

**Microvisions Commercial Cable Ctr., Inc. v ASD
Cable Servs., Inc.**

2007 NY Slip Op 33973(U)

December 4, 2007

Supreme Court, Suffolk County

Docket Number: 0016774/2007

Judge: Arthur G. Pitts

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Supreme Court of the State of New York
IAS Part 43 - County of Suffolk

PRESENT: HON. ARTHUR G. PITTS

 MICROVISIONS, COMMERCIAL CABLE
 CENTER, INC.,

Plaintiff,

-against-

ASD CABLE SERVICES, INC., and
 STEPHEN DONNELLY,

Defendants.

ORIG. RETURN DATE: 7/9/07
FINAL SUBMIT DATE: 9/20/07
MOTION SEQ. NO.: 001-MD
002-MD

PLTF'S/PET'S ATTY:
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STEPHEN T. DONNELLY-Pro Se
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West Babylon, New York 11704

Upon the following papers numbered 1 to 27 read on this motion consolidation/stay proceedings
 Notice of Motion/OSC and supporting papers 1-5/6-11; Notice of Cross-Motion and supporting papers _____;
 Affirmation/affidavit in opposition and supporting papers 12-17; Affirmation/affidavit in reply and supporting papers 18-25/26-27; Other _____; ~~(and after hearing counsel in support of and opposed to the motion)~~ it is,

ORDERED that plaintiff Microvisions Commercial Cable Center, Inc.'s motion for an order removing certain small claims actions presently pending in the Suffolk County District Court, Second District under index nos. 116-07, 117-07, 118-07, 119-07 and 120-07 and for an order staying said action pending the determination of the instant motion is denied under the circumstances presented herein. (CPLR 602)

The matter at bar is one sounding in breach of contract. By way of its complaint the plaintiff alleges that defendant Stephen Donnelly and subsequently, defendant ASD Cable Services agreed to manage the plaintiff Microvisions Commercial Cable Center, Inc., a subcontractor of Cablevision, and the defendants breached such agreement by not properly servicing Cablevision. The defendants have filed five small claims actions against the plaintiff in the Suffolk County District Court, Second District each for work, labor and services and each near the maximum amount allowed to be pled, approximately \$5,000.00.

In support of the instant motion the plaintiff avers that the defendants deceptively and improperly

filed five small claims actions for the sole purpose of circumventing the monetary limits when in actuality, the defendants have one single claim for over \$40,000.00. Notwithstanding the plaintiffs assertions, the issue whether the defendants improperly filed small claims actions should be heard in the Court of origin of those claims, the Suffolk County District Court and not this forum. The plaintiffs motion for removal on such grounds is accordingly denied.

Pursuant to CPLR 602 (b) this Court “may upon motion remove to itself an action pending in another court and consolidate it or have it tried together with that in Supreme Court.” Absent a showing of prejudice to a substantial right the existence of common questions of law or fact justifies the granting of a motion for consolidation. (see *Lambooy v. Inter Fence Co.*, 196 A.D.2d 705, 601 N.Y.S.2d 619 [1st Dept 1993]) However the directing the removal of these actions to the Supreme Court would “frustrate the salutary purposes of small claims courts which is to provide a simple, informal and inexpensive procedure for the prompt determination of claims within its jurisdiction. (UDCA 1802) The small claims procedure requires a showing of substantial justice, the manner of proving damages is simplified, strict rules of practice, procedure, pleading or evidence are not required and discovery is not available as a right. (UDCA 1804)Moreover. A small claims judgment may be pleaded as *res judicata* only as to the amount involved in the particular action and is not deemed an adjudication of any fact at issue or found therein in any other action or court. (UDCA 1808)” (*Kilinski v. Melendez*, 182 Misc2d 55, 696 N.Y.S.2d 780 [Sup Ct, Nassau Cty 1999]) As such, an adverse determination will not affect the rights of the plaintiffs in the matter presently before the Court and the granting of the relief sought by the plaintiff would cause substantial prejudicial delay to the defendants in the trial of their small claims actions.

Accordingly, pursuant to the foregoing and under the circumstances presented herein, the plaintiffs motion is denied.

This shall constitute the decision and order of the Court.

So ordered.

Dated: Riverhead, New York
 December 4, 2007



 J.S.C.

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