st Dept 2019].) Consolidation for this purpose promotes the efficient use of judicial resources and minimizes the risk of various courts imposing conflicting orders on the parties. In complex contractual litigation involving numerous parties, the burdens and risks are particularly acute. Managing a large web of interdependent relationships among the parties often requires a court to join related actions. (*Metropolitan Steel Indus., Inc. v Perini Corp.*, 2004 NY Slip Op 51698[U] at *10 [Sup Ct, NY County Jun. 14, 2004].) An opposing party, then, must show that joint discovery and trial will prejudice a substantial right. (*Lima*, 176 AD3d at 654.)

This action and the five related ones all involve common issues of facts and law to merit joining for discovery and trial. Michilli demonstrates that it hired the subcontracting defendants, which contributed labor, services, or materials to the construction project. Michilli's agreements with the subcontractors permit Michilli to pursue legal remedies against Aquavit before becoming liable to the subcontractors for their work. (NYSCEF No. 83.) Consequently, all parties are seeking payment from a common source of funds—Aquavit. Aquavit's allegation of general performance-related issues with the construction work raises additional commonalities among the actions. Michilli's affidavit makes clear that the parties' claims are inextricably linked such that this court may consolidate for discovery and trial. (*See Metropolitan Steel Indus.*, NY Slip Op 51698[U] at *10.)

¹ Three other defendants have been included as necessary parties.

A joint discovery and trial proceeding also protects the various parties' rights in work performed for Aquavit. Michilli and other subcontractors have placed liens, some overlapping, on Aquavit's renovated property. Were this court to deny Michilli's motion and allows each foreclosure action to proceed separately, one party—the first to obtain a favorable judgment on its lien—may vindicate its rights but at the expense of other parties and their potential remedies. Joining these cases ensures that each party has a fair opportunity to prosecute its case by preventing parties from racing to obtain a judgment.

One defendant—Fujitec—opposes this motion, arguing that it will be prejudiced because joint discovery and trial will delay its ability to litigate its case. Yet Fujitec does not allege that a *substantial* right will be prejudiced. (*See Lima*, 176 AD3d at 654.) A delay is not a sufficient basis to deny this motion. (*See Plot Realty LLC v DaSilva*, 45 AD3d 312, 313 [1st Dept 2007].)

As to Michilli's motion to stay the action pending the outcome of arbitration, CPLR 2201 provides this court with broad discretion, unless otherwise prescribed by law, to grant stays "upon such terms as may be just." A court may stay an action to avoid the risk of inconsistent adjudications and potential waste of judicial resources. (*CMBSW Groups, LLC v Inverness Counsel, LLC*, 2020 NY Slip Op 32525[U] at *4 [Sup Ct, NY County July 31 2020].) Stays of actions are appropriate where an arbitration proceeding could dispose of or limit the issues to be resolved in the pending litigation. (*See Oxbow Calcining USA Inc. v American Indus. Partners*, 96 AD3d 646, 652 [1st Dept 2012].) Contrary to both Fujitec and BRE's position, a court may grant a stay even where the arbitration lacks the total identity of parties. (*See Uptown Healthcare Mgmt., Inc. v Rivkin Raddler LLP*, 116 AD3d 631 [1st Dept 2014].) All that is required is overlapping issues of fact and law in the related actions. (*See Belopolsky v Renew Data Corp.*, 41 AD3d 322, 322 [1st Dept 2007].)

Here, in addition to demonstrating overlapping factual and legal issues, Michilli establishes that the arbitration required by Michilli's and Aquavit's original contract may resolve many of the overlapping issues involved in downstream subcontractors' claims. For example, if the arbitrator determines that Aquavit owes Michilli the entire balance due, that may completely resolve whether Michilli owes the subcontractors. The proceeding would also then resolve the status of Michilli's and the subcontractor's liens on Aquavit and BRE property. Alternatively, if the arbitrator were to find particular aspects of the construction project deficient, certain contractors may be liable while others would be entitled to payment.

BRE and Fujitec, the only parties to oppose the stay, argue that their claims would be prejudiced if this court granted the stay. They maintain that prejudice arises from delaying their ability to either remove (in BRE's case) or foreclose (in Fujitec's case) the liens. However, the benefits of preventing inconsistent judgments and advancing the efficient use of judicial resources outweigh the minimal delay the stay entails.

Fujitec's cross-motion to sever is denied for these same reasons. Fujitec argues that its claims are independent of Michilli's because it had a separate construction contract with Aquavit. Yet despite the absence of a contractual connection with Michilli, Fujitec's claims are still interdependent. Fujitec seeks to foreclose on its mechanic's lien and for a declaratory judgment that the lien takes priority over other parties' liens. (NYSCEF No. 91.) If allowed to

proceed on its own, Fujitec could stymie the other parties' ability to prosecute their claims. Additionally, Aquavit has alleged performance issues with various subcontractors as the reason for not paying Michilli—performance issues that involve common facts to all the related cases, including Fujitec.

Accordingly, it is hereby

ORDERED that Michilli's motion to consolidate the five related actions with this action for the purpose of joint discovery and trial is granted, and it is further,

ORDERED that plaintiffs in the related cases shall file an RJI and indicate this case as a related matter and upon such filing the General Clerk shall assign those cases to this part, and it is further

ORDERED that Michilli's motion to stay pending the outcome of the arbitration is granted, and this case and the related cases shall be stayed, and it is further,

ORDERED that Fujitec's cross motion to sever is denied.

03/29/2021
DATE


HON. GERALD LEBOVITZ
J.S.C.

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