

MP145 WS Owner LLC v Pace Cos. N.Y., LLC

2024 NY Slip Op 32616(U)

July 15, 2024

Supreme Court, New York County

Docket Number: Index No. 654556/2021

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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MP145 WS OWNER LLC, 10 HURON FS CONDO LLC, 19
 INDIA FEE OWNER LLC,

Plaintiff,

- v -

THE PACE COMPANIES NEW YORK, LLC D/B/A THE
 PACE COMPANIES, EDWARDS AND ZUCK,
 P.C., ISMAEL LEYVA ARCHITECT, P.C., STANTEC
 INC., NOBLE CONSTRUCTION GROUP, LLC, 23 INDIA
 RU OWNER LLC, 23 INDIA CU OWNER,

Defendant.

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 008) 247, 248, 249, 250,
 255, 256, 257, 258, 259, 260

were read on this motion to/for

CONSOLIDATE/JOIN FOR TRIAL

Upon the foregoing documents and for the reasons set forth on the record (*tr.* 7.15.24), the
 motion (Mtn. Seq. No. 008) of Edwards and Zuck, P.C. (**Zuck**) and Stantec, Inc. (**Stantec** and,
 together with Zuck, the **Moving Defendants**), to consolidate this action (**Action 1**) with a second
 action arising out of the same construction project (the **Project**) and brought by the same
 plaintiffs, captioned *MP145 WS OWNER LLC, 10 HURON FS CONDO LLC, and 19 INDIA
 FEE OWNER LLC v. DESIGN 2147, LTD.*, Index No. 654805/2023 (**Action 2**), is granted.

The two actions involve common questions of law or fact as to certain code consulting services
 provided by Stantec and Design 2147 Ltd (albeit pursuant to two separate agreements) such that
 consolidation of the two actions would aid judicial economy. Fact discovery in Action 1 is not
 yet complete and Design 2147, Ltd. (**Design 2147**) which opposes the motion shall not be

prejudiced by such consolidation because of they will be permitted to conduct and participate in fulsome discovery. The Court notes, that all other parties consent to the consolidation and it is irrelevant that different standards of care relate to Design 2147 as to the other defendants. This can be addressed at trial through proper instruction about the law.

There is a preference for consolidation in the interests of judicial economy where there are common questions of law and fact, unless the party opposing the motion demonstrates that consolidation will prejudice a substantial right (*see* CPLR 602[a]; *Geneva Temps, Inc. v. New World Communities, Inc.*, 24 A.D.3d 332, 334, 806 N.Y.S.2d 519 [1st Dept. 2005]).

Consolidation is often favored in construction cases “due to the interdependency and relationship of the different construction trades, whose acts and omissions frequently affect the various entities that must coordinate their activities to complete a project” (*Metro. Steel Indus., Inc. v Perini Corp.*, 6 Misc 3d 1002(A) [Sup Ct 2004], *affd*, 23 AD3d 205 [1st Dept 2005]). Here, the two actions involve common questions of law and fact because the plaintiffs sue both Zuck and Design 2147 for code consultancy services relating to the HVAC system for the project such that their liability should be considered together.

As discussed above, and as set forth in the discovery schedule set forth below, Design 2147 shall suffer little to no prejudice as they shall be permitted to seek fulsome discovery and shall not be limited by any discovery taken to date.

Accordingly, it is hereby

ORDERED that the Moving Defendants’ motion to consolidate (Mtn. Seq. No. 008) is granted;
and it is further

ORDERED that the caption is amended to read:

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

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MP 145 WS OWNER LLC, 10 HURON FS CONDO LLC,
and 19 INDIA FEE OWNER LLC,

Index. No. 654556/2021

Plaintiffs,

- against -

THE PACE COMPANIES NEW YORK, LLC d/b/a THE
PACE COMPANIES, EDWARDS AND ZUCK, P.C.,
ISMAEL LEYVA ARCHITECT, P.C., STANTIEC INC.,
and DESIGN 2147, LTD,

Defendants.

-----X
THE PACE COMPANIES NEW YORK, LLC d/b/a THE
PACE COMPANIES, EDWARDS AND ZUCK, P.C.,
ISMAEL LEYVA ARCHITECT, P.C., and STANTIEC
INC.,

Defendants,

- against -

NOBLE CONSTRUCTION GROUP, LLC and 23 INDIA
RU OWNER LLC, 23 INDIA CU OWNER,

Additional Defendants
on Counterclaims.

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; 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 of this decision and order, the Moving Defendants 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 the records to reflect the consolidation; and it is further

ORDERED that counsel for the Moving Defendants 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/supctmanh); 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 of this decision and order, the Moving Defendants 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 document demands shall be served on or before August 14, 2024; and it is further

ORDERED that responses shall be served on or before September 13, 2024 and that parties in Action 1 shall coordinate the delivery of all discovery previously taken to counsel for Design2147 on or before such date; and it is further

ORDERED that document production shall be completed on or before November 12, 2024; and it is further

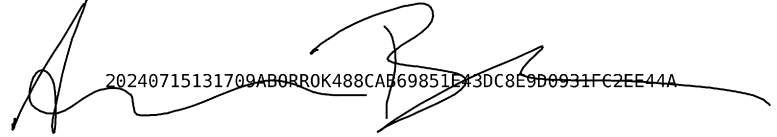
ORDERED that depositions shall be completed on or before February 10, 2025; and it is further

ORDERED that fact discovery shall be completed on or before February 24, 2025; and it is further

ORDERED that expert discovery shall be completed by May 27, 2025; and it is further

ORDERED that note of issue will be filed on or before June 10, 2025; and it is further

ORDERED that the parties shall appear for a status conference on **November 19, 2024, at 11:30am**; parties to provide a deposition schedule.


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7/15/2024

DATE

ANDREW BORROK, 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