

Spanish Broadcasting Sys., Inc. v Jimenez

2007 NY Slip Op 31625(U)

May 23, 2007

Supreme Court, New York County

Docket Number: 0600078/2007

Judge: Richard B. Lowe

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

PRESENT: LOWE
Justice

PART 56

Index Number : 600078/2007
SPANISH BROADCASTING SYSTEM
vs
JIMENEZ, LUIS
Sequence Number : 001
DISMISS ACTION

INDEX NO. 600078/07
MOTION DATE 4/12/07
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

motion to/for _____

Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...
Answering Affidavits -- Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

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

DISMISS ACTION

FILED
JUN 14 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 5/23/07

[Signature]

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 56

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SPANISH BROADCASTING SYSTEM, INC.

Index No: 600078/07

Plaintiff

-against-

DECISION AND ORDER

LUIS JIMENEZ, LUIS JIMENEZ ENTERPRISES, LLC,
and ALMA ENTERTAINMENT, LLC,

Defendants

FILED
JUN 14 2007
NEW YORK
COUNTY CLERK'S OFFICE

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RICHARD B. LOWE III, J:

Plaintiff Spanish Broadcasting System, Inc. ("SBS") brings the instant action against Luis Jimenez ("Jimenez"), Luis Jimenez Enterprises, LLC ("Jimenez Enterprises"), and Alma Entertainment, LLC (collectively, "the Defendants") for breach of contract and tortious interference with contractual relations. In the instant motion, the Defendants move to dismiss the complaint or, in the alternative, stay the action pursuant to CPLR 3211(a)(4). SBS opposes the motion, and cross-moves for sanctions under 22 NYCRR § 130.

BACKGROUND

SBS is a public company organized under Delaware law with its principal place of business in Miami, Florida. It is currently the largest Hispanic-owned radio broadcasting

agreement pertaining to non-solicitation and non-interference. The federal action asserts that Jimenez breached those provisions related to the use of SBS's trademarks and intellectual property. To be sure, both alleged repudiations pertain to the same contract. However, despite the fact that the two actions are premised on the same agreement, the identity of issues, required for dismissal under CPLR 3211(a)(4) is not present when the relief sought is not the same. (*See, Reliance Ins Co v Am. Elec. Power Co., Inc.*, 224 AD 2d 235 [1st Dept 1996].) SBS asks this Court to resolve whether Jimenez breached a specific clause in the contract, while it asks the Federal District Court for the Southern District of New York to adjudicate whether he repudiated *a different* contract provision. SBS does not plead the same issue in the two complaints.¹

But the Defendants' move for a CPLR 3211(a)(4) dismissal or stay is not premised on what SBS has done; rather it is because of what the Defendants did. In their Answer to the federal-based action, the Defendants assert

In addition to the lawsuit SBS filed. . . in this Court, SBS filed suit against the same parties in the Supreme Court of the State of New York, New York County, Commercial Division, alleging that [the Defendants] breached a written employment agreement with SBS and that all of the defendants tortiously interfered with SBS's contract with Moonshadow.²

(*Lukanski Aff'd, Ex C, Answer to Federal Complaint at page 23 ¶ 48*)

¹ At the conclusion of its state-based complaint, SBS asks that this Court declare "the Employment Agreement valid and enforceable." (*State-Based Complaint at page 13*) While, as drafted, this request seems to seek a declaration that all eleven provisions, with sub-parts, is valid, it must be read in conjunction with the complaint's text. The complaint only seeks redress under Section 4(b). Accordingly, it is only that provision's validity and enforceability that will be addressed in the instant action.

² Raymond "Moonshadow" Broussard was a member of the *El Vacilon* ensemble-cast. In the state-based complaint, SBS alleges that Jimenez interred with Moonshadow's employment agreement by soliciting the latter to join the former at Univision. In the federal action, SBS alleges that Jimenez breached the trademark provisions of the employment agreement because, *inter alia*, he marketed a movie starring himself and Moonshadow. SBS avers that it, and not Jimenez, has the exclusive rights to the movie's distribution.

Furthermore, in Count V of their counterclaims, the Defendants seek

A declaration that none of the state court defendants, Luis, Luis Jimenez Enterprises LLC, and Alma Entertainment LLC, have tortiously interfered with SBS's alleged contract with Moonshadow. . .

(Id at page 24, ¶ 51(c))

To be sure, the Defendants move for dismissal or a stay for the following two reasons:

First, the Counterclaim made by the Defendants in the federal court action seeks declaratory relief that defendants Jimenez and Jimenez Enterprises have complied with the Employment Agreement and that the defendants have not tortiously interfered with the alleged contract plaintiff maintained with one of its employees. That claim for relief involves the same issues (just stated inversely) as the claims made by plaintiff in the state court action. . .

Second, the federal and state court actions arise out of the same set of facts. Indeed, plaintiff has alleged breaches of the same Employment Agreement in both the state and federal courts. Proceeding in two different forums in which the same Employment Agreement is at issue would require the same discovery, the same witnesses, the same parties, etc.

(Defendants Memo of Law, pages 5-6)

Addressing the Defendants' second contention : first, there is nothing inconsistent about a possible finding that the Defendants breached one contractual provision and not another. Indeed, as here, many contracts have multiple sections and a party could violate one section and not another. Second, while this Court agrees with the Defendants that it is better to have both actions consolidated in one forum for judicial economy ³, they moved under a specific statutory provision. It is that statute, CPLR 3211(a)(4), under which dismissal must be analyzed.

³ SBS avers that it could not add its non-solicitation and non-interference claims to its federal action because these claims are not premised on a federal question and would destroy diversity. (*See, Transcript at page 9, lines 6-16*) However, under F.R.C.P. 1367(a), a Federal Court has supplemental jurisdiction over all claims that relate to claims that it has original jurisdiction over. While F.R.C.P. 1367(b) limits the scope of a federal court's supplemental jurisdiction, that situation articulated in the code does not appear to be present here.

As discussed, *supra*, it is not SBS's allegations in its two complaints that render the parties and issue identical. Rather, it is the Defendants' asserted counterclaim in the federal action that achieves this. Indeed, SBS seeks a declaration in the *state-based* action that the named Defendants are in breach of the non-solicitation and non-interference contract provisions. The Defendants seek a declaration in the *federal action* that they are not in breach of the provisions in which SBS alleges that are *in both actions*, despite the fact that SBS does not raise its state-based claims in its federal complaint. This Court finds the Defendants' conduct suspect, considering that *they* co-mingled the two action's parties and issues, and then *they* moved to dismiss or stay the action on the very grounds that *they* caused. Nevertheless, both this Court and the Federal District Court in the Southern District of New York are now asked to adjudicate whether Jimenez violated the contract's non-solicitation and non-interference clauses. Indeed, the parties and issues are identical before two courts, and the risk of inconsistent judgments is therefore present.

In its opposition papers, SBS states that it "intends to seek dismissal of this counterclaim on the ground that it duplicates the state law issues here and is not appropriate for a federal declaratory action." (*Memo in Opp'n at page 9*) With this aversion, SBS raises the specter that the claim causing the issues' identicalness may be removed. Accordingly, the instant action is stayed pending SBS's motion to dismiss the Defendants' counterclaim for declaratory relief in the federal action and the Federal District's resolution of the matter. After that Court renders its decision, the parties are directed to submit the appropriate motions to this Court.

In addition, the Defendants' request for costs and fees because SBS rejected their request to consolidate the two actions in the federal court is denied. SBS commenced two separate actions

in two different, yet proper, forums. While judicial economy may desire a different route, SBS was within its right to move as it did. As discussed, *supra*, SBS did not cause the party/issue identicalness; the Defendants did.

SBS's Cross-Motion for Sanctions Pursuant to 22 NYCRR § 130

SBS seeks the imposition of sanctions upon the Defendants' counsel under 22 NYCRR § 130. This statute provides that counsel may be sanctioned due to her/his frivolous behavior in connection with prosecuting or defending an action.

“The court, in its discretion, may award to any party or attorney in any civil action or proceeding before the court, except where prohibited by law, costs in the form of reimbursement for actual expenses reasonably incurred and reasonably attorney's fees resulting from frivolous conduct. . .” (22 NYCRR § 130-1.1(a)) Conduct is frivolous when it “cannot be supported by a reasonable argument.” (*Id.*, at § 130-1.1(c)) “Once there is a finding of frivolousness, sanction is mandatory.” (*Nyitray v New York Athletic Club in the City of New York*, 274 AD 2d 326 [1st Dept 2000].)

Here, the Defendants' argument was reasonably supported. They convincingly argued that the parties and issues were identical and dismissal or a stay was justified. Since they proffered reasonable assertions for their argument, their conduct cannot be deemed frivolous. Sanctions are therefore not warranted. Accordingly, SBS's cross-motion for costs and fees is denied..

CONCLUSION

For the foregoing reasons, it is hereby

ORDERED that the Defendants' motion to stay the instant action pursuant to CPLR 3211(a)(4) is granted; and it is further


ORDERED that Defendants' motion for costs and fees is denied; and it is further

ORDERED that SBS's cross-motion for sanctions under 22 NYCRR § 130 is denied.

This shall constitute the decision and order of this Court.

Dated: May 23, 2007

ENTER:


RICHARD B. LOWE, III
RICHARD B. LOWE, III, J.S.C.

FILED
JUN 14 2007
NEW YORK
COUNTY CLERK'S OFFICE