

Trincity Elec. Inc. v 244 E. 52 Owner LLC

2024 NY Slip Op 32112(U)

June 20, 2024

Supreme Court, New York County

Docket Number: Index No. 650597/2023

Judge: Nicholas W. Moyne

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. NICHOLAS W. MOYNE PART 41M

Justice

-----X

TRINCITY ELECTRIC INC.,
Plaintiff,

- v -

244 E 52 OWNER LLC, DCG NEW YORK INC., ATLANTIC
SPECIALTY INSURANCE COMPANY

Defendant.

-----X

INDEX NO. 650597/2023
MOTION DATE 08/11/2023
MOTION SEQ. NO. 002

DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29,
30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40

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

Upon the foregoing documents, it is

Defendants 244 E 52 Owner LLC and Atlantic Specialty Insurance Company
("Atlantic") move, pursuant to CPLR § 602(a) and Lien Law § 44, to consolidate the
instant action with the actions entitled: (i) DCG New York Inc. v. 244 E 52 Owner LLC,
et al., Supreme Court of the State of New York, New York County, Index No.
650731/2023; (ii) U.S. Concrete, Inc. v. All State 12 General Contracting Corp., et al.,
New York Supreme Court, New York County, Index No. 850066/2023; and (iii) Tri-State
Lumber Ltd. v. 244 E 52 Owner LLC, et al., Supreme Court of the State of New York,
Kings County, Index No. 507731/2023 (the Tri-State Action), under the index number for
the instant action. There is no opposition to the motion.

Each of these actions involves a construction project for a condominium building
(the "project") located at 244-246 East 52nd Street, New York, New York (the
"premises" or "building"). Each of the actions contain a cause of action seeking to
foreclose on a mechanic's lien on the building. Therefore, pursuant to Lien Law § 44, all
of the parties with liens on the property are necessary parties. Accordingly, it is hereby

ORDERED that the motion is granted and the actions DCG New York Inc. v. 244
E 52 Owner LLC, et al., Index No. 650731/2023, and U.S. Concrete, Inc. v. All State 12
General Contracting Corp., et al., Index No. 850066/2023, pending in this Court; and
Tri-State Lumber Ltd. v. 244 E 52 Owner LLC, et al., Index No. 507731/2023 pending
in the Supreme Court, Kings County, shall be consolidated in this Court with Trincity
Electric Inc. v. 244 E 52 Owner LLC, et. al., Index No. 650597/2023, New York County;
and it is further

TRANSFER - REASSIGN

ORDERED that the consolidation shall take place under New York County Index No. 650597/2023 and the consolidated action shall bear the following caption:

-----X
TRINCITY ELECTRIC INC.,

Plaintiff,

-against-

244 E 52 OWNER LLC, DCG NEW YORK
INC., ATLANTIC SPECIALTY INSURANCE
COMPANY

Defendants.

-----X
DCG NEW YORK INC.,

Plaintiff,

-against-

244 E 52 OWNER LLC, TRI STATE LUMBER, U.S.
CONCRETE INC., ALL STATE 12 GENERAL
CONTRACTING CORP., TRINITY ELECTRIC INC.,
BANK HAPOALIM B.M., ATLANTIC SPECIALTY
INSURANCE COMPANY, and John Doe Nos. 1-5, the
name John Doe being fictitious, the true names of the
defendants being unknown,

Defendants.

-----X
DIAMANT HYSENHA,

Additional Defendant
on Counterclaim.

-----X
U.S. CONCRETE, INC., through its wholly owned
subsidiary, USC-NYCON, LLC, a/k/a USC ATLANTIC,

Plaintiff,

-against-

ALL STATE 12 GENERAL CONTRACTING CORP.,
ROSALIO ROJO, 244 E 52 OWNER LLC, ATLANTIC
SPECIALTY INSURANCE COMPANY, NEW YORK
CITY DEPARTMENT OF FINANCE, NEW YORK
STATE DEPARTMENT OF TAXATION AND
FINANCE, DCG NEW YORK INC., TRI-STATE
LUMBER LTD, and "JOHN DOES 1-100" names being
fictitious, parties intended being possible tenants or

TRANSFER - REASSIGN

occupants of premises, and corporations, other entities or persons who claim, or may claim, a lien against the premises,

Defendants.

-----X
TRI-STATE LUMBER LTD,

Plaintiff,

-against-

244 E 52 OWNER LLC, DCG NEW YORK INC., DIAMANT HYSENAJ, ATLANTIC SPECIALTY INSURANCE COMPANY, "JOHN DOE" and "JANE DOE" 1-10, the names being fictitious as their true names are unknown and are intended to be the owners, officers, directors, shareholders and/or members of defendants, 244 E 52 OWNER LLC and/or DCG NEW YORK INC., whose names are currently unknown to Plaintiffs but will be discovered during the course of Discovery in this action,

Defendants.

-----X

And it is further

ORDERED that, within 30 days from entry of this order, counsel for the movant shall serve a certified copy of this order upon the Clerk of the Supreme Court, Kings County, and shall pay the appropriate fee, if any, for such transfer and shall contact the staff of said Clerk to arrange for the effectuation of the transfer in an efficient manner; and it is further

ORDERED that service upon the Clerk of the Supreme Court, Kings County shall be made in accordance with any applicable protocol or other procedures of said county; and it is further

ORDERED that the Clerk of the Supreme Court, Kings County, shall transfer the documents on file under Index No. 507731/2023 to the Clerk of this Court for the purpose of consolidation; and it is further

ORDERED that the Clerk of the Supreme Court, Kings County and the Clerk of this court shall coordinate the transfer of the documents being transferred so as to ensure an efficient transfer and to minimize insofar as practical the reproduction of such documents, including with regard to any documents that may be in digital format; and it is further

TRANSFER - REASSIGN

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 such service upon the Clerk of the Court shall be made in hard-copy format if the case pending in this county is a hard-copy case or, if this case is an e-filed one, 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 this 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 transferred from the Supreme Court, Kings County in the consolidated case file under the New York County 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, 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 upon 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 the case pending in this county is a hard-copy case or, if the case pending here is an e-filed one, 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 preliminary conference in Room 327 , 80 Centre Street, New York, New York, on September 19, 2024, at 2:15PM.

TRANSFER - REASSIGN

This constitutes the decision and order of the court.

6/20/2024

DATE

NICHOLAS W. MOYNE, 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

TRANSFER - REASSIGN