

**Goldshmidt v Gotlibovsky**

2016 NY Slip Op 30777(U)

April 27, 2016

Supreme Court, New York County

Docket Number: 156674/15

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 55

-----X  
ANNA GOLDSHMIDT and ELAN STRATT,

Plaintiffs,

Index No. 156674/15

-against-

**DECISION/ORDER**

VLADIMIR GOTLIBOVSKY,

Defendant.

-----X  
VLADIMIR GOTLIBOVSKY,

Third-Party Plaintiff,

-against-

HLT NY WALDORF LLC d/b/a WALDORF ASTORIA  
NEW YORK, WALDORF ASTORIA MANAGEMENT  
LLC and ANBANG INSURANCE GROUP CO., LTD.,

Third-Party Defendants.

-----X  
**HON. CYNTHIA S. KERN, J.S.C.**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion  
for : \_\_\_\_\_

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Affirmation in Opposition .....	2
Replying Affidavits.....	3
Exhibits.....	4

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Plaintiffs Anna Goldshmidt and Elan Stratt commenced the instant action against defendant Vladimir Gotlibovsky ("Gotlibovsky") seeking to recover damages arising out of an incident that occurred at plaintiffs' wedding at which defendant was a guest. Thereafter, Gotlibovsky commenced a third-party action against HLT NY Waldorf LLC d/b/a Waldorf Astoria New York, Waldorf Astoria Management LLC (hereinafter collectively referred to as the

“Waldorf Defendants”) and Anbang Insurance Group Co., Ltd. (“Anbang”). Gotlibovsky now moves for an Order pursuant to CPLR § 2201 staying the instant action until the resolution of a criminal proceeding currently pending against Gotlibovsky in the Supreme Court, New York County. For the reasons set forth below, Gotlibovsky’s motion is granted.

The relevant facts according to the complaint in the main action are as follows. On or about June 13, 2015, plaintiffs had their wedding reception at the Waldorf Astoria Hotel in Manhattan. Defendant Gotlibovsky was a guest at the wedding and was carrying a concealed firearm which discharged, injuring another guest at the wedding (the “incident”). The incident caused an obvious interruption and eventual cancellation of the wedding reception by the Waldorf Defendants.

Thereafter, plaintiffs commenced the instant action against Gotlibovsky asserting causes of action for negligence and negligent infliction of emotional distress and seeking damages, including punitive damages, the financial cost of the wedding and damages flowing therefrom. In or around September 2015, Gotlibovsky commenced a third-party action against the Waldorf Defendants and Anbang asserting causes of action for indemnification and contribution based on the cancellation of the wedding.

In the fall of 2015, the Manhattan District Attorney’s Office opened a review of the incident and later convened a Grand Jury to consider charges against Gotlibovsky based upon the incident. On or about December 2, 2015, the Grand Jury handed down an eight-count indictment against Gotlibovsky. Gotlibovsky was thereafter arraigned on the indictment and released on bail (hereinafter referred to as the “criminal proceeding”). According to Gotlibovsky’s motion papers, the criminal proceeding is currently at the pre-trial stage with certain motions pending before the Judge in that action.

Pursuant to CPLR § 2201, “[e]xcept 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.” “The principle is well settled that a motion pursuant to CPLR 2201 seeking to stay a civil action pending resolution of a related criminal action is directed to the sound discretion of the trial court.” *Britt v. International Bus Services, Inc.*, 255 A.D.2d 143, 144 (1<sup>st</sup> Dept 1998). “Factors to consider include avoiding the risk of inconsistent adjudications, application of proof and potential waste of judicial resources.” *Id.* “A compelling factor is a situation where a defendant will invoke his or her constitutional right against self incrimination.” *Id.*

Here, this court finds that the instant action should be stayed pending the resolution of the criminal proceeding currently pending against Gotlibovsky. It is undisputed that plaintiffs’ claims against Gotlibovsky in this action are based on the same incident underlying the criminal proceeding pending against him. Proceeding with both actions simultaneously will force Gotlibovsky to choose between waiving his Fifth Amendment privilege against self-incrimination or prejudicing himself in the instant action. On the one hand, if Gotlibovsky invokes his Fifth Amendment privilege, he will be subject to an adverse inference based on his refusal to testify. *See Baxxter v. Palmigiano*, 425 U.S. 308, 318 (1976) (“[T]he Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify....”) On the other hand, if Gotlibovsky does not invoke his Fifth Amendment privilege in this action, it is waived and any evidence obtained from him in this action can be used against him in the criminal proceeding, which allows for more limited discovery than a civil proceeding. Based on the foregoing, the court finds that a stay should be issued in this case pending the resolution of the criminal proceeding currently pending against Gotlibovsky.

