

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

M89066
J/sl

PETER B. SKELOS, J.P.
STEVEN W. FISHER
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2009-02253

DECISION & ORDER ON MOTION

Joseph DePascale, et al., plaintiffs-respondents-appellants, v E&A Construction Corp., t/n E&A Construction, Inc., defendant third-party plaintiff-respondent-appellant, JMOA Engineering, P.C., et al., defendants-respondents Peter Gisolfi Associates, defendant-respondent-appellant; MCS Floor Covering Services, Inc., third-party defendant/fourth party plaintiff-appellant-respondent, et al., third-party defendants; Pride Carpet, Inc., fourth-party defendant-appellant-respondent.

(Index No. 1457/06)

Motion by MCS Floor Covering Services, Inc., on appeals and cross appeals from an order of the Supreme Court, Nassau County, dated February 5, 2009, to stay the trial in the above-entitled action pending hearing and determination of the appeals and cross appeals, and for leave to perfect its appeal before the other appealing parties.

Upon the papers filed in support of the motion and the papers filed in opposition and in relation thereto, it is

ORDERED that the branch of the motion which is to stay the trial is granted, and the trial in the above-entitled action is stayed pending hearing and determination of the appeals and cross appeal on condition that, on or before August 6, 2009, the appeal of MCS Floor Covering Services, Inc., is perfected by serving and filing a joint record or joint appendix and its brief on or before that date; and it is further,

ORDERED that in the event the appeal of MCS Floor Covering Services, Inc., is not perfected on or before August 6, 2009, the court, on its own motion, may vacate the stay, or the other parties may move to vacate the stay, on three days notice;

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ORDERED that on or before August 6, 2009, Pride Carpet, Inc., shall serve and file its brief; and it is further,

ORDERED that on or before September 8, 2009, E&A Construction Corp., shall serve and file its answering brief to the appeal of MCS Floor Covering Services, Inc., including its points of argument on its cross appeal (*see* 22 NYCRR 670.8[c][3]); and it is further,

ORDERED that on or before October 8, 2009, Peter Gisolfi Associates shall serve and file its answering brief in response to the appeal of MCS Floor Covering Services, Inc., and the cross appeal of E&A Construction Corp., and shall include the points of argument on its cross appeal (*see* 22 NYCRR 670.8[c][3]); and it is further,

ORDERED that on or before November 9, 2009, the plaintiffs shall serve and file their answering brief in response to the appeals of MCS Floor Covering Services, Inc., Pride Carpet, Inc., and the cross appeal of Peter Gisolfi Associates, and shall include the points of argument on their cross appeal (*see* 22 NYCRR 670.8[c][3]); and it is further,

ORDERED that on or before December 8, 2009, JMOA Engineering, P.C., and Anastos Engineering Associates shall serve and file their respective respondents' briefs; and it is further,

ORDERED that on or before December 8, 2009, MCS Floor Covering Services, Inc., and Pride Carpet, Inc., shall serve and file their respective briefs in response to the cross appeal by the plaintiffs and in reply on their own appeals; and it is further,

ORDERED that on or before January 7, 2010, E&A Construction Corp., and Peter Gisolfi Associates shall serve and file their respective briefs in response to the cross appeals of the plaintiff and in reply on their own cross appeals; and it is further,

ORDERED that on or before January 22, 2010, the plaintiffs shall serve and file their reply brief; and it is further,

ORDERED that the branch of the motion which is for leave to perfect the appeal before the other appealing parties is granted to the extent indicated above and otherwise denied.

SKELOS, J.P., FISHER, LEVENTHAL and LOTT, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court