

Martucci v 500 W25th Owner LLC

2025 NY Slip Op 34872(U)

December 10, 2025

Supreme Court, New York County

Docket Number: Index No. 160927/2020

Judge: Leslie A. Stroth

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

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CHRISTOPHER MARTUCCI,
Plaintiff,

- v -

500 W25TH OWNER LLC, AVO CONSTRUCTION
LLC, BENCHMARK CONTRACTING, INC., HALAL
BUILDING & CONSTRUCTION INC.,

Defendant.

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INDEX NO. 160927/2020
MOTION DATE 09/09/2025
MOTION SEQ. NO. 010

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 010) 207, 208, 209, 210, 211, 212, 213, 214, 215

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

Defendants 500 W25TH OWNER LLC (“500”) and AVO CONSTRUCTION LLC (“AVO”) move for an order pursuant to CPLR §602 consolidating this action with a related action, *AVO CONSTRUCTION LLC et al v. BENCHMARK CONTRACTING, INC.*, Index No. 650077/2025, for joint discovery and joint trial, and amending the captions accordingly. Their motion asserts that both matters arise from the same accident of May 12, 2018, involve overlapping questions of law and fact, and require identical proof relating to liability and damages.

Benchmark Contracting, Inc. (“Benchmark”), the only party to submit opposition, argues that consolidation would prejudice Benchmark because Action #1 is post-Note of Issue with pending summary judgment motions, while Action #2 has not yet held a preliminary conference. Benchmark further asserts it has outstanding discovery requests in Action #2 and has not yet deposed Defendant 500.

In reply, 500 and AVO contend that Benchmark has not identified prejudice to any substantial right. They further note that the Court has discretion to modify a Note of Issue and permit additional discovery under CPLR 2004 and through possible vacatur of the Note of Issue upon motion.

Pursuant to CPLR §602(a), “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.”

The two actions sought to be consolidated arise from the same underlying construction accident that occurred on May 12, 2018. Both matters involve overlapping issues of liability and damages, and resolution of liability in one action would substantially impact issues in the other. Evidence, including party testimony, accident-related proof, and contractual responsibilities would necessarily be the same in both matters.

Benchmark’s contention that consolidation is improper because Action #1 is post-Note of Issue does not establish prejudice to a substantial right. The Court maintains discretion to direct limited post-note discovery to address any outstanding needs of Benchmark, including written discovery or deposition requests. (*see* CPLR 2004).

Benchmark’s additional argument that a jury may be confused by 500’s posture both as a defaulted defendant and as a third-party plaintiff is speculative. Any potential confusion can be resolved through proper instructions, verdict sheet construction, and delineation of issues at trial. The greater risk of inconsistent adjudications and duplicative trials outweighs any hypothetical jury confusion.

As such, Benchmark has not met its burden of showing prejudice to a substantial right. Consolidation will further judicial economy, avoid divergent verdicts, and prevent duplicative motion practice, discovery, and trial. As such, Defendants 500 and AVO's motion to consolidate is granted.

Accordingly; it is hereby

ORDERED that the motion is granted, and the above-captioned action is consolidated in this Court with *AVO CONSTRUCTION LLC et al v. BENCHMARK CONTRACTING, INC.*, Index No. 650077/2025; and it is further

ORDERED that the consolidation shall take place under Index No. 160927/2020 and the consolidated action shall bear the following caption:

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CHRISTOPHER MARTUCCI,
Plaintiff, Index No.: 160927/2020

-against

500 W25TH OWNER LLC, AVO CONSTRUCTION LLC,
and BENCHMARK CONTRACTING, INC
Defendants

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500 W25TH OWNER LLC,
Third-Party Plaintiff,

-against

BENCHMARK CONTRACTING, INC,
Third-Party Defendants

-----X
and it is further¹

¹ The Court notes that movants proposed caption included Halal Building & Construction Inc. to be named as a Defendant, however all claims and cross-claims against Halal Building & Construction Inc. were dismissed in the Court's Decision and Order on Motion Sequence 006 (NYSCEF Doc No. 205).

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 (60 Centre Street, Room 141 B), 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 service of this order 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, 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 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 such service upon the Clerk of the General Clerk’s Office 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 aforesaid *Protocol*.

The foregoing constitutes the decision and order of the Court.

12/10/2025
DATE


LESLIE A. STROTH, 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