

Calabrese v RT Advisory Team, LLC

2020 NY Slip Op 30444(U)

February 10, 2020

Supreme Court, Kings County

Docket Number: 503762/2019

Judge: Carl J. Landicino

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 10th day of February, 2020.

P R E S E N T:
HON. CARL J. LANDICINO,
Justice.

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RICHARD CALABRESE,

Index No.: 503762/2019

Plaintiff,

-against-

RT ADVISORY TEAM, LLC, ALEX & TOM
CONSTRUCTION & RENOVATIONS, INC.,
SHAH GROUP ENTERPRISES, INC., STEVEN
CARNESI, INC., and JOSEPH ROSSOMANDO,

DECISION AND ORDER

Motion Sequence #2, #3, #4

Defendants.

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

	<u>Papers Numbered</u>
Notice of Motion/Cross Motion and	
Affidavits (Affirmations) Annexed.....	<u>1/2, 3/4, 5/7.</u>
Opposing Affidavits (Affirmations).....	_____
Reply Affidavits (Affirmations).....	<u>8.</u>

After a review of the papers and oral argument the Court finds as follows:

Defendant RT Advisory Team, LLC (hereinafter "Defendant RT") moves (motion sequence #2) for an Order dismissing the subject action pursuant to CPLR 3211(a)(4) and 306-b. Defendant Alex and Tom Construction & Renovations, Inc. (hereinafter "Defendant A&T") cross-moves (motion sequence #4) for the same relief.¹ Plaintiff also cross-moves for an Order consolidating the subject action with "another action" index number 518848/2016.

Defendant RT contends that the Plaintiff failed to make timely service pursuant to CPLR 306-b and that the Plaintiff has commenced three other prior actions in 2016, 2017 and 2018. Defendant RT further contends that none of the Defendants named in the 2017 action were served. Defendant RT

¹ There is no direct opposition to this motion.

argues that by Order dated July 31, 2018 the 2016 and 2018 matters were consolidated under the earlier index number 518848/2016 (Hon. Lawrence Knipel, JSC) and except for the addition of Defendants Steven Carnesi, Inc. and Joseph Rossomando the actions are virtually identical. Finally, Defendant RT avers that the consolidated action has occasioned extensive discovery which has not been completed. Defendant A&T (motion sequence #4) makes similar arguments and adopts, by reference, Defendant RT's arguments as well.

Plaintiff moves to consolidate the subject instant action with those related actions that have already been consolidated under the 2016 index number 518848/2016. The Plaintiff also acknowledges that the subject "action involves the same transaction and occurrence as the previously commenced actions." The Plaintiff contends that in light of a pending statute of limitations bar he commenced the subject actions to add Defendant Carnesi and Rossomando. The Plaintiff explains that the existence of the two new Defendants was discovered during recent depositions, that discovery is ongoing in the 2016 action and no party would be prejudiced. Plaintiff does not specifically address the 3211(a)(4) and 306-b relief sought.

Turning to the merits of the motion by Defendant RT (motion sequence #2) and the cross motion by Defendant A&T (motion sequence #4), the Court finds that the instant action should be dismissed against both of these Defendants. "Where there is a substantial identity of the parties, the two actions are sufficiently similar, and the relief sought is substantially the same, a court has broad discretion in determining whether an action should be dismissed pursuant to CPLR 3211(a)(4) on the ground that there is another action pending." *Scottsdale Ins. Co. v. Indem. Ins. Corp. RRG*, 110 A.D.3d 783, 784, 974 N.Y.S.2d 476, 477 [2nd Dept, 2013]; *see also DAIJ, Inc. v. Roth*, 85 A.D.3d 959, 960, 925 N.Y.S.2d 867 [2nd Dept, 2011]. The Court finds that the instant matter should be dismissed as to

the Moving Defendants, RT and A&T, based upon the identity of the parties involved and the similarity of the claims made in relation to the other actions. The Court also finds that the Plaintiff has failed to show that he has complied with CPLR 306-b, in as much as he failed to serve the summons and complaint “within one hundred twenty days after the commencement of the action or proceeding.” See *Valentin v. Zaltsman*, 39 A.D.3d 852, 835 N.Y.S.2d 298, 299 [2nd Dept, 2007]. In fact, Plaintiff does not address the Moving Defendants’ application in relation to this issue.

However, the Plaintiff’s motion (motion sequence #3) is granted as it relates to the remaining named Defendants. CPLR 602 provides in pertinent part that “[w]hen actions involving a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all the matters in issue, may order the actions consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.” The trial Court has broad discretion in making this determination and “[t]he interests of justice and judicial economy are better served by consolidation in those cases where the actions share material questions of law or fact.” *Hanover Ins. Grp. v. Mezansky*, 105 A.D.3d 1000, 1001, 964 N.Y.S.2d 201, 202 [2nd Dept, 2013]. As such, the Plaintiff’s application to consolidate the instant action with the already existing consolidated action (518848/2016) is granted. However, the instant matter is dismissed as against Defendant RT and Defendant A&T. Accordingly, the matter shall proceed as consolidated, under the 518848/2016 index number.

It is hereby **ORDERED** as follows:

The motions by Defendants RT and A&T (motion sequence nos. 2 and 4, respectively) are granted. The instant matter is hereby dismissed as against these defendants. The Court notes that the Moving Defendants are still parties in the 518848/2016 action.

Accordingly the Plaintiff's motion (motion sequence #3) is granted to the extent provided above and the caption as consolidated will read as follows:

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RICHARD CALABRESE,

Plaintiff,

Index No.: 518848/2016

-against-

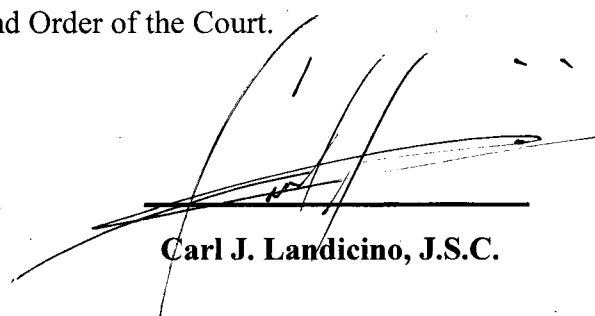
RT ADVISORY TEAM LLC, ALEX & TOM
CONSTRUCTION & RENOVATIONS, INC.,
SHAH GROUP ENTERPRISES, INC., STEVEN
CARNESI, INC., and JOSEPH ROSSOMANDO,

Defendants.

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The foregoing constitutes the Decision and Order of the Court.

ENTER:



Carl J. Landicino, J.S.C.

**KINGS COUNTY CLERK
FILED
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