

Hilt Constr., Inc. v New York City Sch. Constr. Auth.
2022 NY Slip Op 33650(U)
October 20, 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

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HILT CONSTRUCTION, INC.

Plaintiff,

- v -

NEW YORK CITY SCHOOL CONSTRUCTION
AUTHORITY,

Defendant.

-----X

INDEX NO. 653868/2019

MOTION DATE 06/01/2022

MOTION SEQ. NO. 003

**AMENDED
DECISION + ORDER ON
MOTION**

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 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 for purposes of joint trial and discovery, with *Maxum Indus. LLC v. Hilt Constr. Inc., et al.*, 653838/2021, pending in this Court; and it is further

ORDERED that the consolidated action shall bear the following caption:

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

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HILT CONSTRUCTION, INC.,

Action #1
Index No. 653868/2019

Plaintiff,

-against-

NEW YORK CITY SCHOOL CONSTRUCTION
AUTHORITY,

Defendant.

-----X

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

-----X

MAXUM INDUSTRIES, LLC.,

Action #2
Index No. 653838/2021

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.

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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/suptmanh); 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*.

This constitutes the decision and order of the Court.

10/20/22
DATE


LESLIE STROTH, 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: