

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
NEW YORK

X-Caliber Funding LLC v. Petersen

X-Caliber Funding · No. 24 Cv 5529 (VM) · Decided January 6, 2026

SUMMARY

The United States District Court for the Southern District of New York transferred this action to the Northern District of Illinois under 28 U.S.C. § 1404(a). The court found that the case presented factual and legal issues overlapping with an Illinois foreclosure and receivership action and that many parties and witnesses were located in Illinois.

CASE DETAILS

COURT	United States District Court for the Southern District of New York
WRITING FOR THE COURT	Victor Marrero
JURISDICTION	United States District Court for the Southern District of New York
DECIDED	January 6, 2026
DOCKET	24 Cv 5529 (VM)
DISPOSITION	remanded
PROCEDURAL POSTURE	Defendant removed an action seeking summary judgment in lieu of complaint from New York state court, filed a counterclaim, and later filed a third-party complaint. The federal district court transferred the action to the Northern District of Illinois under 28 U.S.C. § 1404(a).
STANDARD OF REVIEW	Whether transfer is warranted under 28 U.S.C. § 1404(a), applying the statutory convenience and interest-of-justice factors and the district court's broad discretion.
PRECEDENTIAL VALUE	unpublished

TOPICS

- venue
- civil procedure
- commercial litigation

PRACTICE AREAS

- civil procedure
- commercial litigation
- real estate

QUESTIONS PRESENTED

1. Whether the action should be transferred from the Southern District of New York to the Northern District of Illinois under 28 U.S.C. § 1404(a) for the convenience of the parties and witnesses and in the interest of justice.

HOLDINGS

1. Transfer was appropriate because the factual and legal issues overlapped with a related Illinois action, many parties and witnesses were located in Illinois, and the Northern District of Illinois appeared to be the more convenient forum.

KEY QUOTATIONS

- “The Court shall retain jurisdiction and supervision of all matters concerning Receiver, the receivership created hereby and the Receivership Assets. Any and all actions which affect Receiver or the Receivership Assets shall be brought in this Court.”*
- “For the convenience of parties and witnesses, in the interest of justice.”*

FACTUAL BACKGROUND

X-Caliber brought an action concerning matters that overlapped with a foreclosure action pending in the Northern District of Illinois. In that Illinois action, a receiver had been appointed and the court retained jurisdiction over the receivership and receivership assets, directing that actions affecting the receiver or those assets be brought there. Many of the parties and witnesses were located in Illinois, and the court found that the Illinois action shared factual and legal issues with the New York action.

PROCEDURAL HISTORY

X-Caliber filed a motion for summary judgment in lieu of complaint in the Supreme Court of the State of New York, County of New York, on June 11, 2024. Petersen removed the action to the Southern District of New York on August 22, 2024, filed a counterclaim, and filed a third-party complaint against Joseph C. Tuter, Walnut Creek Management, LLC, and Illinois Debt Acquisition Company, LLC. Because the matter overlapped factually and legally with a related foreclosure and receivership action pending in the Northern District of Illinois, the court transferred the case there and closed the action.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The Clerk of Court was directed to transfer the action to the United States District Court for the Northern District of Illinois. The order closed the Southern District of New York case, and the Clerk's Office was directed to waive the seven-day transfer timing.

CASES CITED

- Keitt v. N.Y. City, 882 F. Supp. 2d 412, 459-60 (S.D.N.Y. 2011)
- N.Y. Marine and Gen. Ins. Co. v. LaFarge No. Am., Inc., 599 F.3d 102, 112 (2d Cir. 2010)
- D.H. Blair & Co. v. Gottdiener, 462 F.3d 95, 106 (2d Cir. 2006)

OPINION

USDC SDNY DOCUMENT UNITED STATES DISTRICT COURT BOC ALLY PILES SOUTHERN DISTRICT OF NEW YORK ————— DATE FILED:___ 1/6/2026 X-CALIBER FUNDING LLC, 24 Cv 5529 (VM) Plaintiff, TRANSFER ORDER - against - MARK B. PETERSEN, Defendant. MARK B. PETERSEN, Third-Party Plaintiff, - against - JOSEPH C. TUTERA, WALNUT CREEK MANAGEMENT, LLC, and ILLINOIS DEBT ACQUISITION COMPANY, LLC, Third-Party Defendants.

VICTOR MARRERO, United States District Judge. Plaintiff X-Caliber Funding LLC (“X-Caliber”) filed a Motion for Summary Judgment in Lieu of Complaint in the Supreme Court of the State of New York, County of New York, on June 11, 2024, which Defendant Mark B. Petersen (“Petersen”) removed to this Court on August 22, 2024. (See Dkt. No. 1.) Petersen subsequently filed a counterclaim against X-Caliber on October 25, 2024.

(See Dkt. No. 28.) On January 23, 2024, X-Caliber filed a foreclosure action in the Northern District of Illinois, in the case captioned X-Caliber Funding LLC et al. v. El Paso HCC, LLC et al., Case No. 24-CV-50034.

On January 25, 2024, the Honorable Iain Johnston (“Judge Johnston”), United States District Judge for the Northern District of Illinois, granted a motion to appoint receiver Michael Flanagan. (See Dkt. No. 1.) Judge Johnston ordered that “[t]he Court shall retain jurisdiction and supervision of all matters concerning Receiver, the receivership created hereby and the Receivership Assets.

Any and all actions which affect Receiver or the Receivership Assets shall be brought in this Court.” X-Caliber Funding LLC, Case No. 24-CV-50034. On October 23, 2024, Petersen filed a third-party complaint against Joseph C. Tuter, Walnut Creek Management, LLC, and the Illinois Debt Acquisition Company, LLC. (See Dkt. No. 20.) Pursuant to 28 U.S.C. § 1404(a) (“Section 1404”), even if a case is filed in a jurisdiction where venue is proper, a court may transfer the case to any other district where it might have been brought “[f]or the convenience of parties and witnesses, in the interest of justice.” 28 U.S.C. § 1404(a).

In determining whether transfer is appropriate, courts consider the following ten factors: (1) the convenience of witnesses; (2) the convenience of the parties; (3) the locus of operative facts; (4) the availability of process to compel the attendance of the unwilling witnesses; (5) the location of relevant documents and the relative ease of access to sources of proof; (6) the relative means of the parties; (7) the forum’s familiarity with the governing law; (8) the weight accorded to the

plaintiff's choice of forum; (9) trial efficiency; and (10) the interest of justice, based on the totality of circumstances.

Keitt v. N.Y. City, 882 F. Supp. 2d 412, 459-60 (S.D.N.Y. 2011); see also *N.Y. Marine and Gen. Ins. Co. v. LaFarge No. Am., Inc.*, 599 F.3d 102, 112 (2d Cir. 2010) (setting forth similar factors). Under Section 1404, transfer is appropriate in this case. Factual and legal issues in this matter overlap with those in the Illinois action, and many of the parties and witnesses are located in Illinois.

The Northern District of Illinois appears to be a more convenient forum for this action. Accordingly, the Court transfers this action to the United States District Court for the Northern District of Illinois. 28 U.S.C. § 1404(a); see *D.H. Blair & Co. v. Gottdiener*, 462 F.3d 95, 106 (2d Cir. 2006) ("District courts have broad discretion in making determinations of convenience under Section 1404(a) and notions of convenience and fairness are considered on a case-by-case basis.").

ORDER The Clerk of Court is hereby directed to transfer this action to the United States District Court for the Northern District of Illinois. This order closes this case. The Clerk's Office is respectfully directed to waive the seven-day transfer timing. SO ORDERED. ff ee Dated: 6 January 2026 oe a — New York, New York JEEP Victor Marrero U.S..D.