

Pragad v Davis
2023 NY Slip Op 31210(U)
April 12, 2023
Supreme Court, New York County
Docket Number: Index No. 652334/2022
Judge: Melissa A. Crane
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MELISSA A. CRANE

PART

60M

Justice

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DEV PRAGAD,

Plaintiff,

INDEX NO. 652334/2022MOTION DATE 12/15/2022MOTION SEQ. NO. 003

- v -

JOHNATHAN DAVIS, ETIENNE UZAC, IBT MEDIA
INC., TITUS CHOI, DAVID JANG

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 29, 30, 43, 49, 60, 67

were read on this motion to/for

CONSOLIDATE/JOIN FOR TRIAL

Jonathan Davis ("Davis") has filed separate motions in the following four related actions seeking consolidation and other relief. Specifically, Davis moves for an order:

1. Consolidating Index Nos. 652366/2022 ("*Davis* Action") and 652277/2022 ("*IBT* Action") pursuant to CPLR 602;
2. Consolidating Index Nos. 652334/2022 ("*Pragad* Action") and 652344/2022 ("*NW Media* Action") pursuant to CPLR 602;
3. Upon consolidation, dismissing the *Pragad* Action and the *NW Media* Action pursuant to CPLR 3211(a)(4); or
4. In the alternative, staying the *Pragad* Action and *NW Media* Action pursuant to CPLR 2201 until the *Davis* Action and the *IBT* Action are resolved.

(See *NW Media* Action, 652344/2022, MS 07; *Pragad* Action, 652334/2022, MS 03; *Davis* Action, 652366/2022, MS 04; *IBT* Action, 652277/2022, MS 04).

As an initial matter, the court denied as moot Motion Sequence No. 04 in the *IBT* Action to the extent it sought to consolidate the *Davis* Action and *IBT* Action (see *IBT* Action, December

19, 2022 Decision and Order, NYSCEF Doc. No. 66, p. 5).¹ The court also denies as moot the portions of the motions in the *Davis* Action (MS 04), *NW Media* Action (MS 07), and *Pragad* Action (MS 03) that seek consolidation of the *Davis* Action and *IBT* Action. That relief is moot because the court dismissed the *IBT* Action in its entirety.

However, the court grants Davis's motions to consolidate to the extent that the remaining cases are consolidated for the purpose of only joint discovery. Pursuant to CPLR 602, a court may order actions consolidated where the actions involve a common question of law or fact (*Matter of October 31, 2017 Terrorist Attack/Lower Manhattan Litigation*, 194 AD3d 645, 646 [1st Dept 2021]). A court may also join actions solely for discovery (*Lema v 1148 Corp.*, 176 AD3d 653, 654 [1st Dept 2019]; *TSFV Holdings, LLC v Mulberry Development, LLC*, 59 Misc3d 1226(A), *2 [Sup Ct, NY County May 17, 2018] [consolidating actions for "discovery purposes only" where the actions "involve the same parties and present a similar set of facts"]]). Rather than overly complicate these cases by ordering true consolidation, the court exercises its discretion and joins the *Pragad*, *NW Media*, and *Davis* actions for discovery only in the interest of judicial economy. The court declines to order a joint trial at this time, pending further development of the case, but the parties may request a pre-motion conference at a later date if they still wish to move for a joint trial.

The court denies Davis's motion to dismiss the *Pragad* and *NW Media* Actions pursuant to CPLR 3211(a)(4). In order to dismiss an action on the basis of a prior pending action pursuant

¹ The court notes that the decision and order in the *IBT* Action stated that motion sequence 4 was "denied as moot" following the dismissal of the *IBT* Action (December 19, 2022 Decision and Order, p. 5). However, motion sequence 4, like the motions to consolidate in the other actions, also sought consolidation of the *Pragad* and *NW Media* Actions (see MS 04, *IBT* Action). The court clarifies that motion sequence 4 was only denied as moot to the extent that it sought consolidation of the *IBT* Action and *Davis* Action. To the extent motion sequence 4 also sought consolidation of the *Pragad* and *NW Media* Actions, it is decided in accordance with this decision and order.

to CPLR 3211(a)(4), the movant must establish both identity of the parties and the causes of action asserted (*White Light Prods. v On The Scene Prods.*, 231 AD2d 90, 93-94 [1st Dept 1997]).

Dismissal under CPLR 3211(a)(4) is not warranted because the *Pragad* and *NW Media* Actions are not substantially **identical** to the *Davis* Action. The *Davis* Action is fundamentally about Pragad's alleged wrongdoing in breach of his fiduciary duties to Davis and NW Media (*Davis* Action Amended Complaint, NYSCEF Doc. No. 28, ¶ 70) while the *Pragad/NW Media* Actions, on the other hand, include causes of action for conversion and misappropriation of trade secrets based on allegations that Defendants Uzac, Jang, Choi, and Davis conspired to destroy Newsweek documents and misappropriated Newsweek proprietary information (*see e.g. NW Media* Action Complaint, pp. 51-60). Thus, the court declines to dismiss the *Pragad/NW Media* Actions pursuant to CPLR 3211(a)(4).

Additionally, the court denies Davis's motion to stay the *Pragad/NW Media* Actions pursuant to CPLR 2201. The court has broad discretion to grant a motion to stay in order to "avoid the risk of inconsistent adjudications, application of proof and potential waste of judicial resources" (*Chaplin v National Grid*, 171 AD3d 691, 692 [2d Dept 2019]). Here, a stay is not warranted because there is little to no risk of inconsistent adjudications and wasted judicial resources.

In addition, the court notes that the *NW Media* Action (Index No. 652344/2022), a direct action, has only survived to the extent Defendants Uzac and Choi failed to move to dismiss sufficiently under *Sterling Industries Inc. v Ball Bearing Pen Corp.*, 298 NY 483 (1949). That the *NW Media* Action may eventually fall by the wayside entirely militates against true consolidation.

The court has considered the parties' remaining contentions and finds them unavailing.

Accordingly, it is

ORDERED that the motions to consolidate pursuant to CPLR 602 (*NW Media* Action, 652344/2022, MS 07; *Pragad* Action, 652334/2022, MS 03; *Davis* Action, 652366/2022, MS 04; *IBT* Action, 652277/2022, MS 04) are granted to the extent that the three remaining actions (the *NW Media* Action, *Pragad* Action, and *Davis* Action) are consolidated for the purposes of only joint discovery, and the motions are otherwise denied; and it is further

ORDERED that the joined actions shall bear the following caption:

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DEV PRAGAD, for himself, derivatively on behalf of
NW MEDIA HOLDINGS CORP, and double derivatively
on behalf of NEWSWEEK LLC,

Plaintiff,

Index No. 652334/2022
Action No. 01

v.

JONATHAN DAVIS, ETIENNE UZAC, IBT MEDIA INC.,
TITUS CHOI, and DAVID JANG,

Defendants.

-----X

Jonathan Davis, for himself and derivatively on behalf of
NW Media Holdings Corp.,

Plaintiff,

Index No. 652366/2022
Action No. 02

v.

Dev Pragad,

Defendant.

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NW MEDIA HOLDINGS CORP., NEWSWEEK LLC,
NEWSWEEK DIGITAL LLC, NEWSWEEK MAGAZINE LLC,
NEWSWEEK PUBLISHING LLC, NW DIGITAL LLC, and
NW MAGAZINE LLC,

Plaintiffs,

Index No. 652344/2022
Action No. 03

v.

ETIENNE UZAC, DAVID JANG, and YOUNSEOK CHOI
(a/k/a TITUS CHOI),

Defendants.

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And it is further

ORDERED that all future papers filed with the court shall bear the amended caption; and
it is further

ORDERED that movant is directed to serve a copy of this Order with notice of entry on
the County Clerk, who shall mark their records to reflect the consolidation for joint discovery; and
it is further

ORDERED that Service upon the County Clerk must be made in accordance with the
procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically
Filed Cases (accessible at the "E-filing" page on the court's website –
www.nycourts.gov/supctmanh).

04/12/2023

DATE


MELISSA CRANE, J.S.C.

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

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CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

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DENIED

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐

OTHER

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REFERENCE