

Benfield Partners, Inc. v Home Record LLC

2025 NY Slip Op 34146(U)

October 28, 2025

Supreme Court, New York County

Docket Number: Index No. 157655/2022

Judge: Arlene P. Bluth

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

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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BENFIELD PARTNERS, INC.,
Plaintiff,

- v -

HOME RECORD LLC, NYJE, LLC
Defendants.

INDEX NO. 157655/2022

MOTION DATE 10/27/2025

MOTION SEQ. NO. 007

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 156, 157, 158, 159, 160, 161, 162, 168, 169, 170, 171, 172, 173, 179, 180

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

Upon the foregoing papers, plaintiff’s motion to consolidate and to reargue is denied.

Background

Plaintiff Benfield Partners, Inc. (“Benfield”) is a contractor that was hired by defendant Home Record LLC (“Home Record”) in 2021 to perform renovations on a property located at 74 Bowery in Manhattan. Benfield brought this action for breach of contract and foreclosure of a mechanic’s lien against the subject property and insists that it is owed \$230,120.23 plus interest from the date of the contract.

Home Record contends that Benfield did not finish the work on time and raised the affirmative defense of payment in full and counterclaims for lost profits of approximately \$1,400,000 as well as salaries paid of approximately \$30,000 attributable to the alleged delay. Home Record also brought a counterclaim for willful exaggeration of the lien.

The Court dismissed Benfield’s cause of action to foreclose the mechanic’s lien in a decision dated March 12, 2024 (NYSCEF Doc. No. 82). Home Record then successfully moved

for declaratory judgment which resulted in the Court ordering that the bond in the amount of \$253,132.25 issued by U.S. Specialty Insurance Company is exonerated and U.S. Specialty Insurance Company is released and discharged from any liability under bond no. 100693581 (NYSCEF Doc. No. 100). That decision was dated July 24, 2024. In a supplemental order dated March 11, 2025, the Court ordered that Benfield's lien on the property be vacated, as the lien and bond expired without being renewed (NYSCEF Doc. No. 147).

On September 4, 2024 Benfield filed a note of issue in which it submitted that all discovery known to be necessary was completed (NYSCEF Doc. No. 103). This was in violation of this Part's rules which permit the parties to file a note of issue only when the Court directs the parties to do so. Since discovery was far from complete, the note of issue was vacated in the Court's decision at NYSCEF Doc. No. 132. In that decision and order, the Court ordered plaintiff to sit for its initial deposition by February 21, 2025. However, the Court took plaintiff at its word and because plaintiff certified that all discovery was done, plaintiff needed no more discovery and had waived its right to take defendant's deposition (*id.*).

Here, Benfield moves to consolidate this action with a related action at index number 157656/2022 (which was filed on the same day and in which Benfield is the plaintiff and Home Record is defendant and is for work done at a different location), for reargument under CPLR 2221 and/or the Court's inherent power to prevent injustice to reinstate the cause of action to foreclose the mechanic's lien and conditionally reinstate the mechanic's lien *nunc pro tunc* should defendant fail to reinstate the bond securing this claim within 30 days, and for the Court to allow Benfield to complete discovery pursuant to CPLR 3101.

Discussion

Consolidate

“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, may order the actions consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay” (CPLR 602[a]).

Plaintiff moves to consolidate the present matter with the related action at index number 157656/2022 for both pre-trial proceedings and for a joint trial, arguing that it would be more efficient to do so. Plaintiff correctly states that it could have initially brought these claims in one action as the identity of the parties and the issues overlap.

Home Record opposes and asks that if the Court grants the motion to consolidate, that it be “granted with conditions due to discovery deficiencies creating unmanageable proceedings” (NYSCEF Doc. No. 169).

Although plaintiff could have brought these two actions together when it commenced them almost three years ago, it chose not to do so. And since 2022, even though the parties have been litigating these matters under two different index numbers and have brought a combined sixteen motions, plaintiff never sought to consolidate. Only now, after plaintiff represented that discovery was complete in both of the cases and the court held plaintiff to its representation and found plaintiff could not seek anything more from defendant, does plaintiff seek to consolidate.

Under these circumstances, the Court does not find that consolidation would increase efficiency or decrease costs at all. In fact, at this stage it would be more efficient to keep the cases separate and not constantly get tangled up together. Rather, it is more efficient to finish

what discovery is remaining and allowed and then, when discovery is truly complete, the plaintiff may make a motion to consolidate for trial.

The Court therefore denies the part of Benfield's motion which seeks to consolidate this matter with the other action at this time. The Court, however, gives plaintiff leave to bring another motion to consolidate once the Court has determined that discovery is done and orders a note of issue be filed.

Reargue

A motion for leave to reargue "shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry" (CPLR 2221[d][3]). Here, Benfield asks for permission to reargue motion sequence 004 (decided on March 12, 2024), motion sequence 005 (decided on July 24, 2024), and the Court's supplemental order at NYSCEF Doc. No. 147 (issued on March 11, 2025). Benfield claims that this is a matter of fairness and blames its previous attorney. Home Record contends, among other things, that Benfield has abandoned its rights and that Benfield's motion is an "impermissible attempt to circumvent appellate procedures after plaintiff failed to appeal or move to reargue any of this Court's final rulings within the statutory time limits" (NYSCEF Doc. No. 168).

Benfield is asking the Court to ignore the plain language of the CPLR which mandates that a motion to reargue *shall* be filed within thirty days after service of the order and the notice of its entry. Home Record filed a notice of entry for MS 004 on March 14, 2024 (NYSCEF Doc. No. 84) and for motion sequence 005 on July 25, 2024 (NYSCEF Doc. No. 102).

The Court will not ignore the CPLR and therefore denies that part of the motion to reargue decisions well over a year past the statutorily-imposed deadline.

Finish Discovery

Benfield asks the Court to revisit its earlier ruling which found that it was not entitled to take further discovery as it falsely certified that discovery was complete. Benfield claims this is a matter of justice and blames the false certification on its prior attorney. Home Record opposes, claiming that this part of Benfield's motion equates to an impermissible and disguised motion to reargue.

The Court agrees with Home Record. Benfield is asking the Court (again) to reargue a decision well beyond the 30-day limit imposed by the CPLR. The Court's challenged decision was uploaded on January 14, 2025 (NYSCEF Doc. No. 132) and the notice of entry was entered the same day (NYSCEF Doc. No. 133). This was over nine months ago. If Benfield blames its former attorney for falsely certifying that discovery was complete, then it is up to Benfield to make and prove a claim against that attorney. But certainly, as a matter of policy, it would make little sense for a Court to revisit its previous rulings every time a party hires a new attorney while completely disregarding clear statutory deadlines. Law of the case means a great deal, including that whatever claim Benfield may have against its previous attorney does not automatically mean that Benfield can hire a new attorney and get a "do over" on every adverse decision despite the passage of time and deadlines. The Court therefore denies the part of Benfield's motion which seeks to reargue its decision at NYSCEF Doc. No. 132, to vacate the sanctions imposed therein, and to therefore "reopen" discovery from the defendants.

Summary

The Court denies Benfield's motion in its entirety. At this late stage of litigation, consolidation would not increase efficiency or decrease costs, but another motion to consolidate

may be made after discovery is truly complete and notes of issue are filed. And the Court denies the branch of the motion for reargument of issues that were decided months or years ago.

Accordingly, it is hereby

ORDERED that plaintiff's motion is denied in its entirety.

10/28/2025

DATE



ARLENE P. BLUTH, 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