

Java Global LLC v Giordano

2023 NY Slip Op 33949(U)

November 3, 2023

Supreme Court, New York County

Docket Number: Index No. 652352/2021

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 A. JAMES PART 59

Justice

-----X

JAVA GLOBAL LLC, and JAMES C COX JR,
Petitioners,

INDEX NO. 652352/2021

MOTION DATE 05/17/2021

MOTION SEQ. NO. 001 002

- v -

FRANK GIORDANO,

**DECISION + ORDER ON
MOTION**

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92

were read on this motion to/for CHANGE VENUE.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 71

were read on this motion to/for CHANGE VENUE.

ORDER

Upon the foregoing documents, it is

ORDERED that the petition of JAVA GLOBAL LLC, and JAMES C COX, JR, to remove the action Giordano v Java Global LLC, et. al., bearing Index No. CV-003257-20/NY, pending in the New York City Civil Court, to the Supreme Court of New York (motion sequence number 001) is DENIED and the herein proceeding is DISMISSED, with statutory costs and disbursements; and it is further

ORDERED that respondent, having an address at _____, do recover from petitioners, having an address at _____, costs and disbursements in the

amount of \$ _____ , as taxed by the Clerk, and that respondent have execution therefor; and it is further

ORDERED that to the extent he seeks dismissal of the petition, the cross-motion of the respondent FRANK GIORDANO, is GRANTED; and it is further

ORDERED that the cross motion of respondent for sanctions is denied; and it is further

ORDERED that the motion of the petitioners JAVA GLOBAL LLC, and JAMES C COX to remove the action Giordano v Java Global LLC, et. al., bearing Index No. CV-003257-20/NY, pending in the New York City Civil Court to the Supreme Court of New York (motion sequence number 002) is DISMISSED, as moot.

DECISION

This proceeding arises out of a business relationship between petitioners Java Global/James Cox, Jr. ("Cox") and respondent Giordano. The parties were real estate agents and orally agreed to share commissions for certain transactions on which the parties collaborated. The petition alleges that the parties dissolved their collaboration in September 2019.

Respondent Frank Giordano ("Giordano") commenced an action in the Civil Court of New York, New York County captioned Giordano v Java Global LLC, et. al., bearing Index No. CV-003257-20/NY (the "Civil Court Action") by summons and complaint seeking the balance of commissions allegedly outstanding from certain transactions

where the parties had collaborated. Java/Cox answered and asserted a counterclaim seeking a declaration that Cox was entitled to 25% of the commissions received by Giordano for any closed transactions relating to Ethan and Adel Silverstein (the "Silversteins") based on an alleged oral agreement between the parties in October 2019. In his counterclaim, Cox alleges upon information and belief that a transaction with the Silversteins closed after October 2019, but does not provide any other details regarding the property or the basis of his information and belief other than conclusory allegations.

In opposition, Giordano denies that the parties reached an oral agreement in October 2019 after the parties undisputedly severed their business relationship in September 2019. He submits an email wherein the Silversteins specifically state they are not interested in working with Cox in July 2019 (NYSCEF Doc. No. 91).

Thereafter, Cox commenced the instant special proceeding seeking to remove the Civil Court Action to this court pursuant to CPLR 325(b) because the Civil Court lacks subject matter jurisdiction over actions for declaratory relief.

This court finds that removal is not warranted as the true nature of the counterclaim of petitioners at bar/defendants in the Civil Court Action is a counterclaim for money. It is well established that a declaratory judgment action is improper and unnecessary where a claim for damages is available. A review of

the counterclaim shows that a "full and adequate remedy" is already available in the Civil Court of New York, i.e., a breach of contract action for money damages. See Automated Ticket Sys., Ltd. v Quinn, 90 AD2d 738, 739 (1st Dept 1982), aff'd, 58 NY2d 949 (1983).

Java/Cox's motion for removal (motion sequence number 002) seeks the same relief as the petition and is dismissed, as moot.

Debra A. James

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11/3/2023

DATE

DEBRA A. 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