

**Centennial El. Indus., Inc. v 817 Broadway Owner,
LLC**

2022 NY Slip Op 30469(U)

February 10, 2022

Supreme Court, New York County

Docket Number: Index No. 656517/2020

Judge: Louis L. Nock

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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. LOUIS L. NOCK PART 38M

Justice

-----X

CENTENNIAL ELEVATOR INDUSTRIES, INC.,

Plaintiff,

- v -

817 BROADWAY OWNER, LLC, TACONIC INVESTMENT PARTNERS, LLC, TACONIC MANAGEMENT COMPANY, LLC, TACONIC NEW YORK MANAGEMENT, LLC, TACONIC NEW YORK DEVELOPMENT, LLC, JRM CONSTRUCTION MANAGEMENT, LLC, MWCLF PHBC, SPE, LLC, and VIGILANT INSURANCE COMPANY,

Defendants.

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INDEX NO. 656517/2020

MOTION DATE 09/10/2021,
09/10/2021

MOTION SEQ. NO. 001 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, and 49

were read on this motion to DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, and 49

were read on this motion to STAY.

LOUIS L. NOCK, J.

In this action commenced by a construction subcontractor, Centennial Elevators Industries, Inc. (“Centennial”), to foreclose its mechanic’s lien filed against real property located at 817 Broadway in Manhattan in the amount of \$644,579.07: defendants 817 Broadway Owner, LLC; Taconic Investment Partners, LLC; Taconic Management Company, LLC; Taconic New York Management, LLC; and MWCLF PHBC, SPE, LLC (collectively, the “Owner Defendants”), move to dismiss the action as to them, and defendant JRM Construction Management, LLC (“JRM”), joins in the motion to the extent of seeking a stay of the balance of the action pending mediation ordered by this court in a related action titled *Centennial Elevator*

Industries, Inc. v JRM Construction Management, LLC (index No. 652810/2020 [Sup Ct NY County] [Nock, J.]) (the “Related Action”).

For the reasons set forth below, the motion is granted in its entirety.

Background

Facts related to this matter are summarized in this court’s decision and order in the Related Action, dated August 11, 2021 (the “Related Action Order” [NYSCEF Doc. No. 28 in the Related Action]), and familiarity therewith will be assumed. The Related Action Order dismissed the Related Action in favor of mediation pursuant to an express dispute resolution provision agreed to by Centennial, as subcontractor, and JRM, as general contractor, in connection with a construction project located at 817 Broadway in Manhattan (the “Property”).

The complaint in this action identifies the Owner Defendants as owners of the Property, save for defendant MWCLF PHBC, SPE, LLC, which is identified as a mortgagee of the Property (*see*, Complaint [NYSCEF Doc. No. 1 ¶¶ 7, 11]).

Centennial filed a mechanic’s lien against the Property with the New York County Clerk’s Office in an amount of \$644,579.07 (the “Mechanic’s Lien”). JRM, as principal, bonded the Mechanic’s Lien through defendant Vigilant Insurance Company (“Vigilant”), as surety (*see*, NYSCEF Doc. No. 5). This action, filed after the Related Action, seeks foreclosure of the now-bonded Mechanic’s Lien.

The Prong of the Motion Dismissing the Action as to the Owner Defendants

The Owner Defendants move to dismiss this action as to them (leaving JRM and Vigilant as the only remaining defendants) on the ground that once a bond is posted, discharging a mechanic’s lien, the only proper defendants in a mechanic’s lien foreclosure action – insofar as relevant to a case such as this, naming owner/mortgagee defendants – would be the principal on

the bond (JRM) and the surety on the bond (Vigilant). The Owner Defendants are correct (*see, Direct Embed Coating Sys., LLC v Kubik Maltbie, Inc.*, 2020 WL 5576825 [Sup Ct, NY County, Sept. 17, 2020]; *Doma Inc. v 885 Park Ave. Corp.*, 59 Misc 3d 703 [Sup Ct NY County 2018]; *Nova Bros., Inc. v James G. Kennedy & Co., Inc.*, 2016 WL 6125414 [Sup Ct, NY County, Oct. 14, 2016], *adhered to in relevant part on rearg* 2017 WL 2226364 [Sup Ct, NY County, May 17, 2017]; *Benfield Lighting Inc. v A.J.S. Project Mgt., Inc.*, 2016 WL 3000883 [Sup Ct NY County May 19, 2016]; *see also*, Lien Law § 37 [7] [“The plaintiff in such an action must, prior to the commencement thereof, file in the office of the clerk of the county where the bond is filed, the summons and complaint in such action and shall join as parties defendant, the principal and surety on the bond, the contractor, and all claimants who have filed notices of claim prior to the date of the filing of such summons and complaint.”]).

Accordingly, the motion by the Owner Defendants to dismiss this action as to them is granted, with the action severed and continued against JRM and Vigilant.

The Prong of the Motion to Stay the Action
Pending Mediation Ordered in the Related Action

This lien foreclosure action is derivative of, and directly related to, Centennial’s contract claims against JRM in the Related Action. “Except where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just” (CPLR 2201). The court has broad discretion to grant a stay in order to avoid “the risk of inconsistent adjudications, application of proof and potential waste of judicial resources” (*In re Tenenbaum*, 81 AD3d 738, 739 [2d Dept 2011]; *see also, Asher v Abbott Laboratories*, 307 AD2d 211 [1st Dept 2003] [stay is warranted where there is a substantial identity of issues, avoids duplication of effort and resources, and avoids inconsistent dispositions]). Indeed, the Related Action Order mandated mediation to go forward as between

Centennial and JRM. To allow this action to proceed between those very parties in the face of mandated mediation – a mediation those parties expressly agreed to – would be a miscarriage of the procedural mechanism of the court and an infringement on the freely contracted dispute resolution mechanism chosen by those parties.

Accordingly, the motion to stay the remainder of this action pending mediation is granted.

Conclusion

For the foregoing reasons, it is

ORDERED that the motion by the Owner Defendants to dismiss the action as to them is granted; and, accordingly, it is

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption hereof shall be amended to read:

“-----X
CENTENNIAL ELEVATOR INDUSTRIES, INC., :

Plaintiff, :

-against- :

JRM CONSTRUCTION MANAGEMENT, LLC, and :
VIGILANT INSURANCE COMPANY, :

Defendants. :
-----X”;

and it is further ORDERED that counsel for the moving parties shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office 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 the motion by JRM to stay this action is granted to the extent that, except for the immediately preceding direction to counsel for the moving parties, this action be, and hereby is, stayed pending the dispute resolution procedures directed by this court in the Related Action Order.

This will constitute the decision and order of the court.

ENTER:



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| <u>2/10/2022</u> DATE | | <u>LOUIS L. NOCK, J.S.C.</u> |
| CHECK ONE: | <input type="checkbox"/> CASE DISPOSED | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION |
| | <input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED | <input 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 |