

**Casa Redimix Concrete Corp. v Yaphank Bldg.
Supply Corp.**

2022 NY Slip Op 33795(U)

November 5, 2022

Supreme Court, New York County

Docket Number: Index No. 154950/2021

Judge: John J. Kelley

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. JOHN J. KELLEY PART 56M

Justice

-----X

CASA REDIMIX CONCRETE CORP.,
Plaintiff,

INDEX NO. 154950/2021

MOTION DATE 09/23/2022

MOTION SEQ. NO. 001

- v -

YAPHANK BUILDING SUPPLY CORP., FOREMOST
CONTRACTING & BUILDING, LLC, and WESTCHESTER
FIRE INSURANCE COMPANY,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28

were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

In this action to foreclose on a mechanic’s lien, nonparty InteRebar Fabricators, LLC, formerly known as JRC Opco, LLC, as successor-in-interest to Metal Partners Rebar, LLC, doing business as FGH Rebar (InteRebar), moves pursuant to CPLR 602(a) and Lien Law §43 to consolidate a related lien foreclosure action entitled *Feldman Lumber-US LBM, LLC v Dark Side III, Inc., doing business as Defalco Concrete*, pending in the Supreme Court, New York County, under Index No. 150702/2022 (Action No. 2), with the instant action (Action No. 1) to the extent of joining the two actions for discovery and trial. Nonparty Feldman Lumber-US LBM, LLC (Feldman Lumber) opposes the motion. The motion is granted.

On May 20, 2021, Casa Redimix Concrete Corp. commenced Action No. 1, seeking to foreclose a mechanic’s lien that it filed with the New York County Clerk on July 7, 2020 in the sum of \$66,598.56 to secure payment for labor, materials, and equipment that it allegedly provided in connection with real property located at 1516 Park Avenue, New York, New York 10029. On January 25, 2022, Feldman Lumber commenced Action No. 2, seeking to foreclose a mechanic’s lien that it filed with the New York County Clerk on September 24, 2021 in the sum

of \$54,908.08 to secure payment for labor, materials, and equipment that it allegedly provided in connection with the same real property. Feldman Lumber named InteRebar as one of the defendants in Action No. 2. On July 11, 2022, InteRebar commenced a third-party action in Action No. 2 against Philadelphia Indemnity Insurance Company.

“Consolidation is generally favored in the interest of judicial economy and ease of decision-making where cases present common questions of law and fact, ‘unless the party opposing the motion demonstrates that a consolidation will prejudice a substantial right’” (*Raboy v McCrory Corp.*, 210 AD2d 145 [1st Dept 1994], quoting *Amtorg Trading Corp. v Broadway & 56th St. Assoc.*, 191 AD2d 212, 213 [1st Dept 1993]). Moreover, discovery in both Action No. 1 and Action No. 2 are both at approximately the same stage, and there is no indication that joinder for discovery and trial will prejudice a substantial right of any party (*see Amcan Holdings, Inc. v Torys LLP*, 32 AD3d 337 [1st Dept 2006]). Indeed, by failing to oppose the motion, the defendants in both actions essentially concede that consolidation will not prejudice a substantial right of any defendant (*see Amcan Holdings, Inc. v Torys LLP*, 32 AD3d 337 [1st Dept 2006]; *Gadelov v Shure*, 274 AD2d 375 [2d Dept 2000]). Avoidance of confusion in litigating the two actions warrants consolidation to the extent of directing joint discovery and trial (*see Alizio v Perpignano*, 78 AD3d 1087, 1088 [2d Dept 2010]).

Moreover, Lien Law § 43 provides that “[i]f actions are brought by different lienors in a court of record, the court in which the first action was brought, may, upon its own motion, or upon the application of any party in any of such actions, consolidate all of such actions.” Accordingly, contrary to Feldman Lumber’s contention, it is of no moment that InteRebar made the instant motion in Action No.1 despite the fact that it is not a party to Action No. 1, as InteRebar is a party in a related foreclosure action commenced on the same property by a lienor different than the lienor in Action No. 1 (*see Mellen v Athens Hotel Co.*, 149 App Div 534, 535 [1st Dept 1912]; *cf. D.M.I. Painting, Inc. v. Eastern Long Is. Hosp.*, 74 AD2d 838, 839 [2d Dept 1980] [although Supreme Court had discretion to deny consolidation, it might properly grant it

upon renewal, and would be required by Lien Law § 44 in any event to join all parties to the related lien foreclosure actions in a single action]).

Inasmuch as the court is considering InteRebar’s reply papers, there is no prejudice to InteRebar by virtue of the court’s consideration of Feldman Lumber’s late opposition papers.

Accordingly, it is

ORDERED that the motion is granted, and the action entitled *Feldman Lumber-US LBM, LLC v Dark Side III, Inc., doing business as Defalco Concrete*, pending in the Supreme Court, New York County, before Justice Lynn R. Kotler under Index No. 150702/2022, shall be and hereby is consolidated with the action entitled *Casa Redimix Concrete Corp. v Yaphank Building Supply Corp.*, pending in the Supreme Court, New York County, before Justice John J. Kelley under Index No. 154950/2021, to the extent that the two actions shall be and hereby are joined for discovery and trial before Justice John J. Kelley; and it is further,

ORDERED that the two actions shall retain and be prosecuted under separate index numbers, and shall require the filing of separate notes of issue; and it is further,

ORDERED that the caption of the actions so joined before Justice John J. Kelley shall read as follows:

-----X

CASA REDIMIX CONCRETE CORP.,

Plaintiff,

Action No. 1

- v -

Index No. 154950/2021

YAPHANK BUILDING SUPPLY CORP., FOREMOST CONTRACTING & BUILDING, LLC, and WESTCHESTER FIRE INSURANCE COMPANY,

Defendants.

-----X

FELDMAN LUMBER-US LBM, LLC,

Plaintiff,

Action No. 2

-v-

Index No. 150702/2022

DARK SIDE III, INC., doing business as DEFALCO
CONCRETE, FOREMOST CONTRACTING & BUILDING,
LLC, 1516 PARK AVENUE PARTNERS, LLC, SALVATORE
BORGIA, WESTCHESTER FIRE INSURANCE COMPANY,
INTEREBAR FABRICATORS, LLC, formerly known as
JRC OPCO, LLC, successor-in-interest to METAL PARTNERS
REBAR, LLC, doing business as FGH REBAR, and JOHN DOE
"2" THROUGH JOHN DOE "10." the last nine names being
intended to be those persons who may have a lien on or
interest in the property that is the subject of this action,

Defendants

-----X

INTEREBAR FABRICATORS, LLC, formerly known as
JRC OPCO, LLC, successor-in-interest to METAL
PARTNERS REBAR, LLC, doing business as FGH REBAR,

Third-party plaintiff,

-v-

PHILADELPHIA INDEMNITY INSURANCE COMPANY,

Third-party defendant.

-----X

and it is further,

ORDERED that, on the court's own motion, within 15 days of the entry of this order,
InteRebar Fabricators, LLC, formerly known as JRC Opco, LLC, as successor-in-interest to
Metal Partners Rebar, LLC, doing business as FGH Rebar, shall serve a copy of this order with
notice of entry upon the Trial Support Office (60 Centre Street, Room 148, New York, NY
10007), and shall separately file and upload the notice required by CPLR 8019(c) and a
completed Form EF-22, and the Trial Support Office shall thereupon amend the court records to
reflect the joinder of the two actions for discovery and trial and the reassignment of the action
pending under Index No. 150702/2022 from Justice Lynn R. Kotler, IAS Part 8, to Justice John
J. Kelley, IAS Part 56.

This constitutes the Decision and Order of the court.

11/5/2022
DATE



JOHN J. DELLEY, 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: