

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

D31779
G/ct

_____AD3d_____

Argued - May 31, 2011

MARK C. DILLON, J.P.
JOHN M. LEVENTHAL
L. PRISCILLA HALL
PLUMMER E. LOTT, JJ.

2010-06863

DECISION & ORDER

DAIJ, Inc., appellant, v Ronald H. Roth, et al.,
respondents.

(Index No. 13056/08)

Jonathan A. Stein, P.C., Cedarhurst, N.Y., for appellant.

Ronald H. Roth, P.C., New York, N.Y. (Ronald H. Roth, respondent pro se of
counsel), respondent pro se and for respondent Laura Roth.

In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals
from an order of the Supreme Court, Nassau County (Iannacci, J.), entered January 9, 2009, which
granted the defendants' motion to dismiss the complaint pursuant to CPLR 3211(a)(4).

ORDERED that the order is affirmed, with costs.

Pursuant to CPLR 3211(a)(4), a court has broad discretion in determining whether
an action should be dismissed based upon another pending action where there is a substantial identity
of the parties, the two actions are sufficiently similar, and the relief sought is substantially the same
(*see Whitney v Whitney*, 57 NY2d 731, 732; *Kent Dev. Co. v Liccione*, 37 NY2d 899, 901; *Cherico,
Cherico & Assoc. v Midollo*, 67 AD3d 622, 622; *Liebert v TIAA-CREF*, 34 AD3d 756, 757). "The
critical element is that both suits arise out of the same subject matter or series of alleged wrongs"
(*Cherico, Cherico & Assoc. v Midollo*, 67 AD3d at 622 [internal quotation marks omitted]; *see Kent
Dev. Co. v Liccione*, 37 NY2d at 901).

This action and an action pending in the Civil Court of the City of New York both

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arise from the same subject matter and alleged wrongs, and involve substantial identity of the parties and similarity of claims. The plaintiff's claims may be fully litigated in the Civil Court action. Accordingly, on the record presented, the Supreme Court providently exercised its discretion in granting the defendants' motion to dismiss the complaint pursuant to CPLR 3211(a)(4) (*see Cherico, Cherico & Assoc. v Midollo*, 67 AD3d at 623; *Liebert v TIAA-CREF*, 34 AD3d at 757).

The plaintiff's remaining contentions are without merit.

DILLON, J.P., LEVENTHAL, HALL and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court