



Summer is scrambling. In Cause No. 2021-31657, *Summer Energy, LLC v. Hartman Income REIT Management* in the 295<sup>th</sup> Judicial District Court of Harris County, Texas (“the 2021 Lawsuit”), Summer only sued the management company – Hartman Income REIT Management. Summer did not sue the entities that owned the various buildings managed by Hartman Income REIT Management. In a desperate attempt to now involve those entities, Summer has filed a **second lawsuit** – the above-styled lawsuit, on the *exact same transaction* that involves twelve (12) different Hartman entities.

### MOTION

If Summer were to succeed in this lawsuit, it would have 2 judgments for the exact same electricity billing for the exact same buildings.

At issue is Cause No. 2021-31657, *Summer Energy, LLC v. Hartman Income REIT Management* in the 295<sup>th</sup> Judicial District Court of Harris County, Texas (“the 2021 Lawsuit”). A final judgment for the Plaintiff was entered by that court on March 24, 2022. *See* attached Exhibit 1. The subject matter of that case is essentially the same as the above-styled case – electricity billing for the exact same billing period and for the exact same buildings in February 2021 (Winter Storm Uri). *See* Exhibit 2 compared to Exhibit 3. The 2021 Lawsuit is currently on appeal.

In this second lawsuit, Summer attempts to spin it as based on “undisclosed” relationships between the management company (the only Defendant in the 2021 lawsuit) and the new Defendants in the instant lawsuit. However, *these relationships could and should have been discovered during basic, fundamental discovery in the 2021 Lawsuit*. Basic discovery in such a case is routinely aimed at making sure the correct parties are being sued. Summer did not do that in the 2021 Lawsuit and is attempting to clean up its mess while an appeal is pending on the exact same electricity billing for the exact same buildings.

Pursuant to the Rules of the Civil Trial Division, Harris County District Courts, Rule 3.2.1, this case is a “claim for relief based upon a prior judgment.” Under Rule 3.2.1, this case shall be assigned to the court of original jurisdiction. The claim for relief in the above-styled lawsuit is the exact same claim for relief in the 2021 Lawsuit. This is clear on the face of the pleadings in both cases.

Defendants request this matter be transferred to the 295<sup>th</sup> Judicial District Court of Harris County, Texas pursuant to Local Rule 3.2.1. The Plaintiff agrees with this relief.

### **PRAYER**

For the foregoing reasons, Defendants respectfully requests this case be transferred to the 295<sup>th</sup> Judicial District Court of Harris County, Texas, and for any other relief to which it may be justly entitled.

Respectfully submitted,

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By: */s/ J. Christopher Diamond*

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## **CERTIFICATE OF CONFERENCE**

The parties communicated by email on August 18, 2023. Plaintiff indicated, as stated in the Motion, that it was not opposed to the transfer of the case to the 295<sup>th</sup> Judicial District Court. However, Plaintiff is not in agreement with the basis of the Motion as stated above.

/s/ J. Christopher Diamond  
J. Christopher Diamond

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