

<b>Zhongyi Pei v L&amp;H Resort Sys., LP</b>
2022 NY Slip Op 33050(U)
September 8, 2022
Supreme Court, New York County
Docket Number: Index No. 651909/2014
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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ZHONGYI PEI, YIYAN ZHANG,

Plaintiffs,

- v -

L&H RESORT SYSTEMS, LP, LI LI, YIQING HAN,

Defendants.

INDEX NO. 651909/2014

MOTION DATE 05/09/2022

MOTION SEQ. NO. 018

**DECISION + ORDER ON  
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 018) 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324 were read on this motion to CONSOLIDATE AND TRANSFER VENUE.

Plaintiffs Yiqing Han, Yiyang Zhang, and Zhongyei Pei, individually and derivatively on behalf of L&H Resort Systems, LP (collectively, "Plaintiffs"), seek an order consolidating this action with the action captioned, *Yiqing Han, Yiyang Zhang and Zhongyi Pei, individually and derivatively on behalf of L&H Resort Systems, L.P. v NY-32 Realty Group INC.* Index No. EF2021-56, Sup Ct, Greene County (the "Greene County Action"), transferring of the venue of the Greene County Action to New York County, and for leave for the filing of a supplemental summons and second amended complaint.

After review of Plaintiff's motion and supporting papers, this Court directed the parties to address (1) whether the claim asserted in the Greene County action to set aside the deed is subject to CPLR 507's mandatory venue provision, and if so, (2) whether consolidation in this Court is permissible (NYSCEF 323). Counsel for Plaintiffs and counsel for Defendants NY-32 Realty Group Inc. and Yiyao Fu p/k/a Elena Fu submitted a joint letter (the "Joint Letter") in

response to this Court's request (NYSCEF 324),<sup>1</sup> agreeing that the outcome of the Greene County action would affect title to real property situated therein and, therefore, CPLR 507 mandates that said action be heard in Greene County. Accordingly, in light of the parties' agreement, and the applicable case law (*Maurer v Maurer*, 96 AD3d 417, 418 [1st Dept 2012]; *Scotto v Kodosi*, 102 AD3d 947, 949 [2d Dept 2013]; *Clark v Clark*, 93 AD3d 812, 815 [2d Dept 2012]; *GAM Prop. Corp. v Sorrento Lactalis, Inc.*, 41 AD3d 645, 646 [2d Dept 2007]), that action to set aside the deed must remain before the Court in Greene County. Therefore, the motion to transfer the Greene County Action to this Court is denied.

However, consolidation of the two actions is appropriate, albeit in Greene County rather than in this Court. The actions involve substantially identical parties and arise from the same series of facts and transactions. Specifically, both actions are centered around the operation of the property, located in Catskill, Greene County, New York, by L&H and Li Li, which culminated in the alleged fraudulent sale of the property. No opposition to consolidation was filed, and thus there is no evidence in the record that consolidation or joint trial would result in prejudice to a substantial right (*see Berman v Greenwood Vil. Community Dev., Inc.*, 156 AD2d 326, 326-27 [2d Dept 1989]; *Scotto*, 102 AD3d at 948). Accordingly, Plaintiffs' motion to consolidate is granted insofar as this action shall be consolidated into the Greene County Action, and venue of this action is transferred to Greene County (which has exclusive jurisdiction over the claims asserted in the Greene County Action).

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<sup>1</sup> The Letter notes that Defendants Li Li and L&H Resorts Systems LP are currently unrepresented, as their counsel has withdrawn and no new counsel has entered appearance for said Defendants. Defendants Yuzheng Miao and William Su have not appeared in this action; nor have Proposed Defendants Primary Land Abstract NY Inc. and BP3 Capital LLC.

In light of this determination, the Court denies without prejudice Plaintiffs' request for leave to file a second amended complaint. Such an application may be made to the Greene County court in the consolidated action.

Therefore, it is

**ORDERED** that Plaintiffs' motion is **granted in part and denied in part**, as follows:

(i) the motion to transfer the venue of the Greene County Action to New York County is denied; (ii) the motion to consolidate the two actions is granted; (iii) venue of this action is transferred from this Court to Supreme Court, Greene County; and (iv) Plaintiffs' motion for leave to file a second amended complaint is denied without prejudice; 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 Greene and shall mark his records to reflect such transfer; and it is further

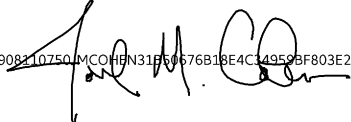
**ORDERED** that, within 14 days from entry of this order, counsel for movant shall serve a copy of this order with notice of entry upon the Clerk of this Court, shall pay the appropriate transfer fee, if any, and shall contact the staff of the Clerk of this Court and cooperate in effectuating the transfer; 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, Greene 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)).

This constitutes the Decision and Order of the Court.

  
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JOEL M. COHEN, J.S.C.

9/8/2022  
DATE

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