

Pludeman v Northern Leasing Sys., Inc.

2015 NY Slip Op 32047(U)

March 13, 2015

Supreme Court, New York County

Docket Number: 101059/04

Judge: Martin Shulman

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3/17/15
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. MARTIN SHULMAN, J S C
Justice

PART 1

Index Number : 101059/2004
PLUDEMAM, KEVIN
vs
NORTHERN LEASING SYSTEMS
Sequence Number : 039
STAY PROCEEDINGS

INDEX NO. 101059/04
MOTION DATE _____
MOTION SEQ. NO. 039

The following papers, numbered 1 to 3, were read on this motion ~~to~~/for stay
Notice of Motion/~~Order to Show Cause~~ — Affidavits — Exhibits A-E | No(s). 1
Answering Affidavits — ~~Exhibits~~ _____ | No(s). 2
Replying Affidavits - Exhibit F | No(s). 3

Upon the foregoing papers, it is ordered that this motion is decided in accordance
with the attached decision and order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

FILED
MAR 17 2015
NEW YORK
COUNTY CLERK'S OFFICE

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NYS SUPREME COURT - CIVIL

Dated: 3/13/15

[Signature], J.S.C.
HON. MARTIN SHULMAN, J S C

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 1

KEVIN PLUDEMAN, CHRIS HANZSEK d/b/a
HANZSEK AUDIO, SARA JANE HUSH, OZARK
MOUNTAIN GRANITE & TILE CO. and DENNIS E.
LAUCHMAN, on behalf of themselves and all others
similarly situated,

Plaintiffs,

-against-

NORTHERN LEASING SYSTEMS, INC., JAY COHEN,
STEVEN BERNARDONE, RICH HAHN, and
SARA KRIEGER,

Defendants.

Index No: 101059/04

Decision & Order

Motion Seq. 039

FILED

MAR 17 2015

**NEW YORK
COUNTY CLERKS OFFICE**

Hon. Martin Shulman, J.S.C.:

Commencing on May 5, 2014 and continuing for a total of 17 days, this court conducted the framed issue hearing as the Appellate Division, First Department directed. See *Pludeman v Northern Leasing Sys., Inc.*, 106 AD3d 612, 615-616 (1st Dept 2013) (the "AD decertification decision"). After having heard testimony from the four named plaintiffs/class representatives, who have yet to rest, defendant Northern Leasing Systems, Inc. ("NLS" or "defendant") moved for an order decertifying the class, which this court ultimately granted by decision and order dated December 19, 2014 (the "12/19/14 order").

NLS now moves for an order pursuant to CPLR §§ 2201 and/or 5519[c] staying proceedings in this case pending the determination of plaintiffs' appeal¹ from the 12/19/14 order. Plaintiffs oppose the motion and beseech this court to proceed expeditiously with a plenary trial of all claims, issues and defenses in this action.

¹ Plaintiffs served and filed a notice of appeal and preargument statement on or about February 4, 2015. Lillienstein Reply Aff. at Exh. F. The appeal has not yet been perfected.

In support of its motion, defendant argues that it will be severely prejudiced if forced to proceed with this case without knowing with certainty whether it is defending against the claims of four plaintiffs whose maximum total recovery NLS estimates to be less than \$1,000, or several hundred thousand class members whose potential recovery could be “tens of millions of dollars”. In order to avoid unnecessary legal expenses, NLS seeks to prepare its defense “in a manner proportionate to the amount at issue”, thereby mounting a less costly defense in the event the class remains decertified after plaintiffs’ appellate remedies have been exhausted. NLS reminds the court that it has already spent “millions of dollars defending a class action that the Court has now found was certified for class treatment based upon inaccurate statements in Plaintiffs’ boilerplate affidavits and their verified complaint.”

Defendant further urges that going forward with a full trial as plaintiffs request, thereby effectively abandoning the uncompleted framed issue hearing, is not an option under the AD decertification decision. To do so “would essentially give Plaintiffs a second bite at the apple” and would also result in “a wasteful and costly duplication of effort.” Anticipating plaintiffs’ oft-repeated cries of inordinate delay in this almost 11 year old case, NLS notes that plaintiffs have the option of perfecting their appeal sooner rather than later and, in any event, plaintiffs are to blame for much of the delay in this action.

Discussion

CPLR §2201² provides as follows:

Except where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just.

In opposition to the within motion, plaintiffs contend that this is not a “proper case” for granting a stay. Plaintiffs argue that defendant fails to establish good cause for such relief. See Patrick M. Connors, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR C2201:7. Plaintiffs observe that the AD decertification decision never barred this court from proceeding with a plenary trial of all issues, claims and defenses in this action, and urge that going forward with such a trial will prevent further delays.

The factual and procedural background of this action is unique, to say the least, and this court has found no case law addressing a stay application comparable to the situation presented here. On the one hand, as plaintiffs cite: “A stay of an action can easily be a drastic remedy, on the simple basis that justice delayed is justice denied.” *Id.* Furthermore, “the issuance of a stay is discretionary with the court, which discretion will be exercised sparingly and only when other remedies are inadequate and the equities involved are apparent and strong.” *In re Weinbaum’s Estate*, 51 Misc2d 538, 539 (Surr. Ct., Nassau County, 1966). On the other hand, this court has “the discretion

² This court’s analysis is limited to CPLR §2201. CPLR §5519[c], under which NLS also moves, applies to stays of enforcement of the judgment or order being appealed. Here, defendant, as the prevailing party, is not seeking to stay enforcement of the 12/19/14 order. Rather, NLS seeks a stay of further proceedings before this court, to wit, continuation of the framed issue hearing or a full trial as plaintiffs request.

and the right in managing its calendars and regulating its order of business” to issue a stay of proceedings. *De La Vergne Mach. Co. v New York & Brooklyn Brewing Co.*, 125 AD 649, 110 NYS 24, 25 (2d Dept 1908) (staying trial of second action until completion of trial of first related action).

This court readily acknowledges that a stay to await a definitive appellate determination is more readily granted when such appellate determination is “imminent”. See generally, Patrick M. Connors, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR C2201:11. That is not the case here, as plaintiffs have not perfected their appeal nor do they confirm in their opposing papers when or even if they intend to perfect the appeal.

Nonetheless, NLS’s motion for a stay is granted. This is a case where “the equities involved are apparent and strong.” *In re Weinbaum’s Estate, supra*. This court cannot justify forging ahead with further proceedings until the question of class status is finally determined. If decertification is affirmed, the action can be quickly resolved as to the four named plaintiffs without any further significant expenditures of time and money by both parties. If decertification is reversed and the class is again certified, the framed issue hearing can resume with the court and parties assured that they are not wasting valuable resources and duplicating their efforts.

This court is fully cognizant of the advanced age of this case and shares plaintiffs’ desire to see it concluded as soon as possible. Nevertheless, vast amounts of time and money have been expended on this case over the past eleven years and at this juncture the court must agree with defendants that it is more economical to await final determination of plaintiffs’ appeal of the 12/19/14 order. And as a matter of equity,

it cannot be overlooked that NLS was forced to incur the great expense associated with mailing notifications to class members (in addition to its legal fees), only for this court to decertify the class years later after hearing plaintiffs' live testimony which contradicted their statements that were before the court at the time certification was granted.

Plaintiffs' counsel cannot minimize the effect of the inconsistencies revealed at the framed issue hearing by characterizing them as mere "oversights". Finally, plaintiffs are in a position to minimize delay by perfecting their appeal promptly.

Accordingly, for all of the foregoing reasons, it is hereby

ORDERED that defendant NLS's motion for a stay of proceedings pending the determination of plaintiffs' appeal is granted.

The foregoing constitutes this court's Decision and Order. Courtesy copies of this Decision and Order have been provided to counsel for the parties.

Dated: New York, New York
March 13, 2015



HON. MARTIN SHULMAN, J.S.C.

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