

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Argued - November 13, 2006

THOMAS A. ADAMS, J.P.
GLORIA GOLDSTEIN
STEVEN W. FISHER
ROBERT A. LIFSON, JJ.

2005-07969

DECISION & ORDER

Lynn L. Liebert, appellant, v TIAA-CREF, et al.,
respondents.

(Index No. 28868/04)

Howard M. Sklar, P.C., Carle Place, N.Y. (Scott R. Cohen of counsel), for appellant.

Mayer, Brown, Rowe & Maw, LLP, New York, N.Y. (Steven Wolowitz and Therese Craparo of counsel), for respondent TIAA-CREF.

Behrins & Behrins, P.C., Staten Island, N.Y. (Jonathan Behrins of counsel), for respondent Kathleen Liebert.

In an action, inter alia, for declaratory relief relating to the parties' rights under a certain pension benefit plan, the plaintiff appeals from a judgment of the Supreme Court, Suffolk County (Werner, J.), entered July 6, 2005, which, upon an order of the same court dated June 16, 2005, inter alia, granting the defendants' separate motions to dismiss the complaint pursuant to CPLR 3211(a)(4), dismissed the action.

ORDERED that the judgment is affirmed, with one bill of costs.

The Supreme Court properly granted the defendants' separate motions to dismiss the action pursuant to CPLR 3211(a)(4) because there is a divorce action and a probate proceeding pending in a court of the State of Nevada in which the plaintiff's asserted interests may be litigated. CPLR 3211(a)(4) vests a court with broad discretion in considering whether to dismiss an action on the ground that another action is pending between the same or similar parties seeking the same or substantially the same relief (*see Whitney v Whitney*, 57 NY2d 731; *White Light Prods. v On the*

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Scene Prods., 231 AD2d 90, 93). Under the circumstances, the plaintiff's commencement of the instant action violates the public policy against "forum shopping and the bifurcation of divorce and equitable distribution proceedings" (*O'Connell v Corcoran*, 1 NY3d 179; see *St. John v St. John*, 201 AD2d 552, 553). The plaintiff may not avoid litigating the issues raised in the Nevada divorce action and probate proceeding by commencing a separate action seeking primarily declaratory relief in New York (see *Matter of Morgenthau v Erlbaum*, 59 NY2d 143, 148, cert denied 464 US 993; *DiGeronimo v Amrod*, 248 AD2d 652, 653; *Salomon Bros. v West Va. State Bd. of Invs.*, 168 AD2d 384).

ADAMS, J.P., GOLDSTEIN, FISHER and LIFSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court