

Winter Invs., LLC v Verschleiser
2020 NY Slip Op 34131(U)
December 9, 2020
Supreme Court, New York County
Docket Number: 651589/2019
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 53EFM

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WINTER INVESTORS, LLC, JACOB FRYDMAN, JFURTI, LLC,

Plaintiff,

- v -

ELI VERSCHLEISER, JENNIFER ZOLDAN, 3501 AVE T HOLDINGS, LLC. A/K/A 3501 AVE T HOLDINGS CORP., 2 CARMEN CT LLC, OUR PLACE IN NEW YORK, INC. A/K/A OUR PLACE IN NY, INC., ELI & SHANI VERSCHLEISER FOUNDATION, CONGREGATION KOLLEL LOMDEI SHAS, INC.,

Defendant.

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INDEX NO. 651589/2019

MOTION DATE 12/9/2020

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 70, 71, 82, 83, 84, 85, 86, 87, 88

were read on this motion to/for CHANGE VENUE.

Upon the foregoing documents, and for the reasons set forth below, Jennifer Zoldan, 3501 Ave T Holdings LLC (**Ave T Holdings**), and Eli & Shani Verschleiser Foundation's (the **Foundation**, and together with Ms. Zoldan and Ave T Holdings, the **Zoldan Defendants**) motion (mtn. seq. no. 002) to change venue from New York County to Kings County pursuant to CPLR § 507, is granted.

I. The Facts Relevant to the Motions

Jacob Frydman and Eli Verschleiser were business partners in several real estate-related ventures from 2011 through 2013 (Am. Compl., ¶ 45). Mr. Frydman, Winter Investors, LLC, and JFURTI LLC (collectively, the **Plaintiffs**) filed several lawsuits against Mr. Verschleiser and

certain entities associated with Mr. Verschleiser in the United States District Court for the Southern District of New York in the matters of *Frydman v Verschleiser et al.*, Case No. 14-cv-08084, *United Realty Advisors, LP, et al. v Verschleiser, et al.*, Case No. 14-cv-5903, and *Winter Investors LLC, et al. v Panzer, et al.*, Case No. 14-cv-06852 (NYSCEF Doc. No. 26, 31). In those cases, the Plaintiffs allege that Mr. Verschleiser and his affiliates hacked their computer servers, damaged their business dealings by disparaging Mr. Frydman, stole trade secrets, and breached a certain sale and purchase agreement. The Plaintiffs assert claims under the Racketeer Influenced Corrupt Organizations Act, 18 USC §§ 1961 *et seq.*, the Computer Fraud and Abuse Act, 18 USC §§ 1030 *et seq.*, the Electronic Communications Privacy Act, 18 USC §§ 2510 *et seq.*, and the Stored Communications Act, 18 USC §§ 2701 *et seq.*, among other contract and tort claims, seeking damages of over \$150 million dollars (*id.*, ¶ 47).

The Plaintiffs also hold a judgment against Mr. Verschleiser of \$10,708.60 stemming from an award of sanctions entered against Mr. Verschleiser in a related case filed in New York State Supreme Court captioned *JFURTI LLC, et al. v Verschleiser, et al.*, Index No. 650803/2014 (NYSCEF Doc. No. 28). Mr. Frydman holds a judgment against Mr. Verschleiser of \$285,957.20 awarded in an action filed in New York State Supreme Court to confirm an arbitration award captioned *In the Matter of the Arbitration of Certain Controversies between Jacob Frydman, et al. v EVUNP Holdings LLC, et al.*, Index No. 652796/2018 (NYSCEF Doc. No. 38). Mr. Frydman has filed a separate suit in New York State Supreme Court in the matter *Frydman v Verschleiser*, Index No. 150803/2018, seeking damages for personal injuries sustained as a result of an alleged physical assault on an elevator in February 2018 in which the

court (Hagler, J.) granted Mr. Frydman's motion for default judgment on May 24, 2018 and ordered that the matter be set down for an inquest on damages (NYSCEF Doc. No. 30).

The Plaintiffs filed an Amended Summons and Complaint in this action on April 5, 2019, asserting causes of action for fraudulent conveyance under Sections 273, 273-A, 275, 276, and 276-A of the Debtor and Creditor Law, alleging that Mr. Verschleiser (1) conveyed certain real property located at 3501 Avenue T, Brooklyn, New York to Ave T Holdings for no consideration (Am. Compl., ¶¶ 67-86), (2) caused certain real property located at 2 Carmen Court, Ramapo, New York to be transferred to an entity known as Congregation Kolliel for no consideration (*id.*, ¶¶ 87-99), and (3) gave personal funds of at least \$216,200, more than 3,000 pieces of artwork valued at \$2,403,645, and stock in a company called FLOWAID valued at \$1.8 million to non-profit organizations affiliated with Mr. Verschleiser (*id.*, ¶¶ 100-126). All defendants initially failed to timely answer or respond to the Amended Complaint. On July 20, 2020, the Plaintiffs moved for default judgment (NYSCEF Doc. No. 51). However, counsel for the Zoldan Defendants contacted counsel for the Plaintiffs and requested additional time to interpose an answer. By stipulation, dated July 31, 2020 (the **Stipulation**), the Plaintiffs agreed to withdraw their motion for default judgment and agreed that the Zoldan Defendants would be permitted to file an answer (NYSCEF Doc. No. 85). To wit, the Stipulation provides:

IT IS HEREBY STIPULATED by and between the attorneys for Plaintiffs and Defendants Jennifer Zoldan A/K/A Jennifer Verschleiser A/K/A Shani Verschleiser, 3501 Ave T Holdings LLC A/K/A 3501 Ave T Holdings, Corp., and Eli & Shani Verschleiser Foundation that the Motion for Default Judgment is withdrawn as to Defendants Jennifer Zoldan A/K/A Jennifer Verschleiser A/K/A Shani Verschleiser, 3501 Ave T Holdings LLC A/K/A 3501 Ave T Holdings, Corp., and Eli & Shani Verschleiser Foundation, and the time for [the Zoldan] Defendants . . . to answer . . . is hereby extended up to and including August 10, 2020.

(*id.*).

On August 10, 2020, the Zoldan Defendants filed an answer to the Amended Complaint (NYSCEF Doc. No. 66). On August 13, 2020, the Zoldan Defendants moved under CPLR § 507 to change venue from New York County to Kings County (NYSCEF Doc. No. 70).

II. Discussion

CPLR § 507 provides: “The place of trial of an action in which the judgment demanded would affect the title to, or the possession, use or enjoyment of, real property shall be in the county in which any part of the subject of the action is situated.” Where a judgment would affect the title to real property, the proper venue is the county in which the real property is situated even where one or more of the parties reside in or maintain offices in the county in which the action was filed (*Moschera & Catalano, Inc. v Advanced Structures Corp.*, 104 AD2d 306, 306-307 [1st Dept 1984]).

The Zoldan Defendants argue that venue should be transferred to Kings County pursuant to CPLR § 507 because a judgment in this action would affect title to real property located in Kings County – i.e., the property located at 3501 Avenue T, Brooklyn, New York. In their opposition papers, the Plaintiffs argue that the Zoldan Defendants have waived their right to challenge venue pursuant to the Stipulation, in which they agreed to an extension of time to answer only, not to file a motion. In addition, they argue that several assets are being challenged as fraudulent conveyances, not merely the transfer of property located in Kings County, and each of the plaintiffs, several of the defendants, and the majority of likely witnesses are located in New York

County, therefore New York County is the proper venue. The Plaintiffs' arguments, however, fail.

The Amended Complaint seeks, among other things, to vacate the transfer of the real property located at 3501 Avenue T, Brooklyn, New York, restore title of the property to Mr. Verschleiser, and render it subject to attachment for the purpose of collecting on present or future judgments. Therefore, a judgment in this case would necessarily affect title to real property located in Kings County. Additionally, the express terms of the Stipulation permit the Zoldan Defendants to file an answer but do not prohibit them from (or otherwise waive the right to) subsequently moving to challenge venue. To the extent that the Plaintiffs ask the court to consider certain emails as evidence of a contrary intent, the Stipulation is clear and unambiguous and must be enforced in accordance with its plain meaning (*Greenfield v Philles Records, Inc.*, 98 NY2d 562, 569-570 [2002]) and venue pursuant to CPLR § 507 is mandatory. Therefore, the motion to change venue to Kings County is granted pursuant to CPLR § 507.

Accordingly, it is

ORDERED that the motion for a change of venue is granted and venue of this action is changed from this Court to the Supreme Court, County of Kings; and it is further

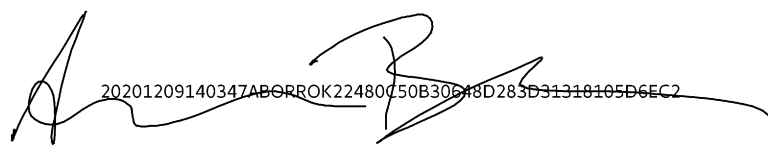
ORDERED that the Clerk of this Court shall transfer the file in this action to the Clerk of the Supreme Court, County of Kings and shall mark his records to reflect such transfer; and it is further

ORDERED that, within 30 days from entry of this order, counsel for movant shall serve a copy of this order with notice of entry upon the Clerk of this Court, shall pay the appropriate transfer fee, if any, and shall contact the staff of the Clerk of this Court and cooperate in effectuating the transfer; and it is further

ORDERED that the Clerk of the Court shall coordinate the transfer of the file in this action with the Clerk of the Supreme Court, Kings County, so as to ensure an efficient transfer and minimize insofar as practical the reproduction of documents, including with regard to any documents that may be in digital format; and it is further

ORDERED that such service upon the Clerk of this Court 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).

12/9/2020
DATE



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ANDREW BORROK, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input checked="" type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE