

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
LITTLE ROCK DIVISION

RIVERCLIFF COMPANY, INC. \*  
\*  
Plaintiff \*  
\*

V. \*  
\*

NO: 4:10CV00330 SWW

RESIDENCES AT RIVERDALE GP, \*  
LLC; RESIDENCES AT RIVERDALE \*  
LP; DAVID F. STAPLETON; and \*  
NATIONS CONSTRUCTION \*  
MANAGEMENT, INC. \*  
\*  
Defendants \*

*and*

McFADDEN ONE LLC \*  
\*  
Plaintiff \*  
\*

V. \*  
\*

NO: 4:11CV00748 SWW

RESIDENCES AT RIVERDALE GP, \*  
LLC; RESIDENCES AT RIVERDALE \*  
LP; DAVID F. STAPLETON; and \*  
NATIONS CONSTRUCTION \*  
MANAGEMENT, INC. \*  
\*  
Defendants \*

**ORDER**

For reasons that follow, the Court finds that the above-captioned cases should be consolidated for trial pursuant to Rule 42 of the Federal Rules of Civil Procedure. The Court

will postpone consolidation and provide the parties an opportunity to state any reason why consolidation is not appropriate. Any objection to consolidation must be filed within 10 days from the entry date of this order.

In these cases, both plaintiffs own property adjoining the same hillside. Both plaintiffs sue the same defendants under the same legal theories, alleging that defendants Residences at Riverdale GP, LLC and Residences at Riverdale LP, by and through defendant Nations Construction Management, Inc., excavated the aforementioned hillside, which caused instability of the hillside and damage to plaintiffs' properties. Additionally, both plaintiffs seek to hold defendant Stapleton liable under a veil-piercing theory.

Federal Rule of Civil Procedure 42 provides that, if actions before the court involve a common question of law or fact, the court may (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay. *See* Fed. R. Civ. P. 42(a). Here, the above-captioned cases arise from the same events, present common questions of law and fact, and will require testimony from the same witnesses. Without question, a joint trial would promote efficiency and avoid the risk of inconsistent rulings. Accordingly, the Court finds that consolidation for the purpose of a joint trial is warranted.

The cases are in different stages of litigation. *Rivercliff Company Inc. v. Residences at Riverdale GP, LLC, et al.*, No. 4:10CV00330 SWW, is set for a jury trial to begin September 17, 2012, and the discovery deadline has expired, though the parties have conducted discovery beyond the court-imposed deadline by agreement, and *McFadden One, Inc. v. Residences at Riverdale GP, LLC, et al.*, 4:11CV00748 SWW, is set for a jury trial to begin November 19,

2012, and the discovery and dispositive motions deadlines are June 19, 2012 and July 19, 2012, respectively. Although it will be necessary to set a common trial date, the Court perceives no reason why the parties cannot proceed according to the separate scheduling orders entered in each case. Consolidation will be for the purpose of a joint trial; the cases will not merge into a single action, and each will retain its separate character.

IT IS THEREFORE ORDERED that the parties have up to and including 10 days from the entry date of this order in which to file any objections or concerns regarding the proposed consolidation.

IT IS SO ORDERED THIS 8<sup>TH</sup> DAY OF FEBRUARY, 2012.

/s/Susan Webber Wright  
UNITED STATES DISTRICT JUDGE