

**Utica First Ins. Co., v JLJ IV Enters., Inc.**

2020 NY Slip Op 33258(U)

October 5, 2020

Supreme Court, New York County

Docket Number: 154152/2017

Judge: Kathryn E. Freed

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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. KATHRYN E. FREED PART IAS MOTION 2EFM

*Justice*

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INDEX NO. 154152/2017

UTICA FIRST INSURANCE COMPANY, AS SUBROGEE  
OF LJ EAST HOUSTON LLC D/B/A LOBSTER JOINT,

MOTION SEQ. NO. 002

Plaintiff,

- v -

**DECISION AND ORDER**

JLJ IV ENTERPRISES, INC.,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39

were read on this motion to/for

CONSOLIDATE/JOIN FOR TRIAL

In this subrogation action seeking to recover for property damage, plaintiff Utica First Insurance Company, as subrogee of LJ East Houston LLC d/b/a Lobster Joint ("Utica First") moves, pursuant to CPLR 602 (a), to consolidate this action with another action venued in Supreme Court, New York County, styled *Utica First Insurance Company as subrogee of LJ East Houston LLC d/b/a/ Lobster Joint v the City of New York*, bearing Index Number 153612/2016 (Docs. 26-39). Utica First also requests that both actions be consolidated under Index Number 153612/2016 and that the newly consolidated action be transferred to a City Part of the Supreme Court, New York County (Doc. 27). The motion is unopposed. After a review of the motion papers, as well as the relevant statutes and case, the motion is **granted**.

It is well-settled that "[c]onsolidation is generally favored by the courts in the interest of judicial economy and ease of decision making where there are common questions of law and fact, unless the party opposing the motion demonstrates that consolidation will prejudice a substantial right" (*Amcan Holdings, Inc. v Torys LLP*, 32 AD3d 337, 339 [1st Dept 2006] [internal quotation marks and citation omitted]; *see* CPLR 602 [a]). Here, the consolidation of both actions would be appropriate and advantageous given that both matters arise out of the same May 22, 2014 incident in which a water main allegedly ruptured beneath East Houston Street in Manhattan. Moreover, Utica First submits a stipulation reflecting that all parties agree to the consolidation and the transfer of the consolidated matter to a City Part.

Therefore, in accordance with the foregoing, it is hereby:

**ORDERED** that plaintiff's motion seeking consolidation of the captioned action with the matter styled *Utica First Insurance Company as subrogee of LJ East Houston LLC d/b/a/ Lobster Joint v the City of New York*, pending under New York County Index Number 153612/2016, is granted and said consolidation shall bear the following caption:

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UTICA FIRST INSURANCE COMPANY, AS SUBROGEE  
OF LJ EAST HOUSTON LLC D/B/A LOBSTER JOINT,

Plaintiff,

Index No. 153612/2016

v

THE CITY OF NEW YORK, JLK IV ENTERPRISES, INC.,  
CORPORATIONS XYZ and JOHN DOES NO. 1-10,

Defendants.

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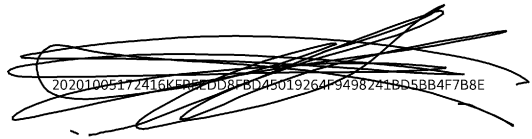
And it is further

**ORDERED** that, within 20 days after this order is uploaded to NYSCEF, counsel for plaintiff shall serve a copy of this order, with notice of entry, on all parties, as well as on the County Clerk (60 Centre Street, Room 141 B) and the Clerk of the Trial Support Office (60 Centre Street, Room 158), who shall mark their records to reflect the consolidation and transfer the consolidated matter to a City part of this court; and it is further

**ORDERED** that such service upon the County Clerk and the Clerk of the Trial Support Office 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](http://www.nycourts.gov/supctmanh)); and it is further

**ORDERED** that this constitutes the decision and order of the Court.

10/5/2020  
DATE



KATHRYN E. FREED, 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