

Palm Bay Intl., Inc. v Winewave, Ltd.

2009 NY Slip Op 32001(U)

August 20, 2009

Supreme Court, Nassau County

Docket Number: 005946/09

Judge: Stephen A. Bucaria

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

PALM BAY INTERNATIONAL, INC.,

Plaintiff,

-against-

WINEWAVE, LTD.,

Defendant.

TRIAL/IAS, PART 3
NASSAU COUNTY

INDEX No. 005946/09

MOTION DATE: July 14, 2009

Motion Sequence # 001

The following papers read on this motion:

- Notice of Motion..... X
- Memorandum of Law in Opposition..... X
- Reply Memorandum of Law..... X

This motion, by defendant, for an order (a) pursuant to CPLR 3211(a)(4) to dismiss the complaint of plaintiff Palm Bay International, Inc. ("Palm Bay"); or (b) in the alternative, for an order pursuant to CPLR 2201 to stay all proceedings in connection with the complaint, pending resolution of the overlapping actions that Palm Bay has previously filed in the United States District Court for the Eastern District of New York, is determined as hereinafter set forth.

FACTS

Plaintiff, Palm Bay International Inc. entered into an importation agreement with Marchesi to be the exclusive importer of its wine in the United States in 1994. The

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purported agreement that was renewable every five years provided that Palm Bay maintained a five percent increase in sales at the end of every five year period. Marchesi terminated the contract with Palm Bay in 2009 after doing business together for fifteen years. Marchesi then entered into a contract with defendant, Winewave Ltd, giving it the sole right to import its wine. Palm Bay has commenced two actions against Marchesi in the U.S. District Court for the Eastern District of New York and has now brought this action against Winewave for unjust enrichment, misappropriation of intellectual property and unfair competition.

DEFENDANTS' CONTENTIONS

Defendant, Winewave asserts that plaintiff should never have brought this action against it until the federal court has decided the actions pending in federal court. Defendant argues that the federal cases are outcome determinative of the action before this court. The disposition in federal court is necessary before deciding this case because should the federal court determine that the contract between Marchesi and Palm Bay was wrongfully terminated, then Palm Bay may have a cause of action against Winewave. However, if the federal court determines that the contract between Marchesi and Palm Bay was properly terminated, the cause of action against Winewave is meritless since no cause of action could be sustained.

PLAINTIFF'S CONTENTIONS

Palm Bay claims that they have upheld every term in the importation agreement with Marchesi and that its contract was improperly terminated. Plaintiff entered into a contract with The Olive Garden to distribute a special label brand of Marchesi wine. Plaintiff imported and distributed the wine to The Olive Garden. The bottles shipped to The Olive Garden were defective. Palm Bay reimbursed The Olive Garden in the amount of \$1,700,000. Marchesi purportedly conceded that the bottles produced were defective; and the plaintiff asserts that the reason its contract was terminated was because it tried to offset the sum it paid Marchesi when Marchesi refused to reimburse plaintiff for the defective merchandise that was shipped and sold to the Olive Garden.

Plaintiff argues that the contract between Marchesi and Winewave will unjustly enrich Winewave because of the misappropriation of its intellectual property when Winewave was given access to Palm Bay's wide network of distributors. Plaintiff contends that Winewave is a direct competitor of Palm Bay and the contract between

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Marchesi and Winewave would allow for unfair competition.

MOTION TO DISMISS

A dismissal of the case pursuant to CPLR 3211 (a)(4) would be inappropriate under the circumstances. When there is another action pending between the same parties for the same cause of action in a court of any state or the United States; the court need not dismiss on this ground but may make such order as justice requires. (CPLR 3211(a) (4); **Reckson Assocs. Realty Corp. v. Blasland, Bouck and Lee, Inc.**, 230 A.D. 2d 723, 724-725, 2nd Dept., 1996). In the event that the federal court determination is that the contract between Marchesi and Palm Bay was improperly terminated, Palm Bay's cause of action against this defendant may ultimately be viable making dismissal a judicial contradiction.

A motion to dismiss would only be granted if the two actions are similar and the relief sought must be substantially the same, and there must be substantial identity of the parties. (**Simonetti v. Larson**, 44 A.D. 3d 1028, 1029, 845 N.Y.S. 2d 369, 2nd Dept., 2007; **White Light Productions Inc. v. On the Scene Productions, Inc.**, 231 A.D. 2d 90, 93-94, 660 N.Y.S. 2d 568, 1st Dept., 1997). (emphasis added). The case at hand is similar in nature since the defendant in the federal action is firmly intertwined with the defendant and the cause of action herein. The case before this court is clearly predicated upon the outcome of the federal court cases. However, a cause of action may exist against the defendant if the defendant in the federal court cases were to be found in breach of contract. Therefore, granting a motion to dismiss would be inappropriate.

New York courts have recognized that the interests of judicial economy and orderly procedure are important considerations in determining whether a motion to dismiss under CPLR 3211 (a)(4) should be granted. (**White Light Prod., Inc. v. On the Scene Prod., Inc.**, *supra*). However, it is in the court's interest to defer to the federal court's determination. To do otherwise would force the parties to re-litigate the facts of the case.

With respect to that part of the motion which seeks a stay, where a prior filed action in another state or federal forum determines an issue that is a required predicate to the claims made in the case, a stay is appropriate. (**Minton v. Minton**, 277 A.D. 2d 103, 717 N.Y.S. 2d 519, 1st Dept., 2000). Plaintiff has already brought two actions that are

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pending a verdict in federal court on issues that will influence the outcome of this case. It would be imprudent to permit this case to go forward. New York courts recognize that the interests of judicial economy and orderly procedure are important considerations in determining whether a stay should be granted. (See, e.g., **Britt v International Bus Services, Inc.**, 255 AD2d 143, 144, 679 NYS2d 616, 1st Dept., 1998; **Pappas v Freund**, 660 N.Y.S. 2d 302, 306, Supr. Ct. 1997; **Belopolsky v. Renew Data Corp.**, 41 A.D. 3d 322, 1st Dept., 2007; **Case Capitol Corp. v. Morgan Invs.**, 154 A.D. 2d 501, 2nd Dept., 1989; **El Greco v. Cohn**, 139 A.D. 2d 615,617, 527 N.Y.S. 2d 256, 2nd Dept., 1988). It is well settled that a court has broad discretion to grant a stay in order to avoid the risk of inconsistent adjudications, application of proof and potential waste of judicial resources. (**Zonghetti v. Jeromack**, 150 A.D. 2d 561,563, 2nd Dept., 1989). No judgment can be made prior to hearing the decision in the federal court cases since a judgment based on the facts of this case alone may result in inconsistent judgments. Where there is a risk of inconsistent adjudications a stay is appropriate (**Pappas v. Freund, supra; El Greco v. Cohn, supra**).

Defendant and plaintiff provide the court with conflicting case law regarding the standard required to be met in order for a stay to be granted. While Plaintiff cites to case law requiring a complete identity of parties, cause of action and the judgment sought in order for a court to grant a stay, (**Pierre Assocs. Inc. v. Citizens Cas. Co. of N.Y.**, 32 A.D. 2d 495, 497, 304 N.Y.S. 2d 158,160, 1st Dept., 1969; **Greenpoint Mortg. Funding, Inc. v. Commw. Land Title Ins. Co.**, 836 N.Y.S. 2d 493, Sp. Ct. Nassau Co. 2007). The defendant provides case law showing that there only needs to be substantial identity of parties. (see, e.g., **Pappas v. Freund, supra; Belopolsky v. Renew Data Corp., supra; Case Capital Corp. v. Morgan Invs., supra; El Greco v. Cohn, supra**). Herein, there is substantial identity since the defendants in the federal and state courts are inextricably bound by the facts and the law. The case against defendant Marchesi in the federal court cases and defendant Winewave in the state court cannot be separated as the claim against Marchesi predicates the issue at hand with Winewave. Plaintiffs cause of action and relief sought can only be granted once the court has determined whether the contract that Marchesi had was properly terminated with Palm Bay since the case at hand is completely based on the decision of the federal court.

The cases pending in federal court and the case before the state court are substantially similar in nature. A stay may be warranted when there is substantial identity and overlap between state and federal actions, and a stay is justified upon due

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consideration of issues of comity, orderly procedure and judicial economy. (Asher v Abbott Labs, 307 A.D. 2d 211,212, 1st Dept., 2003). Where the pleadings in both actions demonstrate that both are based on the same contractual agreements and arise out of the same actionable wrongs, there is substantial identity of the parties and the nature of the relief sought is substantially the same. (Siegel, Practice Commentaries, McKinney's Cons Laws of NY Book 7b CPLR 3211;15, 21; Koren-Di Resta Constr Co. v. Albert B. Ashforth Inc., 100 A.D. 2d 760,761, 1st Dept., 1984) (emphasis added). Substantial, not complete, identity of the parties is all that is required to invoke CPLR 3211 (a)(4). The fact that a party is a defendant in this action but not the other is not dispositive. (Bank of Tokyo-Mitsubishi., 39 A.D. 3d 370; see also JC Mfg., Inc. v NPI Electric Inc., 178 A.D.2d 505, 506, 2nd Dept., 1991). All three causes of action arise out of the distribution agreement between Marchesi and Palm Bay. Therefore, the cases in federal court do, in fact, share a substantial identity of the parties and relief sought.

A stay of one action pending the outcome of another is appropriate where the decision in one will determine all the questions in the other and where the judgment in one trial will dispose of the controversy in the two actions. (Green Tree Fin. Servicing Corp. v. Lewis, 280 A.D. 2d 642,643, 720 N.Y.S.2d 843,844, 2nd Dept., 2001; see also, Fleet Nat'l Bank v. Marrasso, 23 A.D. 3d 337,338, 804 N.Y.S. 2d 99,101, 2nd Dept., 2005). Herein, the viability of the federal action is determinative herein. The fact that the defendant in this case is different than the plaintiff or defendant in the other federal cases is irrelevant since the basis for this case stems directly from the federal court cases. (Bank of Tokyo-Mitsubishi., 39 A.D. 3d 370. See also, JC Mfg., Inc. v NPI Electric Inc., 178 A.D.2d 505, 506, 2nd Dept., 1991).

It is in the court's discretion to decide whether a stay should be granted. (Pierre Assocs. Inc. v. Citizens Cas. Co. of NY, supra).

Based on the forgoing, defendant's motion to dismiss is **denied**. However, defendant's motion for a stay is hereby **granted** pending the determination of the federal actions.

Dated AUG 20 2009

Stephen P. Scavron
J.S.C. **ENTERED**

AUG 25 2009
**NASSAU COUNTY
COUNTY CLERK'S OFFICE**