

**K's Intl. Polybags Mfg. Ltd. v M.T. Packaging Inc.**

2015 NY Slip Op 32026(U)

October 28, 2015

Supreme Court, New York County

Docket Number: 154420/2012

Judge: Jeffrey K. Oing

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL PART 48

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K'S INTERNATIONAL POLYBAGS MFG. LTD.,

Plaintiff,

**Index No.: 154420/2012**

-against-

**Mtn Seq. No. 003**

M.T. PACKAGING INC.,

**DECISION AND ORDER**

Defendant.

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**JEFFREY K. OING, J.:**

Defendant, M.T. Packaging Inc. ("MT"), moves, pursuant to CPLR 2201, for an order staying this action pending the outcome of M.T. Packaging, Inc. v Fung Kai Hoo, individually and as an officer of VN K's International Joint Stock Company and VN K's International Joint Stock Company, Index No. 652579/14 (the "fraud action").

Plaintiff, K's International Polybags Mfg. Ltd. ("K's International"), cross-moves for an order precluding MT from using at trial or in support or opposition to any motion any testimony or documents which would have been responsive to discovery demands as served by K's International which has not been produced to date.

"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 the parties, cause of action and the judgment sought" Somoza v Pechnik, 3 AD3d 394 [1<sup>st</sup> Dept 2004]).

K's International commenced this action in July 2012. This Court granted MT's motion to dismiss the original complaint and K's International served an amended complaint in this action on July 15, 2013 asserting three causes of action -- breach of contract, unjust enrichment, and account stated. K's International seeks to recover \$697,392.66 based on unpaid invoices for plastic bags defendant ordered from plaintiff through a series of transactions that took place from August 2008 to September 2009.

MT commenced the fraud action on August 20, 2014 alleging that defendants Fung Kai Hoo ("Fung") and VN K's International Joint Stock Company ("VN International") "provided a fraudulent certificate of compliance regarding the toxicity levels in bags VN [International] had manufactured for MT" (Fraud Action Compl. ¶ 1). MT argues that the allegations supporting the fraud claims in the fraud action are inseparable from K's International's breach of contract and account stated claims in this action. MT asserts that the contract underlying K's International's claims in this action was obtained through fraud when MT was provided a fraudulent certificate of compliance. MT argues that it ordered the plastic bags "with the expectation and belief that the bags

would be manufactured in compliance with the requirements for use of such packaging and bags in markets within the United States" (Fraud Action Compl. ¶4). In terms of the identity of the parties, MT claims that Fung is the managing director of VN International, the entity that was the actual manufacturer of the bags sold to MT by K's International. VN International is related to K's International, and Fung was produced for deposition as K's International's representative in this action. As such, K's International, VN International, and Fung are inextricably intertwined in both actions.

MT's motion to stay this action pending the outcome of the fraud action is granted. The outcome of the fraud action may resolve this action. If MT prevails in the fraud action, K's International's claims in this action may be vitiated. Accordingly, in the interest of judicial economy, this action is hereby stayed pending resolution of the fraud action.

K's International's cross-motion is denied without prejudice to renew at the time the stay is vacated.

Counsel are directed to notify this Court upon resolution of the fraud action.

Accordingly, it is

ORDERED that defendant's motion is granted; and it is further

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ORDERED that plaintiff's cross-motion is denied without prejudice to renew upon vacatur of the stay herein.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 10/28/15



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HON. JEFFREY K. OING, J.S.C.