

Sweeney Bldg. v Mees
2020 NY Slip Op 31856(U)
March 9, 2020
Supreme Court, Kings County
Docket Number: 521571/2017
Judge: Richard Velasquez
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At an IAS Term, Part 66 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 9th day of March, 2020.

P R E S E N T:
HON. RICHARD VELASQUEZ
Justice.

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THE SWEENEY BUILDING,
BY ITS BOARD OF MANAGERS,

Plaintiff,

Index No.: 521571/2017

-against-

Decision and Order

HELEN MEES.,

Defendant(s).

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The following papers numbered 136 to 157 read on this motion:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed _____	136-139
Opposing Affidavits (Affirmations) _____	143-146
Reply Affidavits (Memorandum) _____	148-156
Memorandum of Law _____	147; 157

After oral argument and a review of the submissions herein, the Court finds as follows:

Defendant moves this court by motion pursuant to CPLR 3025(b) to Amend her answer. Plaintiff opposes contending there is an identical action in this court requesting identical relief and pursuant to 3211(a)(4) this court should consolidate the matters.

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5,6

ARGUMENTS

Defendant contends the alleged proposed amendments to her answer with counterclaims eight through thirteen constitute new occurrences and thus give rise to amended or supplemental pleadings pursuant to CPLR 3025.

Plaintiff's oppose the same contending the proposed amendments are already the subject of a prior action currently pending between the parties before the Honorable Larry D. Martin, J.S.C. and the court should pursuant to CPLR 3211(a)(4) consolidate the matters.

ANALYSIS

Pursuant to CPLR 3025(b) "A party may amend his or her pleading or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading." NY CPLR 3025 (McKinney).

Pursuant to 3211(a)(4) "A party may move for judgment dismissing one or more causes of action asserted against him on the ground that: 4. there is another action pending between the same parties for the same cause of action in a court of any state or the United States; the court need not dismiss upon this ground but may make such order as justice requires", NY CPLR 3211 (McKinney).

It is well settled that "Pursuant to CPLR 3211 (a) (4), a court has broad discretion in determining whether an action should be dismissed on the ground that there is another

action pending (see *Whitney v Whitney*, 57 NY2d 731, 732 [1982]; *DAIJ, Inc. v Roth*, 85 AD3d 959, 959 [2011]), and may dismiss an action where there is a substantial identity of the parties and causes of action” (see *Cherico, Cherico & Assoc. v Midollo*, 67 AD3d 622, 622 [2009]; *Simonetti v Larson*, 44 AD3d 1028, 1028 [2007]). It is not necessary that the precise legal theories presented in the first action also be presented in the second action; rather, it is sufficient if the relief sought is “the same or substantially the same” (*Kent Dev. Co. v Liccione*, 37 NY2d 899, 901 [1975]; see *Cherico, Cherico & Assoc. v Midollo*, 67 AD3d at 622; *Simonetti v Larson*, 44 AD3d at 1029). “The critical element is that both suits arise out of the same subject matter or series of alleged wrongs” (*Cherico, Cherico & Assoc. v Midollo*, 67 AD3d at 622; see *Kent Dev. Co. v Liccione*, 37 NY2d at 901; *Simonetti v Larson*, 44 AD3d at 1029); quoting, *In re Willnus*, 101 AD3d 1036, 1037, 957 NYS2d 229 (2d Dep’t 2012).

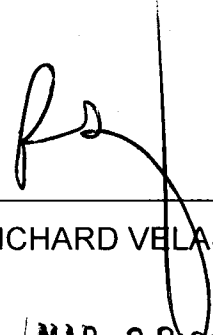
In the present case, it has been established there are two actions which are “sufficiently similar” (*Montalvo v Air Dock Sys.*, 37 AD3d at 567) and that the relief sought is “the same or substantially the same” (*Liebert v TIAA-CREF*, 34 AD3d 756, 757 [2d Dep’t 2006]; see *White Light Prods. v On The Scene Prods.*, 231 AD2d 90 [1997]). Namely, this action and the action titled *Mees v. The Sweeney Building Index No. 508420/2017* before the Honorable Justice Larry Martin. The critical element is that “both suits arise out of the same subject matter or series of alleged wrongs’” (*White Light Prods. v On The Scene Prods.*, 231 AD2d at 94, quoting *Kent Dev. Co. v Liccione*, 37 NY2d 899, 901 [1975]; see *JC Mfg. v NPI Elec.*, 178 AD2d 505 [1991]); quoting *Cherico, Cherico & Assocs. v. Midollo*, 67 A.D.3d 622, 622–23, 886 N.Y.S.2d 914 (2009). In the present case, the parties are the same. All causes of action and counterclaims arise from the same set

of facts and occurrences. Additionally, all the proposed counterclaims made by the defendant are identical to the causes of action in the related action, with the exception of the proposed causes of action five, six, seven, fourteen and fifteen. Therefore, pursuant to the prior action pending doctrine and to best serve the interest of judicial economy this court is ordering the consolidation of these two actions. Namely, Helen Mees v. The Sweeney Building Index No. 508420/2017 and this action titled The Sweeney Building by its Board of Managers v Helen Mees Index No. 521571/2017. The rule requires that the matters be consolidated into the index number of the first pending action which in this case is Helen Mees v. The Sweeney Building Index No. 508420/2017. See annexed consolidation order.

Accordingly, defendants request to amend is denied with leave to renew before the judge in the consolidated matter, for the reasons stated above.

This constitutes the Decision/Order of the Court.

Date: March 9, 2020



 RICHARD VELASQUEZ, J.S.C.

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So Ordered
 Hon. Richard Velasquez