

Telyas v Telyas

2012 NY Slip Op 33253(U)

December 21, 2012

Sup Ct, Nassau County

Docket Number: 3934/12

Judge: Robert A. Bruno

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

PRESENT: HON. ROBERT A. BRUNO, J.S.C.

AVI TELYAS,

Plaintiff,

-against-

JAYNE TELYAS, SIRGAY SANGER, M.D.,
and SIRGAY SANGER, M.D., P.L.L.C.,

Defendants.

TRIAL/IAS PART 20
INDEX No.: 3934/12
Motion Date: 10/23/12
Motion Sequence: 001, 002

DECISION & ORDER

Papers Numbered

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This motion (sequence #001) by the defendant Jayne Telyas for an order pursuant to CPLR 3211(a)(7) and/or CPLR 3212 seeking dismissal of the complaint against her and an order pursuant to 22 NYCRR 130-1.1 imposing sanctions on the plaintiff is determined as provided herein.

This motion (sequence #002) by the defendants Sirgay Sanger, M.D. and Sirgay Sanger, M.D., P.L.L.C. for an order pursuant to CPLR 3211(a)(4) dismissing the complaint on the grounds that there is another action pending is determined as provided herein.

The Telyases were married on April 12, 1988. At various states of their lives, the Telayas' four children have been patients of Dr. Sanger as has the defendant Jayne Telyas, both in her capacity as the children's mother as well as individually. Plaintiff, Avi Telyas, filed for divorce on September 22, 2009. By order dated August 9, 2010, Hon. Anthony J. Falanga granted Jayne Telyas' *pendente lite* application compelling Avi Telyas, *inter alia*, to pay 100% of the costs of the children's therapy with Dr. Sanger which is not covered by insurance, which is capped at \$4,800.00 per month. *Telyas v Telyas*, SFO August 9, 2010, Index No. 202617/09 (Supreme Court Nassau County). The Order also directed defendant, Jayne Telyas, to pay her

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own uncovered health related expenses. Thereafter, defendant, Jayne Telyas, applied to the Court to hold plaintiff in contempt of its August 9, 2010 order and plaintiff cross-moved for, *inter alia*, a downward modification of his obligation to pay the costs of the children's therapy with Dr. Sanger. Hon. Anthony J. Falanga found that there was no evidence to justify a modification of plaintiff's obligation to Dr. Sanger for the children's therapy. *Telyas v Telyas*, SFO February 7, 2011, Index No. 202617/09 (Supreme Court Nassau County). In a so-ordered stipulation dated October 12, 2011, the parties, *inter alia*, ratified plaintiff's other support obligations under the August 9, 2010 *pendente lite* order.

On March 28, 2012, the plaintiff, Avi Telyas, commenced this action against defendants Jayne Telyas and Dr. Sanger. Plaintiff alleges that the defendants have conspired to submit bills for defendant Jayne Telyas's psychotherapy sessions in the names of the parties' children. Plaintiff advances claims sounding in conspiracy to commit fraud, unjust enrichment, libel or slander based on defendant Telyas' alleged threat of another contempt application, declaratory relief and fraudulent billing practices in violation of federal and state laws.

Rather than dismissing an action under CPLR §3211(a)(4), the court may, when appropriate, consolidate it with another pending action. Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR 3211:1a, at p. 33; *see Mideal Homes Corp. v L&C Concrete Work, Inc.*, 90 AD2d 789 (2nd Dept 1982). Consolidation is to be directed where "it will avoid unnecessary duplication of trials, save unnecessary costs and prevent the possibility of incongruous decisions based on the same facts." *Toulouse v Chandler*, 5 Misc 3d 1005(A), fn. 9 (Supreme Court Westchester County 2004), citing *Chinatown Apts. Inc. v New York City Tr. Auth.*, 100 AD2d 824 (3rd Dept 1984). "If it is otherwise proper, a consolidation will not be denied because the parties involved are not identical." *MCC Funding LLC v Diamond Point Enterprises, LLC*, 36 Misc 3d 1206(A) (Supreme Court Kings County 2012), citing *Philip Shlansky & Bro., Inc. v Grossman*, 273 App. Div. 544, 546 (1st Dept 1948).

The record clearly demonstrates that plaintiff has been ordered to pay Dr. Sanger's bills for services rendered to the parties' children in the pending matrimonial action. Therefore, the issue of whether Dr. Sanger's bills are legitimate should be determined by the Justice presiding over the matrimonial action in order to avoid inconsistent decisions with that of the matrimonial action.

Accordingly, this action shall be joined with the matrimonial action *Telyas v. Telyas*, Index No.: 202617/09.

Accordingly, the two actions are joined for trial and each action shall retain its own index number and the caption shall read as follows:

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

-----X
AVI TELYAS,

Plaintiff,

-against-

Index # 202617/09

JAYNE TELYAS,

Defendant.

-----X
AVI TELYAS,

Plaintiff,

Index No. 3934/12

- against -

**JAYNE TELYAS, SIRGAY SANGER, M.D.,
and SIRGAY SANGER, M.D., PL.L.LC,**

Defendants.

-----X

These actions are joined for trial and all parties shall serve upon any party so demanding copies of disclosure documents heretofore obtained in the other action, and it is further

ORDERED, that the joined actions shall bear the combined caption as set forth above and all matters of trial practice, including the right to open and close, are reserved to the Justice presiding at the joint trial; and it is further

ORDERED, that all papers shall reflect the joint caption of these actions, and upon completion of discovery, the parties shall file **separate** Notes of Issue and Certificates of Readiness, as to each action; and it is further

ORDERED, that each party shall be entitled to enter separate Judgments and Bills of Costs and Disbursements in each action respectively, if costs are allowed.

The Movant shall serve a copy of this Order upon all parties to both Actions and upon the Clerk of the Supreme Court of Nassau County within fifteen (15) days. Upon receipt of this

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Order, the Nassau County Clerk is directed to join the files for trial and amend the caption as directed above.

As a result of the joining of these actions for trial, Action #2 shall be transferred for all purposes to the IAS Matrimonial Judge as the earlier action was assigned to Hon. Stacey Bennett.

It is further ordered that the parties are directed to contact the IAS Matrimonial Judge within ten (10) days of receipt of this Order.

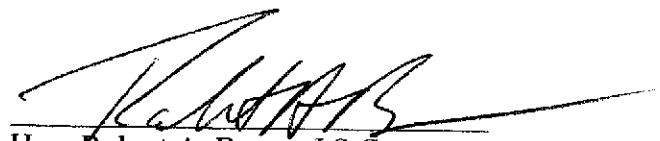
ORDERED, that counsel shall serve a copy of this order upon counsel pursuant to CPLR §2103 (b) 1, 2, 3 or 6, within seven (7) days of the date of this order; and it is further

All matters not decided herein are DENIED.

This constitutes the Decision and Order of this Court.

Dated: December 21, 2012
Mineola, New York

ENTER:


Hon. Robert A. Bruno, J.S.C.

ENTERED
DEC 26 2012
NASSAU COUNTY
COUNTY CLERK'S OFFICE