

Hilt Constr., Inc. v New York City Sch. Constr. Auth.
2022 NY Slip Op 33116(U)
September 12, 2022
Supreme Court, New York County
Docket Number: Index No. 653868/2019
Judge: Leslie Stroth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LESLIE A. STROTH

PART

52

Justice

-----X

HILT CONSTRUCTION, INC.

INDEX NO. 653868/2019MOTION DATE 06/01/2022

Plaintiff,

MOTION SEQ. NO. 003

- v -

NEW YORK CITY SCHOOL CONSTRUCTION
AUTHORITY,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255

were read on this motion to/for

CONSOLIDATE/JOIN FOR TRIAL

Upon the foregoing cited papers, defendant New York City School Construction's motion to consolidate is granted, without opposition. Both actions concern the same construction project to repair the exterior masonry, parapets and roof of Public School 333 in Manhattan.

In this action (the first action) Hilt Construction, Inc. (Hilt), the subject project's general contractor, claims that defendant New York City School Construction Authority (SCA) has failed to pay Hilt for extra work performed and for delays encountered during construction. SCA moves to consolidate this action with *Maxum Indus. LLC v. Hilt Constr. Inc., et al.* (the second action), in which various subcontractor-lienholders and labor unions that performed work on the subject project have sued Hilt, seeking a judicial determination of the lien fund available for resolving their respective claims.

Both actions involve common questions of fact and law. The second action involves the liens of various laborers and subcontractors and a determination of the lien fund available for resolving their respective claims. The first action action will determine what funds, if any, are due

to Hilt from the SCA, and that amount will determine the pool of funds available to distribute to the lienors in the second action.

As common issues of law and fact predominate in both actions, and there is no indication that consolidation would prejudice the plaintiff, consolidation is warranted in this matter and will serve to promote judicial economy. *See* CPLR 602. Moreover, because both cases are in the discovery phase, consolidation will not result in prejudice to the substantial rights of the respective parties, nor do any of the parties oppose the instant motion.

Accordingly, it is

ORDERED that the motion is granted, and the above-captioned action is consolidated in this Court with *Maxum Indus. LLC v. Hilt Constr. Inc., et al.*, 653838/2021, pending in this Court; and it is further

ORDERED that the consolidation shall take place under Index No. 653868/2019 and the consolidated action shall bear the following caption:

X-----

HILT CONSTRUCTION, INC.,

Plaintiff,

-against-

NEW YORK CITY SCHOOL CONSTRUCTION
AUTHORITY,

Defendant.

X-----

MAXUM INDUSTRIES, LLC.,

Plaintiff,

-against-

HILT CONSTRUCTION, INC., NEW YORK CITY SCHOOL
CONSTRUCTION AUTHORITY, NORTH AMERICAN
SPECIALTY INSURANCE COMPANY, INC., ROOFERS
LOCAL UNION EIGHT COMBINED FUNDS, NEW YORK
CITY DISTRICT COUNCIL OF CARPENTERS WELFARE
FUND, PAINTING INDUSTRY INSURANCE FUND,
BRICKLAYERS FRINGE BENEFITS FUNDS,
IRONWORKERS LOCALS 43, 361, AND 417 UNION
SECURITY FUNDS, POINTERS CLEANERS AND
CAULKERS, MASON TENDERS DISTRICT COUNCIL
WELFARE FUND, ARBRIS CORP, KATCO ELECTRIC INC,
PINNACLE SECURITY PATROL, INC., FELDMAN LUMBER
-US LBM LLC, CONNOLLY AND SON CONSTRUCTION,
INC., DURANTE RENTALS, LLC, ABC Corps 1-10 and John
Does 1-10

Defendants.

X-----

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 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 hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, 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 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 hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, 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 previously scheduled status conference to be held in the DCM Part via Microsoft Teams on October 12, 2022 at 3:00 PM.

This constitutes the decision and order of the Court.

9/12/22

DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

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CASE DISPOSED

☒

GRANTED

☐

DENIED

☐

SETTLE ORDER

☐

INCLUDES TRANSFER/REASSIGN

☒

NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

OTHER

☐

REFERENCE

LESLIE STROTH, J.S.C.