

**Nassau Events Ctr., LLC v Blumenfeld Dev. Group,
Ltd**

2016 NY Slip Op 32927(U)

February 23, 2016

Supreme Court, Nassau County

Docket Number: 601941/15

Judge: Vito M. DeStefano

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT - STATE OF NEW YORK

Present:

HON. VITO M. DESTEFANO,
Justice

TRIAL/IAS, PART 13
NASSAU COUNTY

NASSAU EVENTS CENTER, LLC,

Decision and Order

Plaintiff,

MOTION SEQUENCE: 01, 02
INDEX NO.:601941/15

-against-

BLUMENFELD DEVELOPMENT GROUP, LTD,

Defendant.

The following papers and the attachments and exhibits thereto have been read on this motion:

Notice of Motion	1
Memorandum of Law in Support	2
Notice of Cross Motion	3
Memorandum of Law in Opposition	4
Reply Memorandum of Law	5
Reply Memorandum of Law	6

The Defendant Blumenfeld Development Group, Ltd. ("BDG") moves for an order, *inter alia*, pursuant to CPLR 3211(a)(4) dismissing the Instant Action on the ground that there is another action pending entitled *Blumenfeld Development Group, Ltd. v Forest City Ratner Companies, LLC, Forest City Enterprises Inc., and Bruce Ratner and Nassau Events Center* (Index No. 602039-15) in the Supreme Court, Nassau County ("Related Action").

The Plaintiff Nassau Events Center, LLC ("NEC") cross-moves for an order pursuant to CPLR 602(a) joining the Instant Action with the Related Action.

Insofar as relevant here, in both the Instant Action, commenced by Plaintiff NEC, and the Related Action, commenced by the Defendant BDG, the parties have raised similar claims, namely, whether: 1) BDG and NEC, together with certain NEC-affiliated entities, entered into an

oral joint venture agreement with respect to the redevelopment of the Nassau County Veterans Memorial Coliseum (the “Nassau Coliseum”); and 2) whether the parties’ subsequent inability to execute a formal joint venture agreement, as contemplated by their August, 2014 “Memorandum of Understanding” (“MOU”), terminated whatever relationships previously existed between the parties.¹

Given the similar claims in the two pending matters, the parties have moved and cross-moved, respectively, for dismissal and joinder.

For the reasons that follow, the motion to dismiss is denied and the cross motion to join the actions is granted.

The Court’s Determination

Where the requisite identity of matters has been established, the court possesses broad discretion in determining whether a duplicative action should be dismissed pursuant to CPLR 3211(a)(4) on the ground “that there is another action is pending” (*see generally Aurora Loan Servs., LLC v Reid*, 132 AD3d 788 [2d Dept 2015]; *Jadron v 10 Leonard St., LLC*, 124 AD3d 842 [2d Dept 2015]). Nevertheless, and consistent with the broad, discretionary authority conferred upon the court, CPLR 3211(a)(4) expressly provides that a “court need not dismiss upon this ground but may make such order as justice requires . . .” (*Gutman v Klein*, 26 AD3d 464, 465 [2d Dept 2006]). Indeed, “[a] common disposition on a motion under CPLR 3211(a)(4) ‘is not to dismiss the present action, but to consolidate it with the other action’” (*MCC Funding LLC v Diamond Point Enterprises, LLC*, 36 Misc3d 1206[A] [Sup Ct, Kings County 2012], quoting Siegel, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR C3211:19 at 33; *see also Spector v Zuckermann*, 287 AD2d 704 [2d Dept 2001]). Generally, it is the later commenced action that is dismissed under CPLR 3211(a)(4) (*Rajpurohit v Rajpurohit*, 122 AD3d 706 [2d Dept 2014]; *Fay Estates v Toys “R” Us, Inc.*, 22 AD3d 712, 713 [2d Dept 2005]; *Reckson Assoc. Realty Corp. v Blasland, Bouck & Lee*, 230 AD2d 723 [2d Dept 1996]). Here, however, the action sought to be dismissed by BDG (the Instant Action) is actually the first filed action.

A motion seeking a joint trial pursuant to CPLR 602(a) similarly rests within the sound discretion of the trial court. When there are common questions of law or fact, a joint trial is warranted unless the opposing party demonstrates prejudice to a substantial right (*Clark v Clark*,

¹ The complaint in the Related Action also included direct and derivative (on behalf of NEC) breach of fiduciary duty claims as well as a claim for tortious interference with contractual relations. In a decision and order dated February 22, 2016 (DeStefano, J.), the court dismissed the direct breach of fiduciary duty claim set forth in the third cause of action.

93 AD3d 812 [2d Dept 2012]).²

Notably, consolidation is favored by the courts in serving the interests of justice and judicial economy (*Government Empls. Ins. Co. v Bailey*, 251 AD2d 627, 628 [2d Dept 1998]) and, to that end, the “interests of justice and judicial economy are better served by joint trials wherever possible” (*Heck v Waldbaum's Supermarkets, Inc.*, 134 AD2d 568, 569 [2d Dept 1987] [internal quotations omitted]).

Upon the exercise of its broad discretion, the court finds that the interests of justice and judicial economy will be furthered by joining the Instant Action with the Related Action (*see Fay Estates v Toys “R” Us, Inc.*, 22 AD3d at 712, *supra*). In this regard, joinder of the actions, which involve common questions of law and fact, will avoid unnecessary duplication, save unnecessary costs and expenses, and prevent injustice that might result from divergent decisions based on the same facts (*see Lansky v Bate*, 132 AD3d 737, 738 [2d Dept 2015]; *Cusumano v Cusumano*, 114 AD3d 633, 634 [2d Dept 2014]; *Scotto v Kodsí*, 102 AD3d 947, 948 [2d Dept 2013]). Moreover, the court finds that no discernable prejudice to either party would result from joining the two related matters for joint trial (*Lecorps v Bromberg*, 127 AD3d 931 [2d Dept 2015]; *Matter of Joseph J.*, 106 AD3d 1004 [2d Dept 2013]; *Alizio v Feldman*, 97 AD3d at 518, *supra*).

Accordingly, it is hereby

Ordered that the motion by the Defendant Blumenfeld Development Group, Ltd. for an order, *inter alia*, pursuant to CPLR 3211(a)(4) dismissing the Instant Action is denied, in its entirety; and it is further,

Ordered that the cross motion by the Plaintiff Nassau Events Center, LLC for an order, *inter alia*, pursuant to CPLR 602(a) joining the instant action for joint trial with *Blumenfeld Development Group, Ltd v Forest City Ratner Companies, LLC, Forest City Enterprises Inc., and Bruce Ratner and Nassau Events Center, LLC* (Index No.: 602039-15), is granted; and it is further

Ordered that the new caption shall read as follows:

² “The mere desire to have one's dispute heard separately does not, by itself, constitute a ‘substantial right’” (*Matter of Vigo S.S. Corp. [Marship Corp. of Monrovia]*, 26 NY2d 157, 162 [1970]) nor is “mere delay . . . a sufficient basis to justify the denial of a joint trial” (*Alizio v Feldman*, 97 AD3d 517 [2d Dept 2012]; *see also Alizio v Perpignano*, 78 AD3d 1087, 1088 [2d Dept 2010]).

NASSAU EVENTS CENTER LLC,

Plaintiff,

-against-

ACTION NO.: #01
INDEX NO.: 601941-15

BLUMENFELD DEVELOPMENT GROUP, LTD,

Defendant.

BLUMENFELD DEVELOPMENT GROUP, LTD.,

Plaintiff,

-against-

ACTION NO.: #02
INDEX NO.: 602039-15

FOREST CITY RATNER COMPANIES, LLC,
FOREST CITY ENTERPRISES INC., and BRUCE
RATNER,

Defendants,

-and-

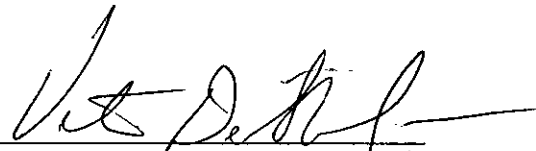
NASSAU EVENTS CENTER, LLC,

Nominal Defendant.

Counsel for all parties in the joined actions are directed to appear for a conference in Part 11 at 9:30 a.m. on March 22, 2016.

This constitutes the decision and order of the court.

Dated: February 23, 2016


Hon. Vito M. DeStefano, J.S.C.

ENTERED

FEB 26 2016
NASSAU COUNTY
COUNTY CLERK'S OFFICE