

**Prairie Ocean Realty LLC v Lan Wang**

2016 NY Slip Op 30821(U)

May 3, 2016

Supreme Court, New York County

Docket Number: 157209/2015

Judge: Debra A. James

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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: DEBRA A. JAMES**  
*Justice*

**PART 59**

PRAIRIE OCEAN REALTY LLC,

Index No.: 157209/2015

Plaintiff,

Motion Date: 04/2 /2016

- v -

Motion Seq. No.: 003

LAN WANG d/b/a FREE ORIENTAL OASIS, INC.,

Motion Cal. No.: \_\_\_\_\_

Defendant.

The following papers, numbered 1 to 3 were read on this motion for removal and consolidation.

Order to Show Cause -Affidavits -Exhibits \_\_\_\_\_  
Answering Affidavits - Exhibits \_\_\_\_\_  
Replying Affidavits - Exhibits \_\_\_\_\_

PAPERS NUMBERED	
_____	1
_____	2
_____	3

**Cross-Motion:**       Yes       No

Upon the foregoing papers,

Defendant LAN WANG d/b/a FREE ORIENTAL OASIS, INC. seeks to remove the proceeding entitled Prairie Ocean Realty LLC v Lan Wang d/b/a Free Oriental an, LLC, L&T Index No. 072094/2015, (NY City Civil Ct, NY County) (NYC Civil Court Non-Payment Summary Proceeding) from the New York City Civil Court, New York County, and consolidate such proceeding with the herein action for all purposes on the grounds that the cases involve the same claims and occurrences. Defendant contends that such proceeding and this action arise out of the same circumstances and involve

**Check One:**       FINAL DISPOSITION       NON-FINAL DISPOSITION

**Check if appropriate:**       DO NOT POST       REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

common questions of law and fact.

Plaintiff Prairie Ocean Realty, LLC opposes the motion arguing that the New York City Civil Court Proceeding is a summary proceeding involving non-payment of rent that is unrelated to the herein action, which plaintiff previously brought seeking a declaratory judgment, as well as damages and specific performance for breach of contract. Plaintiff also asserts that it would suffer prejudice from the consolidation as it would delay the resolution of such summary proceeding. It points out that such rent nonpayment summary proceeding, unlike the instant plenary action, does not permit discovery without court order. Plaintiff urges that as for the counterclaims that defendant has interposed in both this action and the summary proceeding, defendant can obtain full relief thereon in this plenary action.

This court agrees with defendant that consolidation will serve the interest of judicial economy as resolution in this Court of the question of which party bears responsibility for the costs of the repairs at issue "would necessarily resolve the issues in the [non-payment summary] proceeding" as to what amount of rent, including for the period during which both parties agreed there would be an abatement of rent while plaintiff prosecuted the repairs, is owed by respondent tenant. DeCastro v Bhokari, 201 AD2d 382 (1<sup>st</sup> Dept 1994). Moreover, as the

plaintiff landlord filed the herein action before commencing the summary proceeding, it is appropriate that the issues should be tried in this plenary action. See D.J. Mortgage Capital, Inc. v. Kontogiannis, 110 AD3d 522 (1<sup>st</sup> Dept 2013).

Accordingly, it is hereby

ORDERED that the motion is granted and the above-captioned action is consolidated in this Court with Prairie Ocean Realty LLC v Lan Wang d/b/a Free Oriental an, LLC, L&T Index No. 072094/2015, (NY City Civil Ct, NY County) under New York County Index No. 157209/2015 and the consolidated action shall bear the following caption:

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PRAIRIE OCEAN REALTY LLC,

Plaintiff,

- v -

LAN WANG d/b/a FREE ORIENTAL OASIS, INC.,

Defendant.

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And it is further

ORDERED that the Clerk of the New York City Civil Court, New York County, shall transfer the papers on file under L&T Index No. 072094/2015 to the Clerk of this Court upon service of a certified copy of this order and payment of the appropriate fee, if any; and it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that movant is directed to serve a copy of this order with notice of entry on the County Clerk (Room 141 B), who shall consolidated the papers in the actions hereby consolidated and shall mark his records to reflect the consolidation, and it is further

ORDERED that the movant is directed to serve a copy of this order with notice of entry upon the Clerk of the Trial Support Office (Room 158), who is hereby directed to mark the court's records to reflect the consolidation.

This is the decision and order of the court.

**Dated:** May 3, 2016

ENTER:

~~Patricia A. James~~  
**DEBRA A. JAMES** J.S.C.