

JAC Operating, LLC v HNA Hew 2 Intermediate, LP
2023 NY Slip Op 32510(U)
July 20, 2023
Supreme Court, New York County
Docket Number: Index No. 654627/2021
Judge: Joel M. Cohen
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

-----X
JAC OPERATING, LLC, CLEAN CARS EQUITY TWO
LLC, CLEAN CARS HOLDINGS LLC, ABE COHEN,
JOSEPH COHEN

Plaintiffs,

- v -

HNA HEW 2 INTERMEDIATE, LP, HEW 2 GP, LLC,

Defendants.

INDEX NO. 654627/2021

MOTION DATE 06/26/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

-----X
HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 13
were read on this motion to TRANSFER AND CONSOLIDATE.

Defendants HNA HEW 2 Intermediate, LP and HEW 2 GP, LLC (“Defendants”) move for an order pursuant to CPLR 602(b) (i) consolidate this action with a related action captioned *Abe M. Cohen et. al v. City Wash SI, LLC et. al.*, Index No. 150227/2022, pending in the New York Supreme for Richmond County (the “Richmond County Action”), and (ii) transferring the Richmond County Action to New York County for the purpose of consolidation. Plaintiffs join in Defendants’ request (NYSCEF 13).

The unopposed motion is granted. CPLR 602(b) provides that “[w]here an action is pending in the supreme court it may, upon motion, remove to itself an action pending in another court and consolidate it or have it tried together with that in the supreme court.” (CPLR 602[b]). “Although a motion pursuant to CPLR 602 ‘is addressed to the sound discretion of the trial court, consolidation or joinder for trial is favored to avoid unnecessary duplication of trials, save unnecessary costs and expense, and prevent an injustice which would result from divergent

decisions based on the same facts. Where common questions of law or fact exist, a motion . . . to consolidate [or for a joint trial] should be granted, absent a showing of prejudice to a substantial right by the party opposing the motion” (*Sherpa v Ford Motor Co.*, 216 AD3d 834, 835–36 [2d Dept 2023] [citations omitted]).

This action and the Richmond County Action present common issues of law and fact related to Defendant HNA HEW 2 Intermediate, LP’s acquisition of four carwashes from Plaintiffs Abe and Joseph Cohen. Both actions also include overlapping parties, and Defendants submit that the parties that are not identical are all affiliates of the overlapping parties (NYSCEF 11 ¶6). Accordingly, in the interests of judicial economy, preservation of party resources, and avoidance of inconsistent determinations, consolidation of the two actions in New York County is appropriate here.

Accordingly, it is

ORDERED that the motion is granted and the action *Abe M. Cohen et. al v. City Wash SI, LLC et. al.*, Index No. 150227/2022, pending in the New York Supreme for Richmond County, shall be consolidated in this Court with *JAC Operating, LLC et al v. HNA HEW 2 Intermediate, LP et al*, Index No. 654627/2021, New York County; and it is further

ORDERED that the consolidation shall take place under New York County Index No. 654627/2021 and the consolidated action shall bear the following caption:

JAC OPERATING, LLC; CLEAN CARS
EQUITY TWO LLC; CLEAN CARS
HOLDINGS LLC; ABE COHEN; AND
JOSEPH COHEN, FIVE BORO HOLDING, LLC

Plaintiffs,

-against-

HNA HEW 2 INTERMEDIATE, LP and

HEW 2 GP, LLC, CITY WASH SI LLC,
MVP WASH LLC, HNA HEW 2 JV, LP,
HEW 2 FINISH LINE LLC

Defendants.

And it is further

ORDERED that, within 30 days from entry of this order, counsel for the movant shall serve a certified copy of this order upon the Clerk of the Supreme Court, Richmond County, and shall pay the appropriate fee, if any, for such transfer and shall contact the staff of said 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, Richmond County shall be made in accordance with any applicable protocol or other procedures of said county; and it is further

ORDERED that the Clerk of the Supreme Court, Richmond County, shall transfer the documents on file under Index No. 150227/2022 to the Clerk of this Court for the purpose of consolidation; and it is further

ORDERED that the Clerk of the Supreme Court, Richmond 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 shall serve a copy of this order with notice of entry on the Clerk of the Court, 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 hard-copy format if the case pending in this county is a hard-copy case or, if this case is an e-filed one, 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); and it is further

ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents transferred from the Supreme Court, Richmond County in the consolidated case file under the New York 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; and it is further

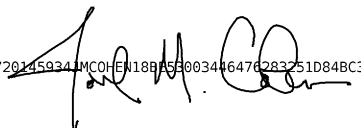
ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry upon the Clerk of the General Clerk’s Office, who is hereby directed to reflect the consolidation by appropriately marking the court’s records; and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office shall be made in hard-copy format if the case pending in this county is a hard-copy case or, if the case pending here is an e-filed one, shall be made in accordance with the procedures set forth in the aforesaid *Protocol*; and it is further

ORDERED that the parties appear for a preliminary conference on August 22, 2023, at 10:30 a.m., with the parties circulating dial-in information to chambers at SFC-Part3@nycourts.gov in advance of the conference.¹

¹ If the parties agree on a proposed preliminary conference order in advance of the conference date (consistent with the guidelines in the Part 3 model preliminary conference order, available

This constitutes the Decision and Order of the Court.

<u>7/20/2023</u> DATE	 20230720145934 JMC0188155003446476283251D84BC3F9634 JOEL M. COHEN, J.S.C.																													
CHECK ONE:	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <table border="0"> <tr><td>☐</td><td>CASE DISPOSED</td></tr> <tr><td>☒</td><td>GRANTED</td></tr> <tr><td>☐</td><td>SETTLE ORDER</td></tr> <tr><td>☐</td><td>INCLUDES TRANSFER/REASSIGN</td></tr> </table> </td> <td style="width: 10%; text-align: center; vertical-align: middle;"> ☐ DENIED </td> <td style="width: 40%; vertical-align: top;"> <table border="0"> <tr><td>☒</td><td>NON-FINAL DISPOSITION</td></tr> <tr><td>☐</td><td>GRANTED IN PART</td></tr> <tr><td>☐</td><td>SUBMIT ORDER</td></tr> <tr><td>☐</td><td>FIDUCIARY APPOINTMENT</td></tr> </table> </td> </tr> <tr> <td style="vertical-align: top;"> APPLICATION: </td> <td style="vertical-align: top;"> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%;"></td> <td style="width: 10%; text-align: center; vertical-align: middle;"> ☐ OTHER </td> <td style="width: 40%;"></td> </tr> <tr> <td style="vertical-align: top;"> CHECK IF APPROPRIATE: </td> <td style="vertical-align: top;"> <table border="0"> <tr><td>☐</td><td>REFERENCE</td></tr> </table> </td> <td style="vertical-align: top;"> </td> </tr> </table> </td> </tr> </table>	<table border="0"> <tr><td>☐</td><td>CASE DISPOSED</td></tr> <tr><td>☒</td><td>GRANTED</td></tr> <tr><td>☐</td><td>SETTLE ORDER</td></tr> <tr><td>☐</td><td>INCLUDES TRANSFER/REASSIGN</td></tr> </table>	☐	CASE DISPOSED	☒	GRANTED	☐	SETTLE ORDER	☐	INCLUDES TRANSFER/REASSIGN	☐ DENIED	<table border="0"> <tr><td>☒</td><td>NON-FINAL DISPOSITION</td></tr> <tr><td>☐</td><td>GRANTED IN PART</td></tr> <tr><td>☐</td><td>SUBMIT ORDER</td></tr> <tr><td>☐</td><td>FIDUCIARY APPOINTMENT</td></tr> </table>	☒	NON-FINAL DISPOSITION	☐	GRANTED IN PART	☐	SUBMIT ORDER	☐	FIDUCIARY APPOINTMENT	APPLICATION:	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%;"></td> <td style="width: 10%; text-align: center; vertical-align: middle;"> ☐ OTHER </td> <td style="width: 40%;"></td> </tr> <tr> <td style="vertical-align: top;"> CHECK IF APPROPRIATE: </td> <td style="vertical-align: top;"> <table border="0"> <tr><td>☐</td><td>REFERENCE</td></tr> </table> </td> <td style="vertical-align: top;"> </td> </tr> </table>		☐ OTHER		CHECK IF APPROPRIATE:	<table border="0"> <tr><td>☐</td><td>REFERENCE</td></tr> </table>	☐	REFERENCE	
<table border="0"> <tr><td>☐</td><td>CASE DISPOSED</td></tr> <tr><td>☒</td><td>GRANTED</td></tr> <tr><td>☐</td><td>SETTLE ORDER</td></tr> <tr><td>☐</td><td>INCLUDES TRANSFER/REASSIGN</td></tr> </table>	☐	CASE DISPOSED	☒	GRANTED	☐	SETTLE ORDER	☐	INCLUDES TRANSFER/REASSIGN	☐ DENIED	<table border="0"> <tr><td>☒</td><td>NON-FINAL DISPOSITION</td></tr> <tr><td>☐</td><td>GRANTED IN PART</td></tr> <tr><td>☐</td><td>SUBMIT ORDER</td></tr> <tr><td>☐</td><td>FIDUCIARY APPOINTMENT</td></tr> </table>	☒	NON-FINAL DISPOSITION	☐	GRANTED IN PART	☐	SUBMIT ORDER	☐	FIDUCIARY APPOINTMENT												
☐	CASE DISPOSED																													
☒	GRANTED																													
☐	SETTLE ORDER																													
☐	INCLUDES TRANSFER/REASSIGN																													
☒	NON-FINAL DISPOSITION																													
☐	GRANTED IN PART																													
☐	SUBMIT ORDER																													
☐	FIDUCIARY APPOINTMENT																													
APPLICATION:	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%;"></td> <td style="width: 10%; text-align: center; vertical-align: middle;"> ☐ OTHER </td> <td style="width: 40%;"></td> </tr> <tr> <td style="vertical-align: top;"> CHECK IF APPROPRIATE: </td> <td style="vertical-align: top;"> <table border="0"> <tr><td>☐</td><td>REFERENCE</td></tr> </table> </td> <td style="vertical-align: top;"> </td> </tr> </table>		☐ OTHER		CHECK IF APPROPRIATE:	<table border="0"> <tr><td>☐</td><td>REFERENCE</td></tr> </table>	☐	REFERENCE																						
	☐ OTHER																													
CHECK IF APPROPRIATE:	<table border="0"> <tr><td>☐</td><td>REFERENCE</td></tr> </table>	☐	REFERENCE																											
☐	REFERENCE																													

online at <https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/PC-Order-Part-3.pdf>), they may file the proposed order and email a courtesy copy to chambers with a request to so-order in lieu of holding the conference.