To be Argued by:
JOHN HALEBIAN
(Time Requested: 15 Minutes)

New York Supreme Court

Appellate Division—First Department

MEREDITH BUSHER, ELLEN BUSHER, NANCY TUMPOSKY and JEROME CORTELLESI,

Plaintiffs-Appellants,

– against –

DESMOND BARRY, THOMAS EGAN, JOHN HEANUE, WILLIAM KELLY, FRANCIS BARRON and WINGED FOOT GOLF CLUB, INC.,

Defendants-Respondents,

– and –

WINGED FOOT HOLDING CORPORATION,

Defendant.

Appellate Case No.: 2021-00525

BRIEF FOR PLAINTIFFS-APPELLANTS

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PRELIMINARY STATEMENT

This is an action seeking dissolution of the Nominal Defendant-Respondent, Winged Foot Holding Corporation ("WFHC"), a New York State business corporation that owns the property upon which the iconic Winged Foot Golf Club ("the Club"), a non-profit membership corporation, has been located for 100 years. Plaintiffs-Appellants ("Plaintiffs") allege that Defendants-Respondents ("Defendants") wasted and misappropriated WFHC's sole asset for the benefit of the Club and its members, by perpetuating a "sweetheart" long-term lease that gives the Club exclusive use of WFHC's property (which Plaintiffs estimate to be worth about $340 million) for a nominal rent set by a 1947 lease provision that was purportedly extended until the year 2071. Plaintiffs are among the approximately 41% of equity shareholders in WFHC who have been deprived of any financial return by Defendants' wrongdoing. *See* R.8-117 (Complt.).[1]

This appeal is from a Supreme Court, New York County decision and order dated and entered on February 3, 2021 (Honorable Jennifer G. Schecter, presiding). *See* R.7 (Decision and Order). The subject of the instant appeal is a venue motion by Defendants pursuant to CPLR 507 to move this action from New York County, where it was initially filed based on the residence of one of the Plaintiffs, to Westchester County where WFHC's property is located. Plaintiffs opposed the

[1] References preceded by "R." are to pages in the accompanying Record on Appeal.

motion, and also cross-moved pursuant to CPLR 510(3) to retain venue in New York County to promote the convenience of the material (non-party) witnesses. The day after briefing was completed on February 2, 2021, the Supreme Court entered its decision and order granting Defendants' application to transfer venue to Westchester County. As argued below, it is submitted that the Supreme Court made errors of law, and improvidently exercised its discretion, when it ruled that the action be transferred to Westchester.

STATEMENT OF QUESTIONS PRESENTED

1. Does CPLR 507 supersede, as a matter of law, Plaintiffs' request for venue pursuant to CPLR 510(3), which permits the Supreme Court to transfer venue to promote the convenience of material non-party witnesses and the ends of justice?

2. If CPLR 507 does not supersede CPLR 510(3):

(a) In weighing the convenience of material witnesses under CPLR 510(3), was it provident for the Supreme Court to disregard the risk and difficulty of travel during a pandemic for witnesses who were 70 years of age and older?

(b) Where Plaintiffs made a showing regarding the convenience of material non-party witnesses that met all legal requirements under CPLR 510(3), was it legally permissible for the Supreme Court to rely on a showing by Defendants that did not meet those requirements?

Answers: The Supreme Court, by its rulings, answered the foregoing questions as "Yes."

STATEMENT OF FACTS

A. The prior federal litigation in Westchester

The dissolution claim being asserted in the instant litigation was formerly part of a larger set of claims alleging breach of fiduciary duty and unjust enrichment that was filed in the United States District Court for the Southern District of New York in 2014 (the "federal action").[2] *See* No. 14 Civ. 4322 (NSR)(JCM) (S.D.N.Y.). The federal action was litigated until it was ready for trial at the end of 2019. Prior to trial, the federal court dismissed a number of claims upon statute of limitations grounds, and also dismissed the dissolution claim on abstention grounds without prejudice to its refiling in state court. When it dismissed the dissolution claim, the court additionally decided several motions *in limine* which, *inter alia*, restricted Plaintiffs' ability to proffer to the jury evidence of damaging admissions made by Defendants.

As a result of the federal court's decisions limiting Plaintiffs' claims and evidence, Plaintiffs sought and obtained a voluntary dismissal of their remaining claims so that the dismissed claims (other than the dissolution claim) could be

[2] Plaintiff Jerome Cortellesi, a plaintiff in the instant Supreme Court action was not a plaintiff in the federal action.

immediately appealed to the United States Court of Appeals for the Second Circuit, where Plaintiffs have recently perfected their appeal. *See* No. 2020-03587 (2d Cir.). Plaintiffs also refiled the dissolution claim in the Supreme Court as the instant action.

B. The instant state court litigation

Plaintiffs properly initiated this litigation on November 3, 2020 by placing venue in New York County pursuant to CPLR 503(a) based upon the residence of plaintiff Jerome Cortellesi. R.26 (Cplt. ¶ 36). (The other three plaintiffs reside out-of-state.)

Based on the effect that dissolution of WFHC would have on WFHC's property in Westchester County, Defendants sought to transfer venue to Westchester County by serving a Demand for Change of Venue dated December 10, 2020 upon Plaintiffs pursuant to CPLR 511 (a) and (b). R.144-145. On December 15, 2020, Plaintiffs served an Affirmation in Opposition to Defendants' Demand for Change of Venue that objected to such a transfer. R.146-148.

Consequently, on December 28, 2020, Defendants moved the Supreme Court, New York County to transfer the action to Westchester pursuant to CPLR 507, which provides for venue in the county where a property is located if an action would affect "title to, or the possession, use or enjoyment of" that real property. R.138-39 (Notice of Motion).

On January 20, 2021, Plaintiffs opposed Defendants' motion, arguing that CPLR 507 did not apply to an action for corporate dissolution. Plaintiffs also cross-moved in the alternative that the Supreme Court retain jurisdiction in New York County pursuant to CPLR 510(3), which grants the Supreme Court the authority to transfer an action "for the convenience of material witnesses and the ends of justice." R.275-76 (Notice of Cross-Motion). To support their cross-motion, Plaintiffs submitted the affirmation of Plaintiffs' counsel John Halebian (the Halebian Affirmation"), which proffered all of the information required under the relevant case law to substantiate that the convenience of material witnesses would be promoted by venue in New York County in order to minimize travel during a pandemic by certain of Plaintiffs' witnesses who were in their 70s or 80s. R.277-460.

Defendants' Reply to Plaintiffs' opposition argued that CPLR 507 was mandatory and superseded or overrode CPLR 510(3) as a matter of law. In addition, Defendants submitted a reply affirmation that made a perfunctory attempt to proffer facts regarding the convenience of Westchester County for their own material witnesses. R461-65.

The Supreme Court declined to hold oral argument despite requests by both sides.

C. The Supreme Court's decision to transfer venue to Westchester County

Shortly after Defendants submitted their Reply, the Supreme Court granted Defendants' motion to transfer the litigation to Westchester County. R.7.

First, the Supreme Court ruled:

> This action affects title to real property in Westchester County so it must be venued there (CPLR 507; *see GAM Prop. Corp. v. Sorrento Lactalis, Inc.*, 41 A.D.3d 645, 646 [2d Dept 2007] ["the discretionary determination of venue based upon the convenience of witnesses must yield to the mandatory venue provision of CPLR 507"]).

Second, the Supreme Court further ruled:

> But even if this court had discretion to consider the convenience of witnesses, given the parties' prior litigation in federal court in Westchester County, there is no credible basis to contend that it would be more convenient to litigate in New York County. The pandemic, in fact, actually militates against retaining venue. All proceedings are and will be remote during the pandemic so the county in which the action proceeds should not matter to witnesses.

As explained in greater detail below, the Supreme Court committed legal errors in these two rulings and acted improvidently in denying Plaintiffs' cross-motion to retain venue in New York County.

ARGUMENT

I. THE SUPREME COURT ERRED WHEN IT RULED THAT CPLR 507 SUPERSEDED CPLR 510(3) AS A MATTER OF LAW.

The Supreme Court's ruling that CPLR 507 supersedes CPLR 510(3) was based on a misreading of *GAM Prop. Corp. v. Sorrento Lactalis, Inc.*, 41 A.D.3d 645 (2d Dept. 2007), and was contrary to the law.

First, no court or decision in the state has ever previously held that a court lacks power to transfer an action pursuant to CPLR 510(3) when venue is founded on CPLR 507. The Supreme Court here appears to have so held, however, as its decision indicated that it lacked "discretion to consider the convenience of witnesses" because the action "must be venued" in accord with CPLR 507. R.7.

Second, the *GAM* decision does not support such a holding and is inapposite to the instant action. In *GAM*, the property at issue in the litigation was located in Orange County. 41 A.D.3d at 645. One of the other parties sought venue in Erie County in connection with a related breach of contract action. *Id.* at 646. The Second Department stated that:

> While both parties demonstrated that their respective nonparty witnesses would be inconvenienced by litigation in the other county, the discretionary determination of venue based upon the convenience of witnesses (see CPLR 510 [3]; *O'Brien v Vassar Bros. Hosp.*, 207 AD2d 169, 171 [1995]) must yield to the mandatory venue provision of CPLR 507 (*see Arnold Constable Corp. v Staten Is. Mall*, 61 AD2d 826 [1978]).

Id.

The correct interpretation of the ruling in *GAM* is that because both parties demonstrated that non-party witnesses would be inconvenienced in the other county—*i.e.*, because there was parity in the parties' showings pursuant to CPLR 510(3)—no exercise of discretion was warranted, and venue consequently remained subject to "the mandatory venue provision of CPLR 507." *Id.* In the instant litigation, by contrast, there was no such parity of showings. Here, only

Plaintiffs demonstrated that their non-party witnesses would be inconvenienced by a change in venue: Defendants failed to make a sufficient showing.

Third, and most importantly, appellate precedent supports Plaintiffs' interpretation of *GAM, i.e.*, that actions subject to CPLR 507 may still be transferred pursuant to CPLR 510(3) if the parties' showings warrant doing so. To the extent that *GAM* might instead be read to mean that CPLR 507 displaces CPLR 510(3) in all cases where CPLR 507 applies (historically known as "local actions"), *GAM* is simply wrong.

In *O'Brien v. Vassar Bros. Hosp.*, 207 A.D.2d 169, 172–73 (2d Dept. 1995), the Second Department examined the requirements for a showing pursuant to CPLR 510(3). The Second Department then stated:

> No distinction between "transitory" actions, on the one hand, and local "actions" on the other, appears in CPLR 510, the statute which defines the grounds which may properly serve as the basis for a nonconsensual change of venue to a county different from that properly designated by the plaintiff (see, CPLR 503[a]; 509). … The transitory or local nature of the plaintiff's cause of action should not, in our view, be decisive in the context of a motion for a discretionary change of venue. Instead, we believe that in all actions, whether transitory or local, a discretionary change in venue pursuant to CPLR 510(3) should be granted only upon the basis of a showing required by the above criteria.

207 A.D.2d at 174-75.

A decision by Supreme Court, Kings County, also surveyed the authority on whether a court may transfer a case pursuant to CPLR 510(3) if such a transfer conflicts with venue according to CPLR 507. *See Diamond v. Papreka*, 801

N.Y.S.2d 232 (Sup. Ct., Kings Cty. 2005). The *Diamond* court explained:

> Fortunately, "[a]lthough CPLR 507 is couched in mandatory terms, it is not entitled to absolute application. Courts may consider other factors, such as the subject matter of the lawsuit, the identity of the parties, the convenience of witnesses, and the interests of justice. Thus, CPLR 507 is subject to the court's power to change venue pursuant to CPLR 510 when a motion is made that … the convenience of material witnesses and the ends of justice will be promoted by the venue transfer" (3 Weinstein–Korn–Miller, N.Y. Civ Prac, ¶ 507.02; *see also Inspiration Enterprises, Inc. v. Inland Credit Corp.*, 54 A.D.2d 839, 841 [1976]; *Suchy v. Suchy,* 126 Misc.2d 1094, 1096 [1984]4 ["It has been said that even though CPLR 507 is couched in mandatory terms, it should not be entitled to absolute application and that the court can look to the subject matter of the lawsuit, the identity of the parties, the convenience of witnesses and the interests of justice"], citing *Town of Hempstead v. City of New York,* 88 Misc.2d 366 [1976]).

801 N.Y.S.2d 232 at *2. The court also referenced additional precedents in matrimonial law. Citing *Suchy,* 126 Misc.2d at 1096, the court noted:

> [I]n matrimonial actions brought under the Domestic Relations Law, where equitable distribution provisions often affect title to real property located in different counties, recognized precedent allows such actions to be tried in a county other than where the marital residence is found (*id.; see also Orsano v. Orsano,* 108 Misc.2d 880 [1981]).

801 N.Y.S.2d 232. at n. 4.

Thus, the Supreme Court's holding that CPLR 507 requires venue in Westchester without regard to the convenience of witnesses should be reversed.

II. THE SUPREME COURT ERRED WHEN IT HELD THERE WAS NO BASIS FOR VENUE IN NEW YORK COUNTY PURSUANT TO CPLR 510(3).

The appellate standard of review for the Supreme Court's exercise of discretion pursuant to CPLR 510(3) is "whether such discretion was exercised in a

provident manner," including de novo review of the facts and independent exercise of discretion by this Court. *O'Brien*, 207 A.D.2d at 171-72; *accord Martinez v. Dutchess Landaq, Inc.*, 301 A.D.2d 424, 425 (1st Dept. 2003) (change of venue under CPLR 510(3) "was an improvident exercise of discretion").

In its alternative ruling under CPLR 510(3), the Supreme Court erred as a matter of law and acted improvidently when it granted Defendants' motion to transfer venue to Westchester County. It was an error of law for the Supreme Court to rely on a legally insufficient showing, as it did here, to establish venue in Westchester County based on the convenience of material witnesses. Because Plaintiffs made a sufficient factual showing to establish the convenience of New York County to Plaintiffs' material witnesses, and Defendants wholly failed to do so regarding Westchester County, if the Supreme Court was going to exercise its discretion at all under CPLR 510(3), it had no alternative but to exercise its discretion in favor of Plaintiffs.

A. The Supreme Court improvidently disregarded the risks and difficulty of travel during a pandemic as factors relevant to the convenience of material witnesses under CPLR 510(3).

CPLR 510(3) permits "[t]he Court, upon motion, [to] change the place of trial of an action where… [t]he convenience of material witnesses and the ends of justice will be promoted by the change." Plaintiffs argued that, because many of their material witnesses were in their 70s and 80s and were therefore particularly

susceptible to COVID, the current pandemic militated in favor of venue in the county that minimized travel.

Courts have found that the risks of contracting COVID from travel associated with trial, as well as the travel complications arising from the pandemic, weigh significantly in favor of a venue that avoids travel if possible. In a federal case in Florida, the court found that:

> [T]he potential need for witnesses to give in-person testimony means that the amount of witness travel ought to be minimized—at least given the current progression of the COVID-19 pandemic. Accordingly, the Court believes that the convenience of the witnesses, which is one of the most important factors, weighs in favor of transferring venue to the Southern District of New York.

Fairstein v. Netflix, Inc., No. 220-CV-00180, 2020 WL 5701767, at *8 (M.D. Fla. Sept. 24, 2020) (granting venue transfer). Another federal court came to a similar conclusion:

> This pandemic has made airplane travel significantly more dangerous. Additionally, the virus has increased the risk of travel disruptions, making it more difficult to confidently plan future travel. Thus, it is particularly useful for Parties and the witnesses to be within driving distance of the court where their case is heard. Therefore, given the factors discussed above and the dangers presented by the COVID-19 virus, considerations of convenience to the parties and witnesses strongly support transfer to the Southern District of New York.

Sanders v. Sanders, No. 9:20-CV-80725, 2020 WL 5361881, at *4 (S.D. Fla. July 20, 2020). *See also Express Mobile, Inc. v. Web.com Grp., Inc.*, No. 19-CV-1936-RGA, 2020 WL 3971776, at *4 (D. Del. July 14, 2020) (“possibility of less risk

associated with less travel" during pandemic weighed in favor of venue change); *Diamond Resorts U.S. Collection Dev., LLC v. Pandora Mktg., LLC,* No. 20-CV-80143, 2020 WL 6504627, at *4 (S.D. Fla. June 18, 2020) (avoidance of travel during pandemic strongly supported venue change).

Furthermore, the Supreme Court mistakenly found that it was not credible for Plaintiffs to claim that Westchester was an inconvenient forum after litigating in the White Plains federal court. R.7. This ignored two critical facts. First, when Plaintiffs initiated the litigation in the federal court in White Plains, they did not know the identity of material witnesses and where they would be located. Based upon the extensive discovery in the federal action, Plaintiffs discovered the identity and whereabouts of the material witnesses, from which it became apparent that New York County is the more convenient forum (as established by the Halebian Affirmation, discussed below). Second, the federal action was not litigated in the middle of a pandemic in which more than 500,000 Americans have died from COVID. These are critical facts that the Supreme Court should have considered in exercising its discretion, but did not.

The Supreme Court also inexplicably stated that the pandemic militates against retaining venue in New York County because all proceedings will be remote. R.7. This is both highly speculative (particularly for trial of a complex case) and contrary to the recent case law cited above on this very issue. As this

Court is undoubtedly aware, Westchester, and in particular White Plains, have been designated as COVID hot spots on several occasions. Witnesses who live and work in New York County, particularly those who are older, would find it significantly more convenient to appear in their home county, where routes, amenities and safety protocols are familiar, rather than engage in unnecessary and risky travel to White Plains. *See* R.279 at ¶ 8. Venue in Westchester is also likely to require additional travel for out of state witnesses after their arrival in New York, complicating already difficult travel planning and increasing health risk in the pandemic context. R.279 at ¶ 9.

B. Plaintiffs' showing concerning the convenience of material witnesses satisfied all requirements to retain venue in New York County pursuant to CPLR 510(3).

The Appellate Division, First Department, specified the requirements for a showing in support of venue under CPLR 510(3) as follows:

> Upon a motion made pursuant to CPLR 510(3), the movant bears the burden of demonstrating that the convenience of material witnesses would be better served by the change. … This showing must include (1) the identity of the proposed witnesses, (2) the manner in which they will be inconvenienced by a trial in the county in which the action was commenced, (3) that the witnesses have been contacted and are available and willing to testify for the movant, (4) the nature of the anticipated testimony, and (5) the manner in which the anticipated testimony is material to the issues raised in the case.

Cardona v. Aggressive Heating, Inc., 180 AD2d 572, 572 (1st Dept. 1992) (citations omitted).

Plaintiffs here satisfied the requirements under CPLR § 510(3) to retain

venue in New York County. The Halebian Affirmation that accompanied Plaintiffs' cross-motion easily made the required showing. Unlike almost every other filed action which seeks a change of venue at the inception of the litigation—when issue has not been joined, no discovery has yet been obtained, and the contours of the litigation are relatively unknown—the federal action was previously pending and litigated for six years and was ready for trial. Substantial documentary and testimonial discovery was obtained from numerous witnesses and experts, the contours of the litigation were relatively known, and a pretrial order (which was attached to the Halebian Affirmation, R.280-314) had been filed including witness lists and summaries of their proposed testimony.[3]

Accordingly, the Halebian Affirmation identified several of Plaintiffs' material witnesses who either resided in New York County or out of state—providing their name, home address, present position, and a summary of their anticipated testimony and its materiality to the issues in the Supreme Court litigation—and affirmed that Plaintiffs' counsel had consulted with them and they had agreed to testify at trial. R.278 at ¶ 4; R.315-16. For expert witnesses, their detailed expert reports regarding their anticipated testimony were attached. R.317-460. Moreover, the Halebian Affirmation pointed out which of the proposed

[3] A full list of the witnesses who planned to appear for Plaintiffs at the federal trial appears at pages 24-27 of the pretrial order. R.303-306.

witnesses were in their 70s and 80s, and therefore especially vulnerable to COVID-19 such that unnecessary travel out of New York County posed a serious inconvenience and an unnecessary health risk.[4] R. 278-79 at ¶¶ 5-6.

The specific witnesses relied on by Plaintiffs' cross-motion were as follows. First, expert witnesses addressing the nature and purpose of WFHC, and its leasing relationship with the Club, are critical to Plaintiffs' case. Of the four experts prepared to testify on these subjects at the federal trial, two live and work in New York County (Merritt Fox and Jeffrey Galant) and a third lives out of state (George Gregores, in Oregon). All three are in their 70s. R.278-79 at ¶ 5. In addition,

Second, Plaintiffs also planned to present five non-party fact witnesses who reside out of state: James Fisher (Alabama), John Daly (Texas), Josephine Mandeville (Pennsylvania), Susan Daly Stearns (Washington) and Dennis Tully (Massachusetts). R.279 at ¶ 6. An additional fact witness, Mark Rowland, who only recently advised his willingness to testify, also resides out of state (Alaska). *Id.* All have knowledge (particularly relevant to the dissolution claim) of misleading shareholder communications, acts of shareholder disenfranchisement, and other schemes to diminish and eventually eliminate the equity interests held by WFHC shareholders other than the Club. *See* R.315-16. Mandeville and Tully are

[4] Although CPLR § 510(3) does not take account of party witnesses, it should also be mentioned that the New York County plaintiff, Jerome Cortellesi, is close to 90 years old. R.279 at ¶ 7.

in their 70s, and Fisher and Rowland are in their 80s. R.279 at ¶ 6.

C. Defendants' attempt to assert the convenience of their witnesses in Westchester County was legally insufficient, and provided no basis for the Supreme Court to exercise its discretion in favor of Defendants under CPLR 510(3).

Defendants' attempt to counter Plaintiffs' cross-motion by showing that transfer to Westchester would promote the convenience of Defendants' material witnesses lacked almost all legally required information and failed to provide a proper basis on which the Supreme Court could exercise its discretion in favor of Defendants.

First, Defendants relied on several witnesses who are individual party-defendants, *i.e.*, Thomas T. Egan and Francis P. Barron, as well as another, Colin Burns, who is an employee of the defendant Club. R.462 at ¶¶ 3-4, 6. As parties or party employees, these witnesses are irrelevant to the CPLR 510(3) analysis, which only considers non-party witnesses. *Cilmi v. Greenberg*, 273 A.D.2d 266, 267 (2d Dept. 2000) (convenience of individual defendants or their employees is "not a factor" under CPLR 510(3)). Second, for the other cited witnesses, Defendants identified only the locations where they worked, not where they lived. R.462 at ¶¶ 5-9. Third, Defendants failed to provide any information about the witnesses' anticipated testimony or its significance to the issues in the litigation. Fourth, Defendants failed to make any kind of sworn representation that counsel had consulted with the witnesses and the witnesses agreed to testify at trial. Fifth,

Defendants failed to indicate how any of their witnesses would be inconvenienced by a trial in New York County.

It is well established that a lower court's reliance upon a legally insufficient showing under CPLR 510(3) will result in reversal when a proper initial showing was not met by a proper responsive showing. For example, in *Pittman v. Maher*, an action where defendants sought a change of venue out of Bronx County, the First Department found:

> Though a motion pursuant to CPLR 510(3) is addressed to the sound discretion of the court, defendants' submissions were legally insufficient to support an exercise of that discretion…. In response to affidavits from each of the non-party witnesses proposed to testify on plaintiff's behalf, defendants submitted only the affidavit of an attorney contradicting their statements concerning the convenience of testifying in the Bronx.

202 A.D.2d 172, 176–77 (1st Dept. 1994) (citation omitted).

In another First Department case, *Ryan-Avizienis v. JBEW Bar Corp*., 121 A.D.3d 579, 580 (1st Dept. 2014), defendants also sought a change of venue from Bronx County, the principal place of business of a defendant who owned the premises of a bar in Suffolk County where the injury occurred, to Suffolk County. In reversing the lower court, the First Department ruled that

> JBEW Bar met its initial burden in support of the motion by submitting the affirmation of its counsel, who had contacted two non-party witnesses—a former employee who was working on the night of the accident and a Village of Patchogue inspector—and averred that they were both willing to testify, the nature of their proposed testimony, and the manner in which they would be inconvenienced if they were required to travel from Suffolk County, where they live and work, to Bronx County…. In opposition,

> plaintiff did not identify any factors of convenience that justify retention of venue in Bronx County.... The alleged location of defendant Dicaralli's principal executive office in Bronx County, is an insufficient basis to deny the motion, in the face of defendant JBEW's showing of inconvenience[.]

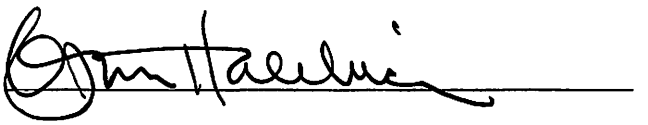
Id. (citations omitted).

Accordingly, as Defendants failed to provide any legally sufficient basis for the Supreme Court to exercise its discretion in their favor, the Supreme Court should not have granted Defendants' motion but should have retained venue in Plaintiffs' preferred location of New York County.

CONCLUSION

For the foregoing reasons, the Court should reverse the decision and order of the Supreme Court and direct that this action be venued in New York County.

Respectfully submitted,

Dated: February 22, 2021 By: 

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Dated: February 22, 2021

STATEMENT PURSUANT TO CPLR § 5531

New York Supreme Court

Appellate Division—First Department

MEREDITH BUSHER, ELLEN BUSHER, NANCY TUMPOSKY and JEROME CORTELLESI,

Plaintiffs-Appellants,

– against –

DESMOND BARRY, THOMAS EGAN, JOHN HEANUE, WILLIAM KELLY, FRANCIS BARRON and WINGED FOOT GOLF CLUB, INC.,

Defendants-Respondents,

– and –

WINGED FOOT HOLDING CORPORATION,

Defendant.

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1. The index number of the case in the court below is 655987/20.

2. The full names of the original parties are as set forth above. There have been no changes.

3. The action was commenced in Supreme Court, New York County.

4. The action was commenced on or about November 3, 2020 by filing of a Summons and Verified Complaint.

5. The nature and object of the action is that Plaintiffs seek a judgment compelling the common law dissolution of Winged Foot Holding Corporation.

6. This appeal is from the Decision and Order of the Honorable Jennifer G. Schecter, dated February 3, 2021, which granted Defendants Desmond Barry, Thomas Egan, John Heanue, William Kelly, Francis Barron and Winged Foot Golf Club, Inc.'s motion to change venue and denied Plaintiffs' cross-motion to retain venue.

7. This appeal is on the full reproduced record.