

JDS Constr. Group LLC v Copper Servs., LLC

2025 NY Slip Op 33029(U)

August 4, 2025

Supreme Court, New York County

Docket Number: Index No. 656912/2020

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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JDS CONSTRUCTION GROUP LLC,	INDEX NO.	<u>656912/2020</u>
Plaintiff,		03/04/2025,
		05/16/2025,
- v -		05/16/2025,
		06/16/2025,
COPPER SERVICES, LLC, TALISMAN CASUALTY	MOTION DATE	<u>06/16/2025</u>
INSURANCE COMPANY, LLC, 111 WEST 57TH		
PROPERTY OWNER LLC, 111 CONSTRUCTION		
MANAGER LLC, MICHAEL STERN, KEVIN MALONEY	MOTION SEQ. NO.	<u>021 022 022</u>
Defendant.		<u>023 023</u>

**DECISION + ORDER ON
MOTION**

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 021) 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 706, 707, 708, 711, 712, 717, 719, 796, 797

were read on this motion to/for DISCHARGE/CANCEL MECHANICS LIEN.

The following e-filed documents, listed by NYSCEF document number (Motion 022) 736, 737, 738, 739, 740, 741, 742, 743, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795

were read on this motion to/for QUASH SUBPOENA, FIX CONDITIONS.

The following e-filed documents, listed by NYSCEF document number (Motion 022) 736, 737, 738, 739, 740, 741, 742, 743, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795

were read on this motion to/for QUASH SUBPOENA, FIX CONDITIONS.

The following e-filed documents, listed by NYSCEF document number (Motion 023) 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777

were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 023) 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777

were read on this motion to/for DISCOVERY.

Upon the foregoing documents and for the reasons set forth on the record (*tr.* 8.4.2025), (i) JDS Construction Group LLC, 111 West 57th Property Owner LLC, and 111 Construction Manager LLC (collectively, **JDS**)’s motion (Mtn. Seq. No. 021) to vacate, cancel, and remove (x) the mechanic’s liens (the **Liens**) filed by Copper Services, LLC (**Copper**) against the property at 111 W 57th Street, New York, New York, and (y) the Notice of Pendency (NYSCEF Doc. No. 636) is GRANTED, and (ii) Copper’s cross-motion for a stay of (x) the prior Decision and Order of this Court, dated December 23, 2024 (the **Prior Decision**; NYSCEF Doc. Nos. 666 and 667), and (y) all proceedings related to the instant motion is DENIED.

As discussed previously, the Notice of Pendency must be vacated because it has lapsed. This issue is separate issue than that identified by the Appellate Division. In addition, CPLR 6514 mandates termination of the Liens under Lien Law §§ 17 and 19(2) (*see* Lien Law § 17; *Madison Lexington Venture v Thomas Crimmins Contr. Co.*, 159 AD2d 256, 257-258 [1st Dept 1990]; *Noce v Kaufman*, 2 NY2d 347, 351 [1957]).

JDS’s motion (Mtn. Seq. No. 022) to quash the Subpoenas Duces Tecum and Ad Testificandum (the **Subpoenas**; NYSCEF Doc. Nos. 721-729 and 732-735) issued by Copper on certain non-parties is DENIED as to the Subpoenas issued to (1) AIG Asset Management (U.S.) LLC (NYSCEF Doc. No. 720), (2) the Variable Annuity Life Insurance Company (NYSCEF Doc. No. 721), (3) the United States Life Insurance Company in the City of New York (NYSCEF Doc. No. 722), (4) National Union Fire Insurance Company of Pittsburgh, PA (NYSCEF Doc. No. 723), and (5) American General Life Insurance Company (collectively, the **Lenders**) (NYSCEF Doc. No. 724) solely to the extent of the requisition request to which Copper indicates that it

believes resulted in underpayment as identified by Affirmation of a principal of Copper within 20 days of this Decision and Order (*i.e.*, August 24, 2025) explaining in detail on requisition request by requisition request basis the amount that Copper believes was underpaid as to any such requisition request and attaching any contemporaneous communications that was exchanged between the parties as to disputed requisition request but is otherwise GRANTED in its entirety.

However, the remaining Subpoenas are overbroad and seek discovery previously sought by Copper's surety, Talisman Casualty Insurance Company, LLC (**Talisman**) as overly burdensome and not relevant to the issue of Owner Default (*see JDS Constr. Group LLC v Copper Servs., LLC*, 223 AD3d 588, 589 [1st Dept 2024]).

Copper's motion (Mtn. Seq. No. 023) to (i) compel JDS to produce documents responsive to Copper's document demands (NYSCEF Doc. No. 758), and (ii) extend the deadlines in the Court's Preliminary Conference Order, dated April 24, 2025 (NYSCEF Doc. No. 718) by 90 days is GRANTED to the extent that JDS must produce discovery regarding internal and external communications that JDS had with others regarding the disputed requisition requests discussed above within 30 days of receipt of the Affirmation discussed above.

Accordingly, it is hereby

ORDERED that JDS's motion (Mtn. Seq. No. 021) to vacate, cancel, and remove (x) the Liens filed by Copper against the Property, and (y) the Notice of Pendency (NYSCEF Doc. No. 636) is GRANTED; and it is further

ORDERED that the Notice of Pendency (NYSCEF Doc. No. 636), dated October 4, 2024, is canceled; and it is further

ORDERED that Copper's cross-motion (Mtn. Seq. No. 021) for a stay of (x) the Prior Decision, and (y) all proceedings related to the instant motion is DENIED; and it is further

ORDERED that JDS's motion (Mtn. Seq. No. 022) to quash the Subpoenas (NYSCEF Doc. Nos. 721-729 and 732-735) issued by Copper is GRANTED solely to the extent set forth herein; and it is further

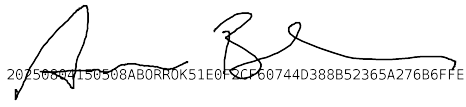
ORDERED that Copper's motion (Mtn. Seq. No. 023) to (i) compel JDS to produce responsive documents, and (ii) extend the deadlines in the Court's Preliminary Conference Order by 90 days is GRANTED solely to the extent set forth herein; and it is further

ORDERED that Copper shall provide JDS with an affirmation identifying the disputed requisition requests in accordance with the rulings set forth herein by August 24, 2025; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B), who is directed to cancel the Notice of Pendency; and it is further

ORDERED that such service upon the Clerk of the Court 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 the parties are directed to order and upload a copy of the transcript (*tr.* 8.4.2025) to NYSCEF, and the parties shall split the cost of said transcript.


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<u>8/4/2025</u> DATE					<u>ANDREW BORROK, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER	
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART		
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER		
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE	