

A.P.T. Tech., II v Westfalia Tech., Inc.

2019 NY Slip Op 30879(U)

March 25, 2019

Supreme Court, New York County

Docket Number: 653491/2016

Judge: Anthony Cannataro

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This opinion is uncorrected and not selected for official publication.

CPLR 2201 vests courts with the discretion to grant a stay of proceedings in a proper case, upon such terms as may be just. Additionally, CPLR 3211 (a) (4) grants a court broad discretion to dismiss or stay a case on the ground of the pendency of another action, or to make such order as justice requires (*see Ackerman v Vertical Club Corp.*, 94 AD2d 665 [1983]; *see also Whitney v Whitney*, 57 NY2d 731, 732 [1982]). A stay premised on the existence of another action generally will be granted when "[t]he issues, relief sought, and parties are substantially identical" (*OneBeacon Am. Ins. Co. v Colgate-Palmolive Co.*, 96 AD3d 541 [2012]). A stay is warranted where there will be "[t]he duplication of effort, waste of judicial resources, and possibility of inconsistent rulings" in the absence of such relief (*id.*).

Although the question of which action was filed first is a factor, chronology is not dispositive, "particularly where both actions are at the earliest stages of litigation" (*San Ysidro Corp. v Robinow*, 1 AD3d 185, 186 [2003]; *see AIG Fin. Prods. Corp. v Penncara Energy, LLC*, 83 AD3d 495, 496 [2011]). "The practice of determining priorities between pending actions on the basis of dates of filing is a general rule, not to be applied in a mechanical way, regardless of other considerations" (*White Light Prods., Inc. v On The Scene Prods., Inc.*, 231 AD2d 90, 96–97 [1997] [internal quotation marks and citations omitted]; *see also L-3 Communications Corp. v SafeNet, Inc.*, 45 AD3d 1 [2007]).

Here, it is undisputed that the parties, causes of action, and relief sought in the New York and Pennsylvania actions are nearly identical except that, in Pennsylvania, A.P.T. Technologies is the defendant and Westfalia is the plaintiff. Allowing both actions to proceed would no doubt result in significant waste, duplication of effort, and a risk of inconsistent rulings. The only question is: in which court the case should proceed?

What might have been a closer question as between the two courts was largely foreclosed by the actions of the Pennsylvania Court which, on February 14, 2019, during

the pendency of the instant motion, denied a mirror image motion by A.P.T. Technologies for a stay of the Pennsylvania action.

At this point, this Court sees no reason to disturb or disagree with the implicit finding of the Pennsylvania court that it is the preferred forum. Although discovery has commenced in this case, the documents turned over can be used in either action, and the Pennsylvania action is now further advanced in that that Court has already held the agreement between the parties was properly terminated. That determination resolves the substance of the declaratory judgment counts in both actions, with the only remaining question being the amount, if any, of commissions A.P.T. Technologies is entitled to under the agreement. Additionally, while each state is home to one of the parties, the agreement between the parties designates Pennsylvania law as controlling, also pointing to the Pennsylvania court as the preferred forum. Lastly, as noted above, the fact that this action was filed earlier than the Pennsylvania action is a notable, but not determinative, particularly where, as here, the actions were commenced within days of each other (*see Hertz Corp. v Luken*, 126 AD2d 446, 450 [1987]), and where plaintiff here only commenced this action after receiving a notice of default from defendant (*see White Light Prods, Inc.*, 231 AD2d at 98 [courts have consistently tempered the application of the first-in-time rule where a party who has reason to believe a lawsuit will be filed preemptively commences litigation in its own preferred forum]).

Accordingly, it is

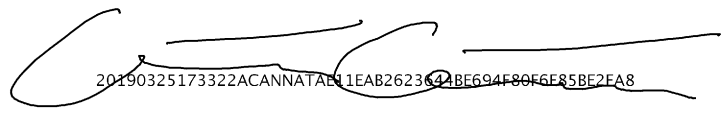
ORDERED that the motion for a stay is granted to the extent of staying further proceedings in this action, except for an application to vacate or modify; and it is further

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/proceeding known

as Westfalia Technologies, Inc. v. A.P.T. Technologies, LLC, Index No. 2016-SU-001810-89, pending before the Court of Common Pleas of York County, Pennsylvania; 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).

3/25/19
DATE



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ANTHONY CANNATARO, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE