

**Saleh v Hudson 418 Riv. Rd. LLC**

2023 NY Slip Op 30767(U)

March 6, 2023

Supreme Court, Kings County

Docket Number: Index No. 526794/2019

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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EBRAHIM SALEH A/K/A IBRAHIM SALIH, suing  
Individually and derivatively on behalf  
Kobas & Salih Realty, LTD,,

Plaintiff,

Decision and order

- against -

Index No. 526794/2019

HUDSON 418 RIVER ROAD LLC,  
ERNEST KALABA,

Defendants,

March 6, 2023

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #4

The defendants have moved seeking to dismiss the complaint on the grounds there is another action pending. Alternatively, the defendants seek to consolidate this action with that other action pending. The plaintiff opposes the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

In another action the defendant here sued numerous parties. That action, *Hudson 418 River Road LLC v. Safiya Consultants Inc., et al.*, Index Number 510351/2018 asserts causes of action for an accounting, rescission, breach of contract, tortious interference, fraud and legal malpractice. The facts supporting the prior complaint were recorded in prior orders. Essentially, property located at 986 Gates Avenue in Kings County was owned by Kobas and Solih Realty LLC. On March 13, 2014 the owner entered into a contract to sell half the ownership interest to the Masjid. The lawsuit was instituted seeking a determination

regarding ownership. In that companion lawsuit the court held that while the ownership of half the property was disputed, Hudson 418 River was a one half owner of the property purchasing that half from Kobas and Solih Realty. In this case the plaintiff Ebrahim Saleh argues the transfer to Hudson 418 was improper, essentially arguing Hudson 418 is not the half owner of the property. In a decision and order in this case dated May 27, 2020 (NYSCEF Doc. No. 35) the court noted that "there were questions concerning the ownership of Kobas and Salih which impacts the ownership of interests of 418 Hudson. Thus, the new lawsuit is really an opportunity to reargue and reconsider the previous determination. That is an improper basis upon which to institute a new action" (id). Thus, the defendants here move seeking to dismiss this action on the grounds the other action sufficiently preserves all plaintiff's claims. The plaintiff opposes the motion arguing the two actions are not similar.

#### Conclusions of Law

CPLR §3211(a)(4) provides that a motion to dismiss a lawsuit on the grounds another lawsuit is pending should be granted when "both suits arise out of the same subject matter or series of alleged wrongs" (Aurora Loan Services LLC v. Reid, 132 AD3d 778, 17 NYS3d 894 [2d Dept., 2015]). "CPLR 3211(a)(4) vests a court with broad discretion in considering whether to dismiss an action

on the ground that another action is pending between the same parties on the same cause of action" (Whitney v. Whitney, 57 NY2d 731, 454 NYS2d 977 [1982]). Thus, where the reliefs sought in the two actions are "substantially the same" then dismissal is proper (Scottsdale Insurance Company v. Indemnity Insurance Corp., RRG, 110 AD3d 783, 974 NYS2d 476 [2d Dept., 2013]). The term "substantially the same" is defined as a cause of action as sufficiently similar to a simultaneously pending cause of action, when the ruling of one may directly conflict with the ruling of the other (see, Diaz v. Philip Morris Companies, Inc., 28 AD3d 703, 815 NYS2d 109 [2d Dept., 2006]).

First, there is no requirement for identical legal theories to be presented in both actions as long as the two actions are 'substantially similar' (Cheric, Cherico & Associates v. Midollo, 67 AD3d 622, 886 NYS2d 914 [2d Dept., 2009]). The causes of action in this case seek a determination regarding ownership of the property and specifically that Hudson 418 is not an owner. The causes of action in the other lawsuit seek a determination regarding ownership of the property and specifically that the Masjid is not an owner. These two lawsuits seek essentially the same relief, namely the ownership of the property. There mere fact that different instruments govern the respective arguments regarding ownership does not mean the two lawsuits are inherently different. Further, again, the fact the different parties

present various grounds demonstrating ownership does not mean the two lawsuits are about different issues. Thus, there is no basis for dual lawsuits that deal, essentially, with the same issues, namely ownership of the property in question.


Further, the mere fact the other action has additional defendants that involve more than just ownership concerns is not a basis in which to distinguish the two lawsuits. Further, the plaintiff here can secure any derivative claims by simply adding such claims in the other lawsuit. The plaintiff has not presented any basis why two lawsuits were instituted seeking essentially the same relief.

Because this lawsuit is substantially the same as the other action the court exercises its discretion pursuant to CPLR §3211(a)(4) and dismisses this action. Thus, the motion seeking to dismiss this lawsuit is granted.

So ordered.

ENTER:

DATED: March 6, 2023  
Brooklyn N.Y.

  
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Hon. Leon Ruchelsman  
JSC