

Index No: 6448/2011

SHORT FORM ORDER

**PUBLISH**

Supreme Court - State of New York  
IAS PART 6 - SUFFOLK COUNTY

MOT. SEQ: 001 MD  
002 MG

**PRESENT:**

Hon. RALPH T. GAZZILLO  
A.J.S.C.

-----X		
BEY'S SPECIALTY, INC.,	:	Peckar & Abramson, P.C.
	:	Attorneys for Plaintiff
Plaintiff(s),	:	41 Madison Avenue, 20 <sup>th</sup> Floor
- against -	:	New York, N.Y. 10010
	:	
CASSWAY CONTRACTING CORP.,	:	Bauman Katz & Grill, LLP
	:	28 West 44 <sup>th</sup> Street, Suite 900
Defendant(s).	:	New York, N.Y. 10036
-----X		

Upon the following papers numbered 1 to 17 read on this motion, Notice of Motion and supporting papers numbered 1-8; Notice of Cross Motion and supporting papers numbered 9-13, Affirmation in Opposition and supporting papers numbered 14-17; Replying Affidavits and supporting papers numbered ; Other; it is,

**ORDERED** that the motion of the plaintiff to dismiss a related action filed in New York County or alternatively, have the New York County action consolidated with the instant action is denied, and it is further

**ORDERED** that the cross-motion of the defendant to dismiss the instant action, or alternatively, consolidated same with the action between the parties presently pending in New York County is granted to the extent that the instant action is consolidated for joint trial with the action pending in New York County, and it is further

**ORDERED** that the Court hereby directs the joint trial of Action #1 (Cassway Contracting Corp., v. Beys Specialty, Inc., Hudson River Park Trust, Federal Insurance Company, Samuel Feldman Lumber Co., Inc. and John Doe "1" through "10", New York County Index No. 650977-2011) and Action #2 (Beys Specialty, Inc. v. Cassway Contracting, Corp., Suffolk County Index No. 6448-2011) pursuant to CPLR §602(a); and it is further

**ORDERED** that counsel for defendants shall serve a copy of this Order, with Notice of Entry, upon the Suffolk County Clerk's Office with the payment of any required fee, at which time, the Suffolk County Clerk is directed to transfer all court files and related papers under Suffolk County Index Number 6448-2011 to the Clerk of the Supreme Court of New York County. The Clerk of the Supreme Court of New York is requested to notify the parties of the date the matters are placed on the Court's calendar; and it is further

COPY

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**ORDERED** that counsel for moving defendants shall serve a copy of this Order with Notice of Entry upon counsel for the plaintiff, pursuant to CPLR §2103(b)(1), (2) or (3), within twenty (20) days of the date the order is entered and thereafter file the affidavit(s) of service with the Clerk of the Court.


A motion pursuant to CPLR §602 to consolidate actions or to join separate actions for trial rests in the sound discretion of the trial court (see, *Skelly v Sachem Cent. School Dist.*, 309 AD2d 917; *McDutchess Bldrs. v Dutchess Knolls*, 244 AD2d 534). Where common questions of law or fact exist, a motion for consolidation or a joint trial should be granted, absent a showing of substantial prejudice to the party opposing the motion (see CPLR §602; see also *Best Price Jewelers.Com, Inc. v Internet Data Stor. & Sys., Inc.*, 51 AD3d 839, 857 NYS2d; *Beerman v Morhaim*, 17 AD3d 302; *Flaherty v RCP Assoc.*, 208 AD2d 496). Consolidation is appropriate where it will avoid unnecessary duplication of trials, save unnecessary costs and expenses, and prevent an injustice which would result from divergent decisions based upon the same set of facts (see *Zupich v Flushing Hosp. & Med. Ctr.*, 156 AD2d 677). Moreover, a joint trial preserves the separate character of each action, but secures the advantage of a single trial on common issues (see, *Megyesi v Automotive Rentals, Inc.*, 115 AD2d 596). Further, in granting a joint trial, it is not required that all questions of law or fact be common to the various actions (see *Hill v Smalls*, 49 AD2d 724)

With regard to the application to consolidate the actions, the motion is granted to the extent that Action No. 1 and Action No. 2 shall be tried jointly, without consolidation. Any material previously received through pretrial disclosure shall be exchanged with any party so demanding. All matters of trial practice are referred to the Justice presiding at the joint trial

Here it is undisputed by the parties that the actions are related involving a construction project for property located in the City and County of New York upon which a Mechanic's Lien has been filed and bonded. In addition, there are parties to the New York County action (Action #1) who are not included in the Suffolk County action. By contrast, all parties to the Suffolk County (Action #2) are also parties to the New York County action (Action #1).

Accordingly, it is appropriate to consolidate the actions for the purposes of joint trial in New York County.

Dated: 9/5/12  
RIVERHEAD, NY

  
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Ralph T. Gazzillo  
A.J.S.C.

NON-FINAL DISPOSITION

FILED

12 SEP 12 PM 12:45

JUDITH A. PASCALE  
SUFFOLK COUNTY CLERK