

<b>Bhng Inc. v I &amp; M Kosher Catering, LLC</b>
2020 NY Slip Op 33213(U)
September 30, 2020
Supreme Court, New York County
Docket Number: 651505/2020
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 14

*Justice*

-----X

BHNG INC.,

Plaintiff,

- v -

I & M KOSHER CATERING, LLC, IRA SCHORR, MITCHELL  
FROELICH

Defendant.

-----X

INDEX NO. 651505/2020

MOTION DATE 09/29/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 27

were read on this motion to/for CHANGE VENUE.

The motion by defendants to change venue to Kings County is granted.

**Background**

This case arises out of the sale of a bagel café in Brooklyn in 2018. Plaintiff contends that defendants failed to pay the first installment due in the note that provided for sale the café. It alleges that the individual defendants signed a guaranty along with the security agreement and note that form the basis of this action.

Defendants Froelich and I&M Kosher Catering, LLC (“Movants”) seek to change the venue to Kings County. Movants assert that I&M brought a case in Brooklyn prior to the commencement of this action and this matter is evidence of plaintiff’s attempt at forum shopping. They observe that plaintiff did not bring any counterclaims in the Kings County case and instead filed this matter. Movants point out that the agreement at issue does not identify New

York County as the only jurisdiction where a case can be brought. They insist that New York County has no connection to the dispute.

In opposition, plaintiff claims that the agreement at issue permits a case to be brought in any jurisdiction in New York State so New York County is a proper venue. It emphasizes that there is no provision of the contract that identifies Kings County as the only proper venue. Plaintiff also points out that the parties in the Kings County case brought by I&M are different from the parties here.

In reply, Movants insist that the instant venue is improper because there are no ties to New York County. They insist that plaintiff improperly relied on CPLR 501 because the agreements (including the guaranty) do not specify New York County. Movants also point out that pursuant to CPLR 507, this case should be transferred to Kings County because plaintiff seeks possession of the property at issue, which is located in Brooklyn.

### **Discussion**

“CPLR § 507 directs that 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.’ Clearly, the relief sought in this action does affect defendant's use, possession or enjoyment of the property” (*Moschera & Catalano, Inc. v Advanced Structures Corp.*, 104 AD2d 306, 306-07, 478 NYS2d 641 [1st Dept 1984] [transferring a case from New York County to Suffolk County where plaintiff sought termination of the tenant’s possession of the property]).

Here, the complaint’s fifth cause of action seeks declaratory relief that “plaintiff has a possessory interest in the [premises] and determination restoring legal title and possession of the

Premises to the plaintiff” (NYSCEF Doc. No. 1, ¶ 74). It also requests “a judgment of ejectment as and against defendants and grant possession of the Premises to plaintiff” (*id.* ¶ 73).

The Court has no choice but to transfer the case to Kings County. There is no question that the complaint seeks relief that would affect defendants’ possession of the property at issue and that property is located in Kings County. Although plaintiff correctly points out that the agreement and guaranty at issue required defendants to submit to jurisdiction in New York State, the agreements did not specify New York County as the only forum in which a case could be brought. Therefore, it is proper to change venue to Brooklyn.

Accordingly, it is hereby

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

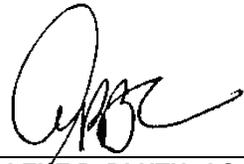
ORDERED that the Clerk of this Court shall transfer the file in this action to the Clerk of the Supreme Court, County of Kings and shall mark its records to reflect such transfer; and it is further

ORDERED that, within 30 days from entry of this order, counsel for movants 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](http://www.nycourts.gov/supctmanh)).

9/30/2020  
DATE

  
ARLENE P. BLUTH, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE