

**US Concrete, Inc.-NYC Div. v Rinaldi Group, LLC**

2023 NY Slip Op 30296(U)

January 30, 2023

Supreme Court, New York County

Docket Number: Index No. 156191/2020

Judge: David B. Cohen

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. DAVID B. COHEN PART 58**

*Justice*

-----X

US CONCRETE, INC.-NYC DIVISION, THROUGH ITS  
WHOLY OWNED SUBSIDIARY, USC-KINGS, LLC,

Plaintiff,

INDEX NO. 156191/2020

MOTION DATE 05/18/2022

MOTION SEQ. NO. 001

- v -

THE RINALDI GROUP, LLC, QBE INSURANCE  
CORPORATION,

Defendants.

**DECISION + ORDER ON  
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45

were read on this motion to/for DISMISSAL.

In this mechanic’s lien proceeding, defendants The Rinaldi Group, LLC and QBE Insurance Corporation move pursuant to CPLR 1003 for an order dismissing the complaint. Plaintiff opposes and, by notice of cross motion, moves pursuant to CPLR 602(a) for an order granting consolidation of the instant action with another pending in this court. Movants oppose the cross motion.

**BACKGROUND**

Plaintiff alleges that it supplied concrete to a hotel development project at 122 Water Street in Manhattan, and is owed \$135,348.86. It contends that the owner of the property hired The Rinaldi Group, LLC as the general contractor. Rinaldi allegedly subcontracted out a portion of the project to Castle Industries, Inc., which in turn sub-sub-contracted out concrete supply to plaintiff (NYSCEF 1).

Plaintiff filed a mechanic's lien against the property, and defendant QBE Insurance Company discharged the lien by filing a bond in the amount of \$148,883.75 or 110% of the amount claimed, thereby removing any cloud on title to the underlying property. Plaintiff then filed this suit against Rinaldi and QBE, seeking to be paid under the bond (NYSCEF 1-3).

Defendants answered, denying liability and alleging various affirmative defenses, including that the lien was willfully exaggerated and therefore void under Section 39 of the Lien Law. Rinaldi in turn filed a third-party complaint against County-Wide Construction Corp., alleging that it was the construction manager on the project, and that plaintiff "was a subcontractor, lower tier contractor, or supplier of County-Wide at the Project" (NYSCEF 6, 11).

County-Wide answered, denying liability, and asserted its own third-party complaint against Carben Industries, Inc. and its principal (NYSCEF 18, 20).

It appears that several other liens were filed against the property related to the project at issue. Carben has the largest lien, for \$1,535,755.17, and it commenced its own foreclosure action in this court. The five other liens range from approximately \$5,000 to \$50,000, and one of them was filed by Engineered Devices, which commenced its own foreclosure action against Rinaldi and QBE in this Court. It does not appear that any lienors other than plaintiff, Carben, and Engineered Devices, have filed an action to enforce their liens (NYSCEF 32). From the pleadings filed in the Carben and Engineered Devices actions, QBE issued separate bonds for all of the mechanics' liens filed on the property, thereby discharging them.

### **MOTION TO DISMISS AND CROSS MOTION TO CONSOLIDATE**

Defendants move to dismiss, arguing that additional lienholders against the property arising out of the same project are necessary parties, and the failure to join them here is fatal to the proceeding. They rely on section 44 of the Lien Law, which provides that:

"[i]n an action in a court of record to enforce a lien against real property...the following are necessary parties defendant: (1) All lienors having liens notices of which have been filed against the same real property.... (4) All persons appearing by the records in the office of the county clerk or register to be owners of such real property or any part thereof."

Plaintiff opposes the motion solely to the extent of cross-moving for consolidation of this proceeding with the already-filed Engineered Devices action or, if consolidation is denied, for leave to amend its complaint to add the other lienholders to this action.

To the extent that the other lienholders are necessary parties (*see Harlem Plumbing Supply Co., Inc. v Handelsman*, 40 AD2d 768 [1st Dept 1972] [finding that property owner was necessary party in action to foreclose mechanic's lien even though lien was discharged by deposit]; *but compare M. Gold & Son v A.J. Eckert, Inc.*, 246 AD2d 746 [3d Dept 1998] [owners of real property not necessary parties as bond filed to discharge lien]; *Bryant Equip. Corp. v A-1 Moore Contr. Corp.*, 51 AD2d 792, 793 [2d Dept 1976] [once bond filed to discharge lien, mortgagee was no longer necessary party as "there is no longer in existence an action to enforce a lien against real property. The bond has replaced the real property as the security to be attached and attacked."]; *Doma Inc. v 885 Park Ave. Corp.*, 59 Misc3d 703 [Sup Ct, New York County 2018] [same]), plaintiff's application to consolidate this action with the Engineered Devices foreclosure action would not result in the addition of all of the necessary parties, as it does not account for Carben's pending foreclosure action or the other lienholders who have not commenced their own actions.

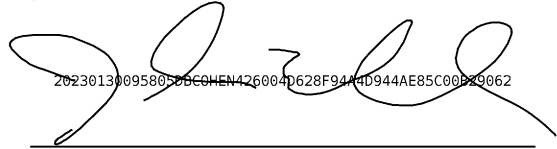
However, as plaintiff alternatively seeks leave to amend its complaint to add all necessary parties, the motion is meritorious (*see e.g., Plumbing Supply Co., Inc.*, 40 AD2d at 768).

Accordingly, it is hereby:

ORDERED, that defendants' motion to dismiss for failure to join necessary parties is denied; and it is further

ORDERED, that plaintiff's cross motion to consolidate is denied, but plaintiff is granted leave to amend its complaint to add all necessary parties; and it is further

ORDERED, that plaintiff file and serve its amended complaint within 30 days of the date of this order, and upon its failure to do so, defendants may renew their motion to dismiss.



2023013009580500COHEN426004D628F94A4D944AE85C00B29062

1/30/2023

DATE

DAVID B. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE