

JDS Constr. Group LLC v Copper Servs., LLC

2026 NY Slip Op 30406(U)

February 2, 2026

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,

Plaintiff,

- v -

COPPER SERVICES, LLC, TALISMAN CASUALTY
INSURANCE COMPANY, LLC, 111 WEST 57TH
PROPERTY OWNER LLC, 111 CONSTRUCTION
MANAGER LLC, MICHAEL STERN, KEVIN MALONEY

Defendant.

INDEX NO. 656912/2020

MOTION DATE 10/20/2025,
12/23/2025,
12/23/2025

MOTION SEQ. NO. 024 025 025

**DECISION + ORDER ON
MOTION**

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 024) 817, 818, 819, 820, 821, 822, 823, 824, 825, 826

were read on this motion to/for ATTORNEY - FEES.

The following e-filed documents, listed by NYSCEF document number (Motion 025) 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 841, 842, 845, 846, 847, 848, 849

were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 025) 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 841, 842, 845, 846, 847, 848, 849

were read on this motion to/for DISCOVERY.

Upon the foregoing documents, (i) JDS Construction Group LLC (**JDS**)’s motion (Mtn. Seq. No. 024) for attorneys’ fees is GRANTED, and (ii) Copper Services, LLC (**Copper**)’s motion (Mtn. Seq. No. 025) to compel is DENIED.

I. Motion for Attorneys’ Fees

Pursuant to CPLR 6514(c), a court may direct a party “to pay any costs and expenses occasioned by the filing and cancellation” of a notice of pendency, in addition to any costs of the action.

Additionally, a court in a civil action is authorized to award the reasonable attorneys’ fees and

expenses incurred by a party as a result of the opposing party's frivolous conduct (22 NYCRR § 130-1.1[a]). Conduct is frivolous if (i) it is completely meritless, (ii) it is done to delay or prolong the litigation or to harass or injure another party, or (iii) asserts false material statements of fact (*id.*).

Reference is made to (i) a prior Decision and Order (the **December 2024 Decision**; NYSCEF Doc. No. 666), dated December 23, 2024, pursuant to which the Court dismissed Copper's counterclaim for lien foreclosure because the liens had lapsed as a matter of law, (ii) a prior Decision and Order (the **August 2025 Decision**, NYSCEF Doc. No. 801), dated August 4, 2025, pursuant to which the Court granted JDS's motion (Mtn. Seq. No. 021) to vacate, cancel, and remove the liens and Notice of Pendency and seeking leave to file further application for attorneys' fees and costs, and (iii) a Supplemental Order (the **Supplemental Order**; NYSCEF Doc. No. 810), dated August 13, 2025, directing the New York County Clerk to immediately vacate, cancel, and remove the liens and Notice of Pendency from the record.

Following the issuance of the December 2024 Decision, Copper flatly refused to voluntarily withdraw its Notice of Pendency. This was without any legal basis whatsoever given that the liens had lapsed as a matter of law. Instead of acceding to JDS' request while preserving its right to appeal, Copper doubled down and continued to maintain its Notice of Pendency clouding title. On the record before this Court, this was entirely meritless and solely to delay or prolong the litigation or to harass JDS. It achieved its purpose in requiring JDS to engage in additional motion practice to have the Notice of Pendency cancelled and to defend against a barrage of emergency applications all of which were denied. Previously in the August 2025 Decision, the

Court granted JDS' motion which included seeking further application for attorneys' fees and costs.¹ Now, the motion seeking attorneys' fees and costs is GRANTED and the matter is referred to a special referee to hear and determine.

II. Motion to Compel

CPLR § 3101 requires “full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof.” As a guiding principle, the words “material and necessary” are to be “interpreted liberally to require disclosure of . . . any facts bearing on the controversy” (*Rivera v NYP Holdings Inc.*, 63 AD3d 469, 469 [1st Dept 2009], quoting *Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]). A party seeking to avoid disclosure bears the burden of showing that the disclosure sought is improper (*Roman Catholic Church of the Good Shepherd v Tempco Systems*, 202 AD2d 257, 258 [1st Dept 1994]).

The doctrine of the law of the case seeks to prevent relitigation of issues of law that have already been determined at an earlier stage of the proceeding (*Aspen Specialty Ins. Co. v RLI Ins. Co., Inc.*, 194 AD3d 206, 212 [1st Dept 2021] [holding that a determination made in a prior, separate proceeding was not binding on the defendant where the plaintiff failed to name the defendant as a party in the prior action]). It applies to prevent the “parties or those in privity” from relitigating “an issue decided in an ongoing action where there previously was a full and fair opportunity to address the issue” (*Matter of Goldstein v Zabel*, 146 AD3d 624, 631 [1st Dept 2017]).

¹ Copper is just plain wrong that this is a disguised motion to reargue. The previous motion sought the right to bring this application for the relief sought. It is granted.

In this motion, Copper seeks to compel the production of two-week look-ahead schedules (the **Schedules**) from JDS (NYSCEF Doc. No. 832). This is not the first time that this request has been made in this case. Previously, Talisman, Copper's surety, made this request. It was denied (NYSCEF Doc. No. 189; NYSCEF Doc. No. 256). Copper too made this request. It was also denied (NYSCEF Doc. No. 803 at 3).

The information sought is plainly for the purpose of litigating the issue of concurrent delay or whether Copper has a basis to assert a delay related defense in this case. These are however no longer issues in this case (*see JDS Constr. Group LLC v Copper Servs., LLC*, 223 AD3d 588, 589 [1st Dept 2024]; (NYSCEF Doc. No. 846 § 25[a])). Accordingly, aside from being precluded by the law of the case, the discovery sought is simply not material and necessary to any claim in this case. As such, the motion is DENIED.

Accordingly, it is hereby ORDERED that JDS's motion for costs, expenses, and attorneys' fees, plus statutory interest of 9% per annum from December 23, 2024 until the date of entry of judgment, and post-judgment interest of 9% per annum from the date of entry of judgment is GRANTED; and it is further

ORDERED that the issue of the amount of reasonable attorneys' fees, expenses, costs, and statutory interest that JDS may recover against the Defendants is referred to a Special Referee to hear and determine; and it is further

ORDERED that counsel for the Plaintiff shall, within 30 days from the date of this order, serve a copy of this order with notice of entry, together with a completed Information Sheet,² upon the Special Referee Clerk in the General Clerk’s Office (Room 119), who is directed to place this matter on the calendar of the Special Referee’s Part for the earliest convenient date; and it is further

ORDERED that such service upon the Special Referee Clerk 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/suptctmanh); and it is further

ORDERED that Copper’s motion to compel is DENIED.


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<u>2/2/2026</u> DATE		<u>ANDREW BORROK, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE

² The Information Sheet can be found here: <https://ww2.nycourts.gov/courts/1jd/suptctmanh/References.shtml>.
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