

Hernandez v 225 5th Ave. (NY), LLC

2023 NY Slip Op 32988(U)

August 28, 2023

Supreme Court, New York County

Docket Number: Index No. 155211/2021

Judge: Frank P. Nervo

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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. FRANK P. NERVO PART 04

Justice

-----X

RIGOBERTO HERNANDEZ,

Plaintiff,

INDEX NO. 155211/2021

MOTION DATE 01/18/2023

MOTION SEQ. NO. 005

- v -

225 5TH AVENUE (NY), LLC, 225 CONDOMINIUM, THE
UNIT OWNERS OF 225 CONDOMINIUM FIRST SERVICE
RESIDENTIAL, CIM GROUP LLC, COLLIERS PROJECT
LEADERS USA NE, LLC, QUEST BUILDERS GROUP,
INC., AND EVEREST SCAFFOLDING,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

QUEST BUILDERS GROUP, INC.

Plaintiff,

Third-Party
Index No. 596110/2021

-against-

RJB CONTRACTING CARTING CORP. DOING BUSINESS
AS ARMTECK CONSTRUCTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 005) 100, 101, 102, 103,
104, 105, 106, 107

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

This matter was recently transferred to Part IV.

Plaintiff seeks an order consolidating a subsequent matter, Index No.
158581/2022, with this matter, under Index No. 155211/2021. The motion is
wholly unopposed.

Consolidation rests within the discretion of the Court and is appropriate where two actions involve “a common question of law or fact” (CPLR § 602[a]); the burden is on a party resisting consolidation to show that consolidation would be prejudicial. (*Vigo S. S. Corp. v. Marship Cop.*, 26 NY2d 157 [1970]). Courts are inclined to award consolidation where it promotes efficiency and judicial economy. (*Amcan Holdings, Inc. v. Torys LLP*, 32 AD3d 337 [1st Dept 2006]). Where consolidation would be inappropriate due to a party’s role as both a plaintiff and defendant in the proposed consolidated action, but the claims underlying the actions arise from the same facts or occurrence, joint trial is appropriate (*Bass v. France*, 70 AD2d 849 [1st Dept 1979]).

Here, the two matters involve common questions of law and fact. Indeed, the two actions arise out of the same incident. Judicial economy is not best served by the actions proceeding separately. No party has appeared in opposition to this application.

Accordingly, it is

ORDERED that the motion is granted and the above-captioned action is consolidated in this Court with *Hernandez v. The 225 Fifth Avenue*

Condominium et al, Index No. 158581/2022, pending in this Court; and it is further

ORDERED that the consolidation shall take place under Index No. 155211/2021 and the consolidated action shall bear the following caption:

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

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RIGOBERTO HERNANDEZ,

Plaintiff,

-against-

225 5TH AVENUE (NY), LLC, 225 CONDOMINIUM,
THE UNIT OWNERS OF 225 CONDOMINIUM
FIRST SERVICE RESIDENTIAL, CIM GROUP LLC,
COLLIERS PROJECT LEADERS USA NE, LLC,
QUEST BUILDERS GROUP, INC, EVEREST
SCAFFOLDING, THE 225 FIFTH AVENUE
CONDOMINIUM, DENNIS TRUNFIO, and
SEWOD CONTRACTION INC,

Defendants.

-----X
QUEST BUILDERS GROUP, INC.

Third-Party Plaintiff,

-against-

RJB CONTRACTING CARTING CORP. D/B/A

ARMTECK CONSTRUCTION

Third-Party Defendant.

-----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, 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); 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, 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 for the parties shall familiarize themselves with the Part IV Rules confer regarding outstanding discovery; and it is further

ORDERED that to the extent agreement can be reached on outstanding discovery, counsel shall file (via NYSCEF with courtesy copy to chambers in accordance with the Part Rules) a single joint proposed discovery order within 60 days of this order; and it is further

ORDERED that to the extent agreement cannot be reached on all outstanding discovery, contemporaneously with the proposed discovery order above, counsel shall file (via NYSCEF with courtesy copy to chambers in accordance with the Part Rules) a single joint letter to judge, in accordance with the Part Rules, advising of the dispute and providing the parties' respective positions and objections; and it is further

ORDERED that the Court will consider only a complying single joint proposed order, and if necessary joint letter, from counsel and will not consider competing individual discovery letters; and it is further

ORDERED that the failure to timely file a single joint proposed order, and if necessary joint letter, in compliance with the aforementioned directives may constitute waiver of outstanding discovery, and counsel are reminded of the Part Rules, available on the Court’s website or in Courtroom 327 at 80 Centre Street.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT

8/28/2023
DATE


HON. FRANK P. NERVO

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART
 SUBMIT ORDER

J.S.C.
 OTHER

APPLICATION:

SETTLE ORDER
 INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE

CHECK IF APPROPRIATE: