

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

McCarthy Improvement Company,)	
)	
Plaintiff,)	Civil Action No.: 2:17-cv-03290-JMC
)	
v.)	
)	ORDER AND OPINION
Manning & Sons Trucking & Utilities, LLC,)	
Keven Manning, <i>Individually</i> ,)	
and SouthStar Capital, LLC.)	
)	
Defendants.)	
_____)	

This matter is before the court pursuant to Plaintiff’s Motion to Consolidate (ECF No. 47) and Defendants’ Motion to Consolidate and Motion for a Status Conference (ECF No. 48). The parties move the court to consolidate this case with a separate case in which they are also parties, *Manning & Sons Trucking & Utilities, LLC, et al. v. McCarthy Improvement Company*, Civil Action No. 5:17-cv-01994-JMC. For the reasons stated below, the court **GRANTS** Plaintiff’s Motion to Consolidate (ECF No. 47) and Defendants’ Motion to Consolidate (ECF No. 48).¹

The court may consolidate multiple pending actions involving “common question[s] of law or fact” into one action in the interest of efficiency. Fed. R. Civ. P. 42(a)(2). “District courts enjoy substantial discretion in deciding whether and to what extent to consolidate cases.” *Hall v. Hall*, 138 S. Ct. 1118, 1131 (2018).

There are common questions of fact in both cases as both cases arise from the parties’ participation in a construction project in Orangeburg County, South Carolina. (ECF Nos. 47 at 2; 48 at 2.) There are also common questions of law in both cases. In *Manning*, Civil Action No.

¹ The court **GRANTS** Defendants’ Motion for a Status Conference (ECF No. 45) and has scheduled a status conference for June 7, 2018.

5:17-cv-01994, Defendants Manning & Sons Trucking & Utilities, LLC and Keven Manning bring several causes of action against Plaintiff including, fraud; Plaintiff's violation of the S.C. Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 et seq. (1971); negligence and negligent misrepresentation; defamation and slander; Plaintiff's violation of Title VI of the Civil Rights Act of 1964; and abuse of process and malicious prosecution. (*See Manning*, Civil Action No. 5:17-cv-01994, ECF No. 1-1.) Plaintiff counterclaimed for breach of contract and/or mistake against Defendants or in the alternative for unjust enrichment against just Manning & Sons Trucking & Utilities, LLC. (*Id.* at ECF No. 24 at 1-3.) Plaintiff also counterclaimed against SouthStar Capital, LLC ("SouthStar") for unjust enrichment and/or mistake. (*Id.* at ECF No. 24 at 3-5.)

In this case, Plaintiff filed a declaratory judgment action against Defendants seeking the following declarations: the parties' obligations under the subcontract, whether Defendants have any common law, statutory, or regulatory claim against Plaintiff, that Plaintiff does not owe Defendants any further sums of money, and that Defendants were unjustly enriched and therefore, must refund Plaintiff. (ECF No. 1-1 at 174-81.)

Upon review of the facts and law in each case, the court finds that there are common questions of law and fact within each case and that judicial efficiency is best served by consolidating the two cases. Accordingly, the court **GRANTS** the parties respective Motions to Consolidate. (ECF Nos. 47, 48.) The cases are consolidated for both pretrial purposes and for trial purposes unless otherwise ordered by the court.

IT IS SO ORDERED.



United States District Judge

June 6, 2018
Columbia, South Carolina