

**Stolarik v City of New York**

2021 NY Slip Op 31529(U)

May 5, 2021

Supreme Court, New York County

Docket Number: 150970/2019

Judge: J. Mabelle Sweeting

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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. J. MACHELLE SWEETING PART IAS MOTION 62
Justice
INDEX NO. 150970/2019
ROBERT STOLARIK, MOTION DATE 06/12/2020, 03/08/2021
Plaintiff, MOTION SEQ. NO. 002 003
-v-

THE CITY OF NEW YORK, CONSOLIDATED EDISON
COMPANY OF NEW YORK, INC., CABLEVISION
SYSTEMS NEW YORK CITY CORPORATION, E.E. CRUZ
& COMPANY, INC., CROWN CASTLE NG EAST
LLC, CARLO LIZZA & SONS PAVING, INC., WELSBACH
ELECTRIC CORP., PINNACLE INDUSTRIES II,
LLC, LIGHTOWER FIBER NETWORKS I, LLC, CITYWIDE
PAVING INCORPORATED,

DECISION + ORDER ON
MOTION

Defendant.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
Plaintiff,

Third-Party
Index No. 595813/2019

-against-

CITYWIDE PAVING INC.

Defendant.

E.E. CRUZ & COMPANY, INC.

Second Third-Party
Index No. 595527/2020

Plaintiff,

-against-

CARULLO CONSTRUCTION CORP.

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 156, 157, 158

were read on this motion to/for JUDGMENT - DEFAULT

The following e-filed documents, listed by NYSCEF document number (Motion 003) 140, 141, 142, 143, 144, 145, 146, 147, 149, 150, 151, 152, 153, 154, 155

were read on this motion to/for

STRIKE CASE FROM CALENDAR

Pending before the court are two motion sequences: Motion #002 filed by the plaintiff Robert Stolarik seeking an order pursuant to CPLR § 3215 directing the entry of default judgment against defendant CARLO LIZZA & SONS PAVING, INC. Motion #003 filed by defendant WELSBACH ELECTRIC CORP. (“Welsbach”) seeking an order pursuant to CPLR §3124, compelling plaintiff to appear for a deposition on a date certain, and scheduling all other remaining depositions. Also pending under sequence #003 is a cross-motion filed by plaintiff seeking an order: (i) pursuant to CPLR §602(a) to consolidate the above-captioned actions pending under Index Nos. 150970/19; 595813/19 and 595527/20 (collectively “Action # 1”) with the action captioned ROBERT STOLARIK v. CARULLO CONSTRUCTION CORP. pending in the Supreme Court, New York County under Index No. 150601/21 (“Action # 2”); (ii) an order denying that branch of the motion by defendant WELSBACH ELECTRIC CORP. seeking to compel the plaintiff to appear for deposition; (iii) a post-consolidation order setting dates for all parties herein to appear for deposition and complete all outstanding discovery.

Motion #002 by plaintiff

This motion was GRANTED pursuant to the Default Judgment dated May 4, 2021.

Motion #003 by Welsbach

Pursuant to Part 62 rules currently in place,<sup>1</sup> no discovery motions shall be filed without first conferencing the matter with the Court. Here, there is no indication that the movant made any attempt to seek a conference on these issues. Accordingly, this motion is DENIED as improperly filed.

Counsel shall exercise good faith in seeking to resolve any outstanding discovery issues prior to filing any discovery motions. In the absence of a resolution, counsel may request a conference with the court by following instructions at: <https://www.nycourts.gov/legacypdfs/courts/1jd/supctmanh/PDF/Remote-Conference-Protocol.pdf>.

Further, pursuant to Administrative Order 270/2020 from Chief Administrative Judge Marks, the Uniform Civil Rules for the Supreme Court and the County Court are amended as of February 1, 2021 by, *inter alia*, adding a new section as follows:

202.23 Consultation prior to Preliminary and Compliance Conference

Counsel for all parties shall consult prior to a preliminary or compliance conference about (i) resolution of the case, in whole or in part; (ii) discovery, including discovery of electronically stored information, and any other issues to be discussed at the conference; (iii) the use of alternate dispute resolution to resolve all or some issues in the litigation; and (iv) any voluntary and informal exchange of information that the parties agree would help aid early settlement of the case. Counsel shall make a good faith effort to reach agreement on these matters in advance of the conference.

Accordingly, the party requesting the conference must explain, with particularity, its good faith efforts and why court intervention is needed.

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<sup>1</sup> The undersigned took over Part 62 in September 2020 in the midst of the Covid-19 pandemic. The Part Rules, which remain in place, as a courtesy to counsel and all parties, can be found at: <https://www.nycourts.gov/legacypdfs/courts/1jd/supctmanh/Rules/part62-rules.pdf>.

Cross-motion filed by plaintiff

Between April 13, 2021 and April 29, 2021, counsel for each defendant informed the court in writing that their respective client(s) did not oppose said consolidation.

Accordingly, IT IS HEREBY ORDERED that the motion is GRANTED, without opposition, and the above-captioned action shall be consolidated for joint trial and discovery with court index #150601/21 (ROBERT STOLARIK v. CARULLO CONSTRUCTION CORP.); and

IT S FURTHER HEREBY ORDERED that the Clerk of the Court is directed to amend the caption to reflect the substitution of the parties and consolidation as follows:

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

\_\_\_\_\_X  
**ROBERT STOLARIK,**

*Plaintiff,*

*-against-*

*Index No.:*  
**150970/19**

**THE CITY OF NEW YORK, CONSOLIDATED  
EDISON COMPANY OF NEW YORK, INC.,  
CABLEVISION SYSTEMS NEW YORK CITY  
CORPORATION, E.E. CRUZ & COMPANY, INC.,  
CROWN CASTLE NG EAST LLC, CARLO LIZZA  
& SONS PAVING, INC., WELSBACH ELECTRIC  
CORP., PINNACLE INDUSTRIES II, LLC,  
LIGHTOWER FIBER NETWORKS I, LLC,  
CITYWIDE PAVING, INCORPORATED and  
CARULLO CONSTRUCTION CORP.,**

*Law Dept. #:*  
**2017-073252**

*Defendants,*

\_\_\_\_\_X  
**CONSOLIDATED EDISON COMPANY  
OF NEW YORK, INC.,**

*Index No.:*  
**595813/19**

*Third-Party Plaintiff,*

*-against-*

**CITIWIDE PAVING, INC.,**

*Third-Party Defendant,*

\_\_\_\_\_X  
**E.E. CRUZ & COMPANY, INC.,**

*Index No.:*  
**595527/20**

*Second Third-Party Plaintiffs,*

*-against-*

**CARULLO CONSTRUCTION CORP.,**


*Second Third-Party Defendant.*

150970/  
Motion I

and;

IT IS FURTHER HEREBY ORDERED that the plaintiff shall serve a copy of this Order with Notice of Entry by regular mail on all parties and the persons entitled to notice.

This constitutes the decision and order of the court.

<u>5/5/2021</u> DATE					 J. MACHELLE SWEETING, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" 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