

American Intl. Group, Inc. v Greenberg

2008 NY Slip Op 33102(U)

November 5, 2008

Supreme Court, New York County

Docket Number: 600885/08

Judge: Charles E. Ramos

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

PRESENT: CE Ramos

PART 53

Index Number : 600885/2008
AMERICAN INTERNATIONAL
VS.
GREENBERG, MAURICE R.
SEQUENCE NUMBER : 001
DISMISS

Justice
INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. 1
MOTION CAL. NO. _____

ad on this 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):

partially
Motion is decided in accordance with accompanying Memorandum Decision

FILED

NOV 14 2008

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 11/5/08

CR
CHARLES E. RAMOS L.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION
-----X
AMERICAN INTERNATIONAL GROUP, INC.,

Plaintiff,

Index No. 600885/08

-against-

MAURICE R. GREENBERG, HOWARD I. SMITH,
EDWARD E. MATTHEWS, ERNEST E. STEMPEL,
I. MICHAEL MURPHY, JOHN J. ROBERTS, and
HOUGHTON FREEMAN,

Defendants.
-----X

FILED
NOV 14 2008
COUNTY CLERKS OFFICE
NEW YORK

Charles Edward Ramos, J.S.C.:

In motion sequence 001, defendant Ernest E. Stempel moves to dismiss the first, second and third causes of action (CPLR 3211 [a] [7], [8]), and alternatively for a stay (CPLR 2201) pending the resolution of an action in the Southern District of New York, entitled *Starr International Company, Inc. v American International Group, Inc.* (Federal Court Action).

In motion sequence 002, defendant John J. Roberts moves to stay this action pending the resolution of the Federal Court Action (CPLR 2201), and alternatively, to dismiss the action (CPLR 327, 3211 [a] [7]).

In motion sequence 003, defendant Houghton Freeman moves to stay this action (CPLR 2201) pending resolution of the Federal Court Action, and alternatively to dismiss the second and third causes of action (CPLR 3211 [a] [7]).

In motions sequence 006 and 008, defendants Maurice R. Greenberg and Howard I. Smith move to stay this action (CPLR 2201) pending resolution of the Federal Court Action, and alternatively to dismiss the complaint (CPLR 327 [a]; CPLR 3211

[a] [7])).

In motion sequence 007, defendant Edward E. Matthews moves to stay (CPLR 2201) this action pending resolution of the Federal Court Action, and alternatively to dismiss the complaint (CPLR 3211 [a] [1], [7]; CPLR 3016 [b]).

In motion sequence 009, defendant L. Michael Murphy moves to stay this action pending the resolution of the Federal Court Action (CPLR 2201), and alternatively to dismiss.

Motion sequence 001 through 003, and 006 through 009 are consolidated for disposition, with respect to that portion of the motions that seek a stay of this action pursuant to CPLR 2201. Otherwise, those portions of the motions that alternatively seek to dismiss on the basis of forum non conveniens, failure to state a cause of action, defense based upon documentary evidence, improper service, and failure to plead with sufficient particularity (CPLR 327; 3211 [a] [1], [7], [8]; CPLR 3016 [b]), are severed and reserved for subsequent disposition.

Background¹

In this action for damages, plaintiff American International Group, Inc. (AIG) seeks damages for alleged breaches of fiduciary duty by certain AIG founders, former officers, and directors, for their alleged misappropriation of a special block of AIG shares (Shares) that were entrusted to them.

The seven individual defendants are Maurice Greenberg,

¹ The allegations set forth in this section are taken from the complaint, unless otherwise noted.

Howard Smith, Edward Matthews, Ernest Stempel, Michael Murphy, John Roberts and Houghton Freeman (collectively, Defendants). Additionally, the Defendants were all voting stockholders of AIG affiliate, non-party Starr International Company, Inc. (SICO), that actually held the Shares in a blocked account.

The complaint alleges that the Defendants undertook express fiduciary duties to preserve the value of the Shares for the enrichment of present and future generations of AIG employees, notwithstanding their dual capacities as SICO officers, directors and voting shareholders. However, in March of 2005, amidst an investigation initiated by state and federal officials into several AIG transactions for accounting irregularities, Defendants allegedly caused SICO to misappropriate the Shares for their own personal benefit.

In July of 2005, SICO commenced the Federal Court Action against AIG, seeking the return of a collection of art maintained in AIG's building, in addition to other property. AIG interposed counterclaims against SICO, seeking to remedy SICO's own alleged breaches of contractual, fiduciary and equitable duties, in addition to unjust enrichment and declaratory judgment relating to SICO's treatment of the Shares. Extensive discovery was taken, and SICO moved for summary judgment on all of AIG's counterclaims.

In June of 2008, Judge Barbara Jones granted, in part, and denied, in part, SICO's motion for summary judgment. Judge Jones dismissed the causes of action for breach of contract, unjust

enrichment and constructive trust, and denied the motion as to causes of action for breach of fiduciary duty, conversion and declaratory judgment, on the ground that triable issues of fact remain "regarding the obligations of SICO with respect to the Acquired Stock [the Shares]" (Exhibit A, annexed to the Supplemental Aff. of Christopher Duffey, Esq., 51). A trial was subsequently scheduled.

AIG commenced this action in March of 2008, asserting three causes of action for breach of fiduciary duty against former AIG directors Greenberg and Smith, breach of fiduciary duty against all Defendants as fiduciaries of AIG, and aiding and abetting breach of fiduciary duty against all Defendants.

Discussion

Defendants² move for a stay of this action pursuant to CPLR 2201 pending the outcome of the Federal Court Action, based upon the contention that AIG's allegations in this action are entirely dependent on the outcome of the Federal Court Action.

Specifically, Defendants assert that, in the event that SICO prevails in the Federal Court Action, insofar as it is determined that SICO does not owe a fiduciary duty to AIG arising out of its holding of the Shares, AIG cannot proceed in this action.

AIG counters that the prerequisites for obtaining a stay pursuant CPLR 2201 are not met here. AIG asserts that none of the Defendants are parties to the Federal Court Action, while

² The individual Defendants each submit separate briefs, but largely adopt one another's arguments in support of a stay.

SICO is not a party to this action. Further, AIG contends that, although it asserts causes of action for breach of fiduciary duty in both actions, they are based upon separate and distinct duties allegedly owed by different people and entities. Finally, AIG points out that in the Federal Court Action it is seeking relief from SICO, while it is seeking relief from the individual Defendants in this action.

CPLR 2201 authorizes the granting of a stay "in a proper case," and is within the trial court's discretion. Further, where a party seeks the stay of an action pending the outcome of another action, complete identity of parties, causes of action and judgment sought are required (*952 Associates, LLC v Palmer*, 52 AD3d 236, 236-37 [1st Dept 2008]). Although these elements are not specifically set forth in CPLR 2201, they are generally adhered to (*see e.g. Id.; Mt. McKinley Ins. Co. v Corning, Inc.*, 33 AD3d 51, 56-57 [1st Dept 2006]; *Somoza v Pechnik*, 3 AD3d 394 [1st Dept 2004]).

There is not complete identity of parties, causes of action or judgment sought between this action and the Federal Court Action. Moreover, there are no common questions of law. Although there are undoubtedly overlapping facts, the conduct and peculiar facts giving rise to the existence or non-existence of a duty in both actions are distinct. The remaining issue in the Federal Court Action is whether SICO owed AIG a fiduciary duty to hold the Shares in trust. At issue here is whether the individual Defendants undertook fiduciary duties to AIG to

preserve the value of the Shares held by SICO, notwithstanding their dual capacities as officers, directors and voting shareholders of SICO.

Consequently, the determination in the Federal Court Action that SICO did not owe AIG a fiduciary duty with respect to the Shares is of no legal consequence to resolving the issue of whether the individual Defendants undertook a duty to AIG. Even if the factual record in that case does not support the allegation that SICO, a separate, albeit related, entity did not undertake a higher level of trust to hold the Shares in a certain manner for AIG's benefit, the factual and legal issue of whether the individual Defendants undertook a higher duty to preserve the value of those Shares is not disposed of. Thus, the issue raised in the Federal Court Action, namely, the existence of a fiduciary relationship between AIG and SICO is not dispositive of whether the Defendants owed AIG a fiduciary duty with respect to preservation of the value of the Shares (*compare Beloposky v Renew Data Corp.*, 41 AD3d 322, 322-23 [1st Dept 2007]).

Therefore, because there is not complete identity of parties, causes of action and judgment sought between the Federal Court Action and this action, and the determination of issues in that action will not dispose of or limit the issues before this Court, the prerequisites for obtaining a stay are not met, and the Defendants' motion is denied.

Accordingly, it is

ORDERED that motions sequence 001-003, and 006-009, to the

extent that they seek a stay, are denied; and it is further

ORDERED that the remainder of the motions, insofar as they seek dismissal, are severed and reserved for subsequent disposition.

Dated: November 5, 2008

ENTER:



J.S.C.

CHARLES E. RAMOS

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NOV 14 2008
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