

Heller v Board of Mgrs. of Jardim Condominium

2025 NY Slip Op 33331(U)

September 8, 2025

Supreme Court, New York County

Docket Number: Index No. 159742/2022

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

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KEITH HELLER, CHRISTINE DING, RANCHO LINDO LLC, CHU HO CHUNG, JOHN DANKS, ALEXANDRA LEVINSON, PATRICK CLOPPENBURG, AGNES & LUCAS A LLC, LISA STONER, DANIEL KRAMER, MORTON DUBLIN, KIP CHAPPELLE, SONJA I RUBIN, YIZHOU ZHENG, CRAIG SIEGENTHALER, ALEXANDRA SIEGENTHALER, WILLIAM S MCCORMACK, PEMBROKE HOLDINGS LLC, ZARA INGILIZIAN, ATLANTIC PERCH LLC, DS GARDEN LLC, 67 FRANKLIN STREET 6A LLC, LAUREN A HANRAHAN, HELEN LEE, RICHARD SIU, MICHAEL JUNE KIM, JOOHUN KIM, AMIR KHANDANI, AMENEH AMINIAN,

Plaintiff,

- v -

BOARD OF MANAGERS OF JARDIM CONDOMINIUM, WC 28 REALTY LLC,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88 were read on this motion to/for MODIFY ORDER/JUDGMENT.

Upon the foregoing documents, and after a final submission date of May 22, 2025, Plaintiff AIG Property a/s/o Keith Heller and Christine Ding's ("AIG") motion for (a) leave to renew Defendant WC 28 Realty LLC's prior motions which sought to consolidate New York County Index Number 154571/2023 (the "AIG Action") with this action; (b) upon leave to renew, vacating this Court's prior orders dated December 20, 2024 and February 20, 2025 which granted WC 28 Realty LLC's unopposed motions to consolidate; (c) seeking a modified order joining the AIG action and this action for purposes of joint trial and discovery, and (d) moving this Court to consolidate the AIG action with another action that AIG has commenced bearing index number 153850/2025, which names additional defendants, is granted in part and denied in part.

On October 7, 2024, Defendant WC Realty LLC moved to consolidate this action with the AIG Action. This action and the AIG Action are based on identical events – the difference is the fact that in the AIG Action, AIG is a plaintiff asserting subrogation rights, and AIG is asserting subrogation rights against defendants who were not named in this action. Defendant WC Realty LLC asked this Court to consolidate the two actions, and the caption they requested consolidation under did not name the additionally named defendants in the AIG action. No party opposed consolidation, nor did any party request the consolidation caption be different than the one requested by WC Realty LLC. After the Court granted WC Realty LLC’s unopposed motion, the parties now ask the Court to change the result and order that the two actions be joined for discovery and trial, rather than consolidated.

The parties provide no true grounds for renewal, as none of the parties provide justification for their failure to submit papers on WC Realty LLC’s underlying motion requesting the relief they now seek. However, as there is no opposition, because the underlying decision is merely procedural, and in the interest of justice, the Court grants leave to renew. Upon renewal, this Court’s December 20, 2024 decision and order granting WC Realty LLC’s request for consolidation is vacated, and instead this action is joined for discovery and trial with the separate action pending in this Court bearing index number 154571/2023.

For future reference, and because parties frequently are confused as to the difference between consolidation and joint trial, a joint trial, rather than consolidation, is generally the more appropriate relief where plaintiffs in the two separate actions are different (*see, e.g. Whiteman v Parsons Transp. Group of New York, Inc.*, 72 AD3d 677 [2d Dept 2010]). Here, although there is some overlap between the defendants, the plaintiffs are different as in this action, the Plaintiffs are all individuals, while in the action bearing index number 154571/2023, AIG is the plaintiff

asserting subrogation rights. Moreover, the Plaintiffs in this action are not seeking relief against certain defendants named in the action bearing index number 154571/2023. Thus, for the sake of simplicity, WC Realty LLC should have requested this action and index number 154571/2023 be joined for trial and discovery rather than consolidated.

Because the consolidation orders were never served on the County Clerk or the General Clerk's office, this Court can vacate its prior order dated December 20, 2024. However, because the cases were never consolidated, the action bearing index number 154571/2023 was never assigned to Part 33. This Court does not have the authority to vacate or modify the order issued on February 26, 2025 by Justice Goetz in the action bearing index number 154571/2023, which granted WC Realty LLC's identical unopposed motion to consolidate which was filed in this Court.¹ Therefore, the branch of motion which asks this Court to vacate or modify Justice Goetz's decision and order dated February 26, 2025 is denied, without prejudice. If the case is assigned to Part 33 and Justice Goetz consents to this Court modifying his prior order, the parties may renew their application.

Because this Court was never assigned index number 154571/2023, AIG's motion asking this Court to consolidate index number 154571/2023 with another action AIG commenced bearing index number 153850/2025 is denied. This Court may entertain that request if index number 154571/2023 is assigned to Part 33.²

Accordingly, it is hereby,

ORDERED that Plaintiff AIG Property a/s/o Keith Heller and Christine Ding's ("AIG") motion is granted in part and denied in part; and it is further

¹ For future reference, it is a strain on judicial resources, and makes little, if any, sense for a party to move for consolidation simultaneously and identically in the multiple actions.

ORDERED that Plaintiff AIG's motion is granted to the extent it is granted leave to renew this Court's prior Decision and Order dated December 20, 2024, and upon renewal, that consolidation order is vacated and superseded by this Decision and Order, and it is further;

ORDERED that Plaintiff AIG's motion is granted to the extent that the above-captioned action shall conduct joint discovery and be jointly tried with *AIG Property Casualty Company a/s/o Keith Heller and Christine Ding v. WC 28 Realty LLC, et al.*, Index No. 154571/2023, pending in this court; and it is further

ORDERED that, within 30 days from entry of this order, counsel for Plaintiff AIG in *AIG Property Casualty Company a/s/o Keith Heller and Christine Ding v. WC 28 Realty LLC, et al.*, Index No. 154571/2023, shall file with the General Clerk's Office a copy of this order with notice of entry, together with, if a Request for Judicial Intervention ("RJI") has not yet been filed in that action, an RJI and shall pay the fee therefor, and the Clerk of the General Clerk's Office shall assign said action to the undersigned or reassign such action to the undersigned, as the case may be; and it is further

ORDERED that, upon payment of the appropriate calendar fees and the filing of notes of issue and certificates of readiness with the General Clerk's Office in each of the above actions, the Clerk of the General Clerk's Office shall place the aforesaid actions upon the trial calendar for a joint trial on the issue of liability before the undersigned or other Justice of this court; and it is further

ORDERED that in both actions such filing with the Clerk of the General Clerk's Office 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; and it is further

ORDERED that the remainder of AIG’s motion, which asks this Court to modify a prior order of Justice Goetz in *AIG Property Casualty Company a/s/o Keith Heller and Christine Ding v. WC 28 Realty LLC, et al.*, Index No. 154571/2023 and to consolidate *AIG Property Casualty Company a/s/o Keith Heller and Christine Ding v. WC 28 Realty LLC, et al.*, Index No. 154571/2023 with another action captioned *AIG Property Casualty Company a/s/o Keith Heller and Christine Ding v. FJM-Ferro Inc., et al.*, Index No. 153850/2025 is denied without prejudice with leave to renew upon assignment of *AIG Property Casualty Company a/s/o Keith Heller and Christine Ding v. WC 28 Realty LLC, et al.*, Index No. 154571/2023 to Part 33’s docket; and it is further

ORDERED that the parties shall appear for a status conference with the Court on November 5, 2025 at 9:30 a.m. in Room 442, 60 Centre Street, New York, New York; and it is further

ORDERED that within ten days of entry, counsel for AIG shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

<u>9/8/2025</u> DATE		<u>Mary V Rosado J.S.C.</u> HON. MARY V. ROSADO, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE