

**Oldcastle Infrastructure, Inc. v
Bronx Commons Bldrs., LLC**

2024 NY Slip Op 33383(U)

September 25, 2024

Supreme Court, New York County

Docket Number: Index No. 655931/2020

Judge: Joel M. 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
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

-----X

OLDCASTLE INFRASTRUCTURE, INC.,

Plaintiff,

- v -

BRONX COMMONS BUILDERS, LLC,

Defendant.

INDEX NO. 655931/2020

MOTION DATE 06/05/2024

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

-----X

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 174, 175, 176, 177, 178, 179, 180, 181

were read on this motion to CONSOLIDATE.

Defendant Bronx Commons Builders LLC (“BCB”) moves to consolidate this action with an action pending in Bronx County Supreme Court, bearing Index Number 804020/2024E. For the following reasons, the unopposed motion is **granted**.

“When actions involving a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all the matters in issue, [or] may order the actions consolidated” (CPLR 602[a]). “CPLR 602(a) vests a trial court with discretion to order consolidation of actions involving a common question of law or fact,” and “[c]onsolidation of actions is appropriate where it will avoid unnecessary duplication of trials, save unnecessary costs and expense and prevent the injustice which would result from divergent decisions based on the same facts” (*Sokolow, Dunaud, Mercadier & Carreras LLP v Lacher*, 299 AD2d 64, 73-74 [1st Dept 2002] [internal quotation marks and citations omitted]).

Under a consolidation order, the actions “are merged into a single action to be disposed of by a single decision or verdict, in the case of a jury trial, and a single judgment with one bill

of costs; the new title is one which merges all the litigants into one group of plaintiffs and one group of defendants” (*Padilla v Greyhound Lines*, 29 AD2d 495, 497 [1st Dept 1968]). Further, “the venue of the action first commenced should be fixed as such place of trial in the absence of proof of circumstances requiring otherwise” (*id.* at 498; *see also Graev v Graev*, 219 AD2d 535, 535-36 [1st Dept 1995]; *Harrison v Harrison*, 16 AD3d 206, 207 [1st Dept 2005]; *Nigro v Pickett*, 39 AD3d 720, 722 [2d Dept 2007]).

Here, BCB has shown that consolidation in New York County is warranted. The actions contain common questions of law and fact as to the claims, and the lien foreclosure action in the Bronx County Supreme Court is related to the facts pleaded in this case. The parties are substantially the same, with the addition of the surety in the Bronx action. Plaintiff has not opposed the motion, so it cannot meet its burden to show prejudice (*see Chiacchia v Nat’l Westminster Bank USA*, 124 AD2d 626 [2d Dept 1986]; *accord Progressive Ins. Co. v Vasquez*, 10 AD3d 518, 519 [1st Dept 2004]). Finally, the action pending before this Court was the first filed, and the case in Bronx County has not yet been assigned to a judge.

Accordingly, it is

ORDERED that the motion is **granted** and the actions bearing Index Numbers 655931/2020 and 804020/2024E be consolidated under a single caption and index number; it is further

ORDERED that the action *Oldcastle Infrastructure, Inc. v Bronx Commons Builders, LLC*, Index No. 655931/2020, pending in the Supreme Court, New York County, be consolidated in this Court with *Oldcastle Infrastructure, Inc. v Bronx Commons Builders, LLC et al.*, Index No. 804020/2024E, Bronx County; and it is further

ORDERED that the consolidation shall take place under New York County Index No. 655931/2020, and the consolidated action shall bear the following caption:

OLDCASTLE INFRASTRUCTURE, INC. f/k/a
OLDCASTLE PRECAST, INC.,

Plaintiffs,

-against-

BRONX COMMONS BUILDERS, LLC, and
FIDELITY AND DEPOSIT COMPANY OF MARYAND

Defendants.

And it is further

ORDERED that, within 14 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, Bronx 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, Bronx 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, Bronx County, shall transfer the documents on file under Index No. 804020/2024E to the Clerk of this Court for the purpose of consolidation; and it is further

ORDERED that the Clerk of the Supreme Court, Bronx 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

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 this 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 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

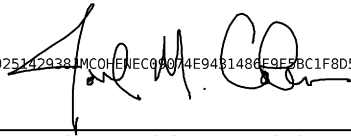
ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents transferred from the Supreme Court, Bronx County in the consolidated case file under the New York County Index Number of the consolidated action in the New York State Courts Electronic Filing System 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, 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 telephonic status conference on November 19, 2024, at 10:30 a.m. The parties are to circulate dial-in information in advance of the conference.

This constitutes the Decision and Order of the Court.

20240925142938 JMCHEC0004E948148CE9E5B0C1F8D5029162


JOEL M. COHEN, J.S.C.

9/25/2024
DATE

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