

CBIZ, Inc. v Grubhub, Inc.

2021 NY Slip Op 31387(U)

April 23, 2021

Supreme Court, New York County

Docket Number: 651472/2019

Judge: Erika M. Edwards

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ERIKA M. EDWARDS

PART 11

Justice

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CBIZ, INC. and HARTFORD UNDERWRITERS
INSURANCE COMPANY, a/s/o CBIZ, INC.,

Plaintiffs,

- v -

GRUBHUB, INC. and AMERICON CONSTRUCTION, INC.,

Defendants.

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GRUBHUB, INC.,

Third-Party-Plaintiff,

-against-

AMERICON CONSTRUCTION INC.,

Third-Party Defendant.

-----X

AMERICON CONSTRUCTION INC.,

Second Third-Party Plaintiff,

-against-

PAR PLUMBING CO., INC., SOVEREIGN MECHANICAL
CORP. and ATLANTIC ENGINEERING LABORATORIES OF
NY, INC.,

Second Third-Party Defendants.

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GRUBHUB, INC.,

Third Third-Party Plaintiff,

-against-

PAR PLUMBING CO., INC., SOVEREIGN MECHANICAL
CORP. and JACOBS ENGINEERING GROUP, INC.,

Third Third-Party Defendants.

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INDEX NO. 651472/2019

MOTION DATE 06/4/2020

MOTION SEQ. NO. 001

**AMENDED DECISION + ORDER
ON MOTION**

Third-Party
Index No. 595412/2019

Second Third-Party
Index No. 595873/2019

The following e-filed documents, listed by NYSCEF document number (Motion 001) 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79

were read on this motion to/for

CONSOLIDATE/JOIN FOR TRIAL

Upon the foregoing documents, the court grants Defendant/Third-Party Plaintiff/Third Third-Party Plaintiff Grubhub, Inc.'s ("Grubhub") motion to consolidate this matter ("Action 1") for discovery and trial with two other related actions filed in this court under Index Numbers 154858/2019 ("Action 2") and 162178/2019 ("Action 3"), without opposition.

Grubhub moves to consolidate this action with Action 2, *The TJX Companies, Inc. v. Jacob Engineering, et al.*, under Index Number 154858/2019, and Action 3, *Lexington Insurance Company, et al. v. Americon Construction, Inc.*, under Index Number 162178/2019, pursuant to CPLR 602, for purposes of joint discovery and trial. Grubhub argues in substance that these matters should be consolidated as they all involve claims for damages allegedly caused by a fire sprinkler pipe that burst on March 5, 2015, at a building located at 1065 Avenue of the Americas a/k/a 5 Bryant Park, New York, New York.

To date, there has been no opposition to this motion.

The court finds that Grubhub demonstrated that consolidation of this matter for discovery and trial with the other two actions, currently pending in this court is warranted, pursuant to CPLR 602(a), as all three matters involve common questions of law and fact and consolidation would enhance judicial economy and unnecessary expense to many of the parties. Therefore, the court grants consolidation of these matters.

As such, it is hereby

ORDERED that the court grants Defendant/Third-Party Plaintiff/Third Third-Party Plaintiff Grubhub, Inc.'s motion to consolidate this matter ("Action 1") for discovery and trial with the following two cases: *The TJX Companies, Inc. v. Jacob Engineering, et al.*, under Index

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THE TJX COMPANIES, INC.,

Third Third-Party Plaintiff,

-against-

JACOBS ENGINEERING GROUP, INC.,
ABCO-PEERLESS SPRINKLER CORPORATION,
GRUBHUB, INC., JOHN DOES 1-10 and ABC
COMPANIES 1-10 (fictitious entities),

Third Third-Party Defendants.

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LEXINGTON INSURANCE COMPANY, XL
INSURANCE AMERICA, INC., INTERSTATE
FIRE AND CASUALTY COMPANY, AXIS
SURPLUS INSURANCE COMPANY, LIBERTY
MUTUAL INSURANCE, NATIONAL FIRE AND
MARINE INSURANCE COMPANY, TOKIO MARINE
HCC, CERTAIN INTERESTED UNDERWRITERS
AT LLOYD'S LONDON SUBSCRIBING TO
POLICY NO. PG1600382, ACE AMERICAN
INSURANCE COMPANY, CHUBB CUSTOM
INSURANCE COMPANY, GENERAL SECURITY
INDEMNITY COMPANY OF ARIZONA,
and WESTPORT INSURANCE CORPORATION
a/s/o BLACKSTONE REAL ESTATE ADVISORS,

Fourth Third-Party Plaintiffs,

-against-

AMERICON CONSTRUCTION, INC., PAR
PLUMBING COMPANY, INC., SOVEREIGN
MECHANICAL CORP., and ATLANTIC
ENGINEERING LABORATORIES OF NY INC.,

Fourth Third-Party Defendants.

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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 entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the Court (60 Centre Street, Room 141 B), who shall consolidate the documents in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that counsel for the movant shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed; and it is further

ORDERED that service of this order upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents being consolidated in the consolidated case file under the index number of the consolidated action in the New York State Courts Electronic Filing System or make appropriate notations of such documents in the e-filing records of the court so as to ensure access to the documents in the consolidated action; and it is further

ORDERED that, within thirty (30) days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is hereby directed to reflect the consolidation by appropriately marking the court's records; and it is further

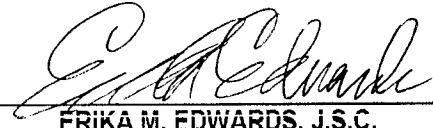
ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the aforesaid *Protocol*; and it is further

ORDERED that counsel are directed to appear for a status conference on May 20, 2021, at 11:00 a.m. via Microsoft Teams (link will be provided).

This constitutes the decision and order of the court.

4/23/2021

DATE



ERIKA M. EDWARDS, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: