

Pustilnik v Sincere Care Agency, Inc

2023 NY Slip Op 31981(U)

June 13, 2023

Supreme Court, New York County

Docket Number: Index No. 154444/2018

Judge: Frank P. Nervo

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. FRANK P. NERVO PART 04

Justice

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BORIS PUSTILNIK, INDIVIDUALLY AND ON BEHALF OF ALL OTHER PERSONS SIMILARLY SITUATED WHO WERE EMPLOYED BY SINCERE CARE AGENCY, INC. AND ADVANCE HOME CARE, LLC D/B/A SINCERE CARE, ALONG WITH OTHER AFFILIATED ENTITIES,

Plaintiff,

- v -

SINCERE CARE AGENCY, INC, ADVANCE HOME CARE, LLC, AND/OR ANY OTHER RELATED ENTITIES

Defendant.

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INDEX NO. 154444/2018

MOTION DATE 04/10/2023

MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION - STAYING MATTER**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 173, 174, 175, 178, 179, 180, 181, 182, 183

were read on this motion to/for STAY.

Plaintiff seeks to stay this matter pending a decision by Kings County Supreme Court on plaintiff's motion to consolidate this matter with *Konstantynovska v. Friendly Home Care* (Index No. 523015/2017) on the basis that the defendants are, effectively, a single entity employer of the same class of plaintiffs and thus the matters raise identical issues of fact and law. Defendant opposes, contending, *essentia*, that plaintiff is engaging in forum shopping, having been aware of the purportedly related matter for several years and moving for consolidation only after the Kings County Supreme Court denied that defendant's application to compel arbitration in *Konstantynovska*.

The Court finds a stay is warranted. The claims asserted in this matter and *Konstantynovska* are nearly identical, and address the same questions of both fact and law. The motion filed by the instant defendant to compel arbitration in this matter is substantively identical to that motion filed by the defendant in *Konstantynovska*. Furthermore, defendants' own evidence submitted on these motions to compel, namely the employee handbook acknowledgements relied upon by defendants to compel arbitration, indicate that the defendants in both matters are, effectively, a single entity employing the plaintiffs in both matter (see e.g. submissions by Sincere Care Agency, the defendant in this matter, of handbook acknowledgements from employees working for the defendant in *Konstantynovska*, Friendly Home Care, and Friendly Home Care's submissions of handbook acknowledgments from employees working for Sincere Care Agency). Further supporting this inference, it appears defendants in both matters share corporate officers, directors, and owners and are represented by the same counsel. Where overlapping issues of law and fact exist in two matters, and determination of the issues in the prior matter may affect the subsequent action, a stay should be issued (*Belopolsky v. Renew Data Corp.*, 41 AD3d 322 [1st Dept 2007]).

There is little, if any, prejudice to the defendant here in granting a limited stay. Defendant has moved to compel arbitration of this matter, thus necessarily seeking to stop further proceedings in this matter. Furthermore, to the extent that the plaintiff's deposition remains outstanding in this matter, determination of the consolidation motion by the Kings Supreme Court may render a deposition of Pustilnik unnecessary, given that the plaintiff class in the Kings County matter has already been certified.

Accordingly, it is

ORDERED that this matter is stayed pending the determination of motion sequence 005 in *Konstantynovska v. Friendly Home Care* (Index No. 523015/2017) filed in the Supreme Court of Kings County; and it is further

ORDERED that counsel for the parties shall submit to this Court, via NYSCEF with courtesy copy to chambers, a copy of the *Konstantynovska* Court's decision within 10 days of issuance of same. The failure to timely submit a copy, as above, may result in sanctions, including but not limited to monetary sanctioning of counsel, in the Court's discretion; and it is further

ORDERED that any party may make an application by order to show cause to vacate or modify this stay upon determination of the motion sequence 005 in *Konstantynovska v. Friendly Home Care* (Index No. 523015/2017); and it is further

ORDERED that the movant is directed to serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office within ten days from entry and the Clerk shall mark this matter stayed as herein provided; and it is further

[continued on following page]

ORDERED that such service upon the Clerk of the General Clerk’s Office shall 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).

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

6/13/2023
DATE


HON. FRANK P. NERVO

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| CHECK ONE: | <input type="checkbox"/> | CASE DISPOSED | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION | J.S.C. |
| | <input checked="" type="checkbox"/> | GRANTED | <input type="checkbox"/> | GRANTED IN PART | <input type="checkbox"/> |
| APPLICATION: | <input type="checkbox"/> | SETTLE ORDER | | SUBMIT ORDER | |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | | FIDUCIARY APPOINTMENT | <input type="checkbox"/> |
| | | | | | REFERENCE |