

**Kahan Jewelry Corp. v Empire J., Inc.**

2022 NY Slip Op 32441(U)

July 22, 2022

Supreme Court, New York County

Docket Number: Index No. 653704/2021

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: HON. DEBRA JAMES

PART 59

*Justice*

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KAHAN JEWELRY CORP.,

Plaintiff,

- v -

EMPIRE J., INC. and SAMI JAJATI,

Defendants.

-----X

INDEX NO. 653704/2021MOTION DATE 12/03/2021MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

were read on this motion to/for

STRIKE PLEADINGS.

ORDER

Upon the foregoing documents, it is

ORDERED that the motion of plaintiff pursuant to CPLR § 3126 to strike defendants' answer or to preclude defendants, at trial, from offering evidence with respect to issues upon which such non-disclosed evidence is material, is granted to the extent that should such defendants fail to appear at the virtual deposition on or before August 31, 2022, defendants shall be sanctioned upon further motion; and it is further

ORDERED that the cross motion of defendants is granted and Kahan Jewelry Corp. v Empire J., Inc. and Sami Jajati, Index No. 653704/2021, the action pending in this Court, shall be consolidated with Empire J Inc. v Kahan Jewelry Corp., Yitzchok

Kahan and Bullion Trading LLC, Index No. 505134/2021, pending in the Supreme Court, Kings County; and it is further

ORDERED that the consolidation shall take place under Kings County Index No. 505134/2021 and the consolidated action shall bear the following caption:

SUPREME COURT  
COUNTY OF KINGS

-----X

Empire J Inc.,

Plaintiff/Counterclaim Defendant,

-and-

Sam Jajati,

Counterclaim Defendant only,

-against-

Kahan Jewelry Corp.,

Defendant/Counterclaim Plaintiff,

-and-Yitzchok Kahan and Buillion Trading LLC,

Defendants.

-----X

And it is further

ORDERED that, within 30 days from entry of this order, counsel for the movant (or counsel for plaintiff, should movant delay) shall serve a certified copy of this order upon the Clerk of the Supreme Court, New York County, and shall pay the appropriate fee, if any, for such transfer and shall contact the staff of such Clerk

to arrange for the effectuation of the transfer in an efficient manner; and it is further

ORDERED that service upon the Clerk of the Supreme Court, New York County 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 this court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further

ORDERED that the Clerk of the Supreme Court, New York County, shall transfer the documents on file under Index No. 653704/2021 to the Clerk of the Supreme Court, Kings County, for the purpose of consolidation; and it is further

ORDERED that the Clerk of the Supreme Court, Kings County and the Clerk of this court shall coordinate the transfer of the documents being transferred so as to ensure an efficient transfer and to minimize insofar as practical the reproduction of such documents, including with regard to any documents that may be in digital format; 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, within 30 days from entry of this order, movant or (counsel for plaintiff, should movant delay) shall serve a copy of this order with notice of entry on the Clerk of the Supreme

Court, Kings County (360 Adams Street, Room 295), who shall consolidate the documents in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the protocols for such county; and it is further

ORDERED that, as applicable and insofar as is practical, the Clerk of Court, Kings County, shall file the documents transferred from the Supreme Court, New York County in the consolidated case file under the Kings County Index Number of the consolidated action in the New York State Courts Electronic Filing System or make appropriate notations of such documents in the e-filing records of the court so as to ensure access to the documents in the consolidated action.

#### DECISION

This court, *sua sponte*, judicially notices the Order dated June 21, 2022 in Empire J. Inc. v Kahan Jewelry Corp., Index No. 505134/2020 (Knipel, J.) (NYSCEF Document Number 38), pending in Supreme Court, Kings County (Kings County Action), which provides, in pertinent part:

"Defendant files a motion to dismiss/etc. for plaintiff's failure to attend EBT (mot seq 2). The motion is fully briefed and decided as follows: Plaintiff to appear for EBT to be held via remote video conference o/o/b 8/31/22 or be sanctioned upon further motion. NOI o/o/b 7/7/23."

In the action at bar, plaintiff in the Kings County Action is the defendant herein. As in the Kings County action, defendant at bar has failed to appear for the scheduled examination before trial, in this instance, not complying with the Orders dated July 28, 2021 and December 27, 2021 (NYSCEF Documents Number 16 and 30). Plaintiff herein deposing Empire J. Inc., as defendant and as plaintiff in the Kings County Action during the same deposition will promote efficiency.

As such discovery process suggests, for reasons of judicial economy and ease of decision making in the two cases, the Kings County Action and the action at bar, which involve common questions of law and fact, should be consolidated. “[T]he court typically will select the venue of the joined action, which ordinarily will be where the first of the actions was commenced. See Perinton Associates v Heicklen Farms, Inc., 1979, 67 AD2d 832 . . . (4<sup>th</sup> Dept).” McKinney’s Supplementary Practice Commentaries, 2012, C602:3. Here the Kings County Action was commenced on March 1, 2020, while the herein action was commenced on June 9, 2021.

Therefore, this court selects the King County as the venue of the consolidated action.

*Debra A. James*  
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7/22/2022  
DATE

DEBRA JAMES, 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