

**FPG Cobble Hill Acquisitions, LLC v Downstate at  
Lich Holding Co., Inc.**

2026 NY Slip Op 30517(U)

February 6, 2026

Supreme Court, Kings County

Docket Number: Index No. 517473/2025

Judge: Wavny Toussaint

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 70 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 6<sup>th</sup> day of February, 2026.

PRESENT: HON. WAVNY TOUSSAINT, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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FPG COBBLE HILL ACQUISITIONS, LLC,

**Index No.: 517473/2025**

Plaintiff.

**DECISION and ORDER**

-against-

DOWNSTATE AT LICH HOLDING COMPANY,  
INC.,

Defendant.  
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The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/  
and Affidavits (Affirmations) Annexed  
Cross Motion and Affidavits (Affirmation) Annexed  
Answers/Opposing Affidavits (Affirmations)  
Reply Affidavits (Affirmations)  
Affidavit (Affirmation)  
Other Papers

8-10  
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16  
18  
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Upon the forgoing papers, defendant's move (Seq. 01) for an order, pursuant to CPLR §§ 501 and 511, to transfer this action to Albany County. Plaintiff opposes the motion.

**BACKGROUND**

This action arises out of a dispute concerning the prospective sale of the property

located at 97 Amity Street in Brooklyn, NY, which defendant owns and is selling pursuant to a Purchase and Sale Agreement (“PSA”) executed on June 30, 2014, and the subsequent Zoning Lot Development and Easement Agreement (“ZLDA”) dated September 1, 2015. Plaintiff was to purchase the property. The purchase was to take place over the course of three closings. Plaintiff alleges that the ZLDA grants it ongoing development-related rights that survive any sale of the property. The final closing ultimately did not take place due to plaintiff’s alleged default under the PSA, which is currently the subject of dispute in a related action in Albany County commenced by defendant against the plaintiff.

In 2024, defendant began to market the property to selected prospective buyers. Plaintiff was not notified of the planned sale and was not included among the prospective buyers, despite its alleged existing contractual rights at the premises. Plaintiff contacted defendant’s non-party real estate firm, Newmark, to ensure that potential purchasers were being informed of plaintiff’s rights under the ZLDA. Newmark ultimately stated that it would act only at defendant’s direction. Plaintiff alleges the sale would impair its contractual rights, and commenced this action seeking a judicial determination to protect and enforce its rights under the ZLDA.

### **PARTIES’ CONTENTIONS**

Defendant contends that Albany County is the proper venue for this action because the PSA contains an exclusive forum-selection clause. Defendant further argues that the ZLDA exists solely because of the PSA, as it became a signatory to the ZLDA as an accommodation to facilitate the final closing. Additionally, defendant asserts that the PSA expressly incorporates the ZLDA as part of the PSA by reference to its form and attached

exhibits. The ZLDA itself repeatedly refers back to the PSA and confirms that the parties' agreements regarding the property were made pursuant to and in connection with the PSA.

In opposition, plaintiff asserts that the forum-selection clause in the PSA is inapplicable because the ZLDA is a separate and distinct contract. Plaintiff contends that the claims in this action relate solely to the enforcement and protection of plaintiff's property rights under the ZLDA, which are independent of both the PSA and the claims in the Albany action arising from the PSA. Plaintiff further asserts that defendant purportedly terminated the PSA in August 2023, and that such termination had no effect on plaintiff's rights under the ZLDA.

In reply, defendant maintains that this action arises out of or is connected with the PSA and therefore must be transferred to Albany County. Defendant further argues that the clause need not be expressly incorporated by reference into the ZLDA to apply. According to defendant, the applicability of a forum-selection clause is determined by the language of the clause itself, not by the nature of the underlying claims, and here, the clause is broad enough to apply to all actions arising out of or in any way connected with the PSA. Lastly, defendant argues that absent an express termination of the forum-selection provision itself—which did not occur here—a general termination of contractual performance does not affect the enforceability of that clause.<sup>1</sup>

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<sup>1</sup> Plaintiff submitted a sur-reply without leave of Court; accordingly, the Court declined to consider those papers.

## DISCUSSION

Pursuant to CPLR § 501, a written agreement fixing the place of trial made before an action is commenced must be enforced upon a motion for a change of venue. Forum-selection clauses are presumptively valid and enforceable unless a challenging party shows they are unreasonable, contrary to public policy, the result of fraud or overreaching, or so gravely difficult that the party would effectively be deprived of its day in court (*Puleo v Shore View Ctr. for Rehabilitation and Health Care*, 132 AD3d 651, 652 [2d Dept 2015]). Moreover, “[T]he applicability of a forum selection clause does not depend on the nature of the underlying action . . . [r]ather, it is the language of the forum selection clause itself that determines which claims fall within its scope” (*Couvertier v Concourse Rehabilitation and Nursing, Inc.*, 117 AD3d 772, 773 [2d Dept 2014]; *Bernstein v Wysoki*, 77 AD3d 241, 250 [2d Dept 2010]).

Here, Section 26.6 of the PSA expressly provides that any dispute arising from or connected to the agreement shall be adjudicated in Albany County. The ZLDA, executed as an accommodation by defendant, was included as an exhibit to the PSA, references it throughout, and provides that in case of conflict, the PSA controls. The ZLDA would not exist but for the PSA.

Defendant has demonstrated that the forum-selection clause in the PSA is broad enough to encompass claims arising from or connected to the PSA, including claims under the ZLDA. The fact that the claims here involve enforcement of property rights under the ZLDA does not remove them from the scope of the forum-selection clause. As in *Couvertier*, the clause itself—not the nature of the claims—determines applicability (117

AD3d at 773).

Additionally, plaintiff's reliance on the termination of the PSA is unavailing. Although defendant terminated the PSA after the first two closings, a general termination of contractual performance does not extinguish a forum-selection clause absent an express termination of that provision (See *Getty Properties Corp. v Getty Petroleum Mktg. Inc.*, 106 AD3d 429, 430 [1st Dept 2013]; See also *Matter of Primex Intern. Corp. v Wal-Mart Stores, Inc.*, 89 NY2d 594, 602 [1997]).

**CONCLUSION**

Accordingly, it is hereby,

**ORDERED** that defendant's motion to transfer this action to Albany Court is granted. The Clerk of the Supreme Court, Kings County, is directed to transfer this action to the Clerk of the Supreme Court, Albany County, upon payment of any appropriate fees.

This constitutes the decision and order of the Court.

E N T E R



J.S.C.

Hon. Wavny Toussaint  
J.S.C.

KINGS COUNTY CLERK  
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