

Burrowes v Combs

2005 NY Slip Op 30002(U)

February 18, 2005

Supreme Court, New York County

Docket Number: 0104225/2004

Judge: Charles E. Ramos

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Charles Edward Ramos PART 53
Justice

0104225/2004

BURROWES, KIRK

VS
COMBS, SEAN

SEQ 2

DISMISS ACTION

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

FILED

FEB 28 2005

NEW YORK
COUNTY CLERK'S OFFICE

The following papers, numbered 1 to _____ were read for this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE
WITH THE MEMORANDUM
DECISION IN MOTION SEQUENCE 9

*Is decided in accordance with
accompanying memorandum decision and order.*

Dated: 2/18/05

Charles E. Ramos
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST

CHARLES E. RAMOS

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK:COMMERCIAL DIVISION
-----X

KIRK BURROWES,

Plaintiff,

Index No. 104225/04

- against -

SEAN COMBS a/k/a "Puff Daddy," a/k/a
"Puffy," a/k/a "P Diddy," a/k/a
Sean John, KENNETH MEISELAS, and
BAD BOY ENTERTAINMENT, INC.,

Defendants.

FILED
FEB 28 2005
NEW YORK
COUNTY CLERK'S OFFICE

Charles Edward Ramos, J.S.C.:

Plaintiff Kirk Burrowes used to work for defendant Bad Boy Entertainment, Inc. (Bad Boy), a record company. Plaintiff alleges that he used to be a close friend of Bad Boy's chair and chief executive officer, defendant Sean Combs, and that Combs promised him part ownership of Bad Boy and a share of its profits. The complaint in this action claims that Combs breached his promises. It is also alleged that Combs and defendant Kenneth Meiselas, attorney for Bad Boy and Combs, engaged in conversion, fraud, and tortious interference with plaintiff's other contracts. Now, Combs and Bad Boy (motion sequence number 001) and Meiselas (motion sequence number 002) move to dismiss the complaint or for a stay of this action, pending the determination of a federal appeal.

Plaintiff alleges the following. From 1992 through July 1997, plaintiff was in charge of Bad Boy's budget, musical production, marketing, staff management, personnel recruitment, and artist development. Initially, plaintiff alleges that he was paid nothing for his services. Beginning in early 1993, he was

[*3]

paid a salary of approximately \$30,000 a year. In June of 1994, his salary was increased to approximately \$60,000 a year. In 1997, his salary was increased to \$125,000 a year, he was promoted from general manager of Bad Boy to president, and Combs agreed to give him an ownership interest in Bad Boy and at least 25% of the profits for each year that Burrowes worked for the company.

Upon incorporation, Bad Boy issued 100 shares. The initial shareholders were Janice Smalls, Combs' mother, and Bert Padell, accountant and business manager of Bad Boy. Smalls and Padell held their shares as Combs' nominees. Plaintiff alleges that Combs caused Padell's shares to be transferred to plaintiff in 1993. Three years later, in May 1996, Combs and Meiselas made a surprise visit to plaintiff's office and demanded that Burrowes turn over his shares. Plaintiff alleges that Combs was carrying a baseball bat during the visit. Employing the threat of violence, Combs and Meiselas allegedly intimidated plaintiff into handing over the share certificate and into signing documents releasing plaintiff's interest in Bad Boy.

In spite of this incident, plaintiff worked at Bad Boy until July 1997, when Combs fired him. Plaintiff alleges that he continued at Bad Boy, because Combs continued to promise him an equity interest in Bad Boy and a share of its profits. Combs allegedly continued to make these promises until April 2001, almost three years after plaintiff left Bad Boy's employ.

Plaintiff further alleges that, in November 1997, he agreed

to become manager and producer for singer Mary J. Blige, and that Combs and Meiselas caused Blige to breach her agreement with plaintiff and to enter into a like agreement with Combs.

On June 10, 2003, plaintiff filed an action against these same defendants in the United States District Court for the Southern District of New York. The complaint included causes of action based on violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 USC §§ 1961 *et seq.*, and supplemental state law claims. The federal court determined that plaintiff had no cause of action under RICO, and dismissed the entire action in March 2004. The state law claims were dismissed without prejudice. Plaintiff has filed an appeal in the federal action.

A court has broad discretion in deciding whether to stay an action on the ground that another action is pending between the same parties on the same cause of action (*Houston v Trans Union Credit Info. Co.*, 154 AD2d 312, 313 [1st Dept 1989]; *Pierre Assoc., Inc. v Citizens Cas. Co. of New York*, 32 AD2d 495, 496 [1st Dept 1969]). In such instances, the purpose of a stay is to conserve judicial resources and avoid the risk of inconsistent rulings (*Asher v Abbott Labs.*, 307 AD2d 211, 212 [1st Dept 2003]). A stay is appropriate where the decision in one action will determine all the questions in the other action (*Pierre Assoc., Inc.*, 32 AD2d at 497). The general rule for allowing a stay has been that the action stayed and the other proceeding must share complete identity of parties, claims, and relief

sought (*Asher*, 307 AD2d at 211). Nonetheless, a stay may be warranted when instead of complete identity, there exists substantial identity between two actions (*id.*; *Goodridge v Fernandez*, 121 AD2d 942, 945 [1st Dept 1986]; *Wechsler v Exxon Corp.*, 55 AD2d 875, 876 [1st Dept 1977]).

Defendants seek to stay this action, until after the appeal is determined. They point out that, if the appeal succeeds and the federal causes of action are reinstated, the federal court will adjudicate the state law claims, as well. If the appeal does not succeed, then this forum will entertain plaintiff's claims.

The parties in the federal action are identical to the parties in this action. The state law claims in the federal action are either identical to, or substantively the same as, the claims here. All claims are based on the same allegations of fact. Defendants thus show that a stay would be appropriate in this case.

Plaintiff opposes a stay, on the grounds that his federal appeal seems "speculative at best" and that the federal appeal has not been perfected (Memorandum of law, at 29). Although plaintiff's evaluation of his appeal may be correct, the court does not find it a reason to deny defendants' motion. Oral argument on the appeal is scheduled for March 13, 2005, in the month after the month of this decision. Since a decision in the appeal seems not too far away, this case, including the determination of the instant motions, will be stayed until that


time.

Defendants shall notify this court when the appeal is determined. If the appeal is dismissed, withdrawn or otherwise denied, defendants shall notify the court whether their motions to dismiss should be resolved. They will not have to move again or submit new papers.

In conclusion, it is

ORDERED that motion sequence numbers 001 and 002, which move to dismiss the complaint and, in the alternative, move to stay this action are granted to the extent that this action is stayed and the motions to dismiss are stayed, pending the determination of an appeal.

Dated: February 18, 2005



J.S.C.

CHARLES E. RAMOS

Counsel are hereby directed to obtain an accurate copy of this Court's opinion from the record room and not to rely on decisions obtained from the internet which have been altered in the scanning process.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Charles Edward Ramos PART 53

Justice

0104225/2004

BURROWES, KIRK
VS
COMBS, SEAN

SEQ 2

DISMISS ACTION

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Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION TO DISMISS BY ACCORDANCE
WITH SECTION 57(2)(b) OF THE
COURT ACT IS DENIED. SEQUENCE ... 9

*Is decided in accordance with
accompanying memorandum decision and order.*

Dated: 2/18/05

9

Check one: FINAL DISPOSITION DO NOT POST NON-FINAL DISPOSITION
CHARLES E. RAMOS

J.S.C.

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[* 1]

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