

Kotbi v Najjar

2015 NY Slip Op 30487(U)

April 2, 2015

Sup Ct, New York County

Docket Number: 153147/13

Judge: Anil C. Singh

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

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NABIL KOTBI,

Plaintiff,

DECISION AND
ORDER

-against-

FARID NAJJAR,

Defendant.

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HON. ANIL C. SINGH, J.:

Defendant moves pursuant to CPLR 3212 for summary judgment dismissing the complaint, or, in the alternative pursuant to CPLR 2201, for a stay of the instant action based upon a related lawsuit pending in the courts of the nation of Morocco. Plaintiff opposes the motion.

In its reply papers, defendant withdraws the branch of the motion seeking an award of summary judgment in light of the experts' dispute regarding the meaning of the decision of the Moroccan Court of Appeals. Accordingly, the sole remaining issue is whether this Court should temporarily stay the instant action.

The earlier action commenced by plaintiff Nabil Kotbi against defendant Farid Najjar in Morocco arises from an agreement to invest in the development of certain real property located in Marrakech in Morocco.

Plaintiff commenced the instant action on April 10, 2013, by filing a motion for summary judgment in lieu of complaint pursuant to CPLR 3213, based upon the

conciliation agreement that is the subject of the Moroccan lawsuit.

Pursuant to a so-ordered stipulation dated August 1, 2013, the defendant deposited the sum of \$268,000 into an escrow account to satisfy any final judgment that may ultimately result of the Moroccan action.

In an order dated November 27, 2013, this Court: a) denied plaintiff's motion to turn over the escrow funds, finding that the competing affidavits of Moroccan counsel raised an issue of fact as to what the parties obligations are under the conciliation agreement; and b) denied plaintiff's motion for summary judgment in lieu of complaint. In addition, the order states that the "terms of the Aug. 1, 2013, stipulation are in full force, and the escrow monies shall not be released except by order of this Court."

Discussion

"A stay of one action pending the outcome of another is appropriate only 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 both actions; this requires a complete identity of parties, cause of action and the judgment sought" (Somoza v. Pechnik, 3 A.D.3d 394 [1st Dept., 2004]).

The First Department's decision in Canadian Imperial Bank of Commerce v. Commonwealth Ins. Co., 19 A.D.3d 211 [1st Dept., 2005], illustrates the type of scenario where a temporary stay is appropriate. The Court wrote:

Temporarily staying this action pending the outcome of plaintiff's argument, made as a defendant in a pending Canadian action, that the Canadian action should be dismissed and until further order of the New York court, was an appropriate exercise of discretion. The parties to the two actions are the same and, in light of the pleading amendments accepted by the Canadian court, the issues to be litigated in the actions are identical. In assessing the propriety of the temporary stay, we take particular note of plaintiff's participation in the prior pending Canadian action.

(Canadian Imperial, 19 A.D.3d at 212 (internal citations omitted)).

After careful consideration, we find that a temporary stay is not only beneficial, but necessary, in the instant action for the following reasons.

First, the parties to the instant action and the Moroccan action are the same, and the issues to be litigated and the judgment sought in the actions are identical (Flintkote Company v. American Mutual Liability Ins. Co., 103 A.D.2d 501 [2nd Dept., 1984]. A stay is appropriate where the decision in one action will determine all the questions in the other action, and the judgment in one will dispose of the controversy in both actions (Kubricky Construction Corp. v. Bucon Inc., 282 A.D.2d 796 [3rd Dept., 2001]).

Second, it is important to note that the instant action is not the first action that was commenced by plaintiff. Rather, plaintiff commenced the lawsuit in Morocco before he commenced this one. Where, as here, full and adequate relief may be obtained in each of two pending actions, the action first commenced should be allowed to proceed to judgment and the later action stayed (SM v. AM, 32 Misc.3d

1242(A) [Sup. Ct., N.Y. Cty., 2011]; see also Lupoli v. Lupoli, 205 A.D.2d 595 [2nd Dept., 1994]).

Third, staying the instant action will avoid the potential for conflicts that might result from inconsistent rulings issued by this Court and the Moroccan court (White Light Productions, Inc. v. On the Scene Productions, Inc., 231 A.D.2d 90 [1st Dept., 1997]).

Fourth, the courts of Morocco have a greater interest in this litigation than this Court (Bewers v. American Home Products Corp., 99 A.D.2d 949 [1st Dept., 1984]), as plaintiff and defendant are both citizens of Morocco (Huani v. Donziger, 46 Misc.3d 534 [Sup. Ct., N.Y. Cty., 2014], and the controversy arises from land situated not in New York, but in Morocco (American Marine Ins. Co. v. Price Forbes Ltd., 166 A.D.2d 263 [1st Dept., 1990]; Ahmad v. Khalil, 40 Misc.3d 1206(A) [Sup. Ct., Kings County, 2013]).

Finally, it will be extremely difficult for this Court to make a fair and accurate decision in the instant action without a clear understanding of Moroccan law. Unfortunately, the parties' own experts disagree as to the meaning of such law. This Court should not have to guess about the exact meaning of a foreign nation's law. In this regard, it is important to note that the laws of Morocco are written in Arabic, so this Court lacks the capacity to conduct its own independent legal research on the procedural and substantive issues raised by the Moroccan lawyers. Where, as here,

the parties' experts have provided conflicting interpretations of the law needed to decide the case at hand, the metaphorical hands of this Court are tied.

Accordingly, it is

ORDERED that the motion is granted to the extent of staying further proceedings in this action, except for an application to vacate or modify said stay; and it is further


ORDERED that either party may make an application by order to show cause to vacate or modify this stay upon the final determination of the action pending before the courts of Morocco; and it is further

ORDERED that the monies being held in escrow shall not be disbursed without order of this Court; and it is further

ORDERED that the movant is directed to serve a copy of this order with notice of entry on the Trial Support Office (Room 158).

The foregoing constitutes the decision and order of the court.

Date: 4/2/15
New York, New York



Anil C. Singh