

**Manda Intl. Corp. v Red Hook 160 LLC**

2023 NY Slip Op 32497(U)

July 17, 2023

Supreme Court, Kings County

Docket Number: Index No. 531163/2022

Judge: Leon Ruchelsman

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

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MANDA INTERNATIONAL CORP.,

Plaintiff,

Decision and order

- against -

Index No. 531163/2022

RED HOOK 160 LLC, PHILADELPHIA INDEMNITY  
INSURANCE COMPANY, and JOHN DOES 1-1,

Defendants,

July 17, 2023

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #1

The defendants have moved pursuant to CPLR §3211 seeking to dismiss the complaint. The plaintiff has opposed the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

According to the complaint on December 4, 2019 the plaintiff was hired by the defendant as a construction manager to complete a construction project located at 160 Imlay Street in Kings County. The parties entered into a Construction Management Agreement, referred to as the CM Agreement and it provided a guaranteed maximum price of \$2,064,500. Further, the CM Agreement contained exhibits that delineated work to be performed by Strikeforce Mechanical Corp. The complaint alleges that the plaintiff submitted invoices for payment and that the defendant did not fully pay all the invoices. Consequently, on November 5, 2020 the plaintiff filed a mechanic's lien in the amount of \$1,595,309.25. Further, the plaintiff asserts there are other

fees owed and seeks recovery of \$2,325,881.53. The complaint alleges causes of action for breach of contract, account stated, to foreclose the mechanic's lien, quantum meruit and a declaratory judgment. The defendant has now moved seeking to dismiss the complaint on the grounds the agreement was assigned to another entity, namely Churchill 160 Imlay Lender LLC [hereinafter Churchill] and that any action to recover any payments should be directed to that assignee. Further, the defendants argue that a Federal action has been commenced against plaintiff and therefore an action already exists where these claims may be adjudicated rendering this action superfluous. The plaintiff, as noted, argues the motions should be denied.

#### 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" (id, Aurora Loan Services LLC v. Reid, 132 AD3d 778, 17 NYS3d 894 [2d Dept., 2015]). 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]). Thus, a motion to dismiss made in this case should be granted where an identity of parties and causes of action in the pending action raises the danger of conflicting rulings. "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]).

The Federal lawsuit involves the same construction project and the same CM Agreement. Although the plaintiff in the Federal action is an entity that was formed after the CM Agreement was executed, in any event the parties are essentially identical. The Federal action alleges that the owner of the project, the defendant in this action Red Hook 160 LLC, assigned rights in the CM Agreement to Churchill who assigned its rights to MAM 160 Imlay Lender LLC who then assigned it to the plaintiff in the Federal action, JGIAP RH 160 LLC. Thus, while the plaintiff in this action is not a party in the Federal action, a subsequent assignee in the Federal action is pursuing claims against Manda which Manda could surely oppose in that action. The similarity of interests between the owner Red Hook 160 LLC, the defendant here, and the plaintiff in the Federal action is confirmed by the fact the Federal complaint refers to them together as sharing

interests and suffering the misdeeds of the defendants (see, Federal Complaint, ¶11: "while RH 160 and Lender reasonably believed...", ¶16: "the fraud planned by Naghieh and perpetrated by CRI, Manda, and Strikeforce, was targeted not only at RH 160 but at Lender..." ¶17: "at bottom, Naghieh and his cronies conspired to set the Project up for failure and to bilk both RH 160 and Lender out of as much money as they could take before their game ended" [NYSCEF Doc. No. 19]).

The Federal action alleges that the plaintiff, standing in the shoes of the owner of the property, was the victim of mismanagement, fraud and other wrongs committed by various defendants including Manda, to undermine the project and harm its success. Specifically, the Federal Complaint alleges that an entity called CRI Holding Corp., was retained by the owner to represent the owner's interests in the project. CRI and its owner Touraj Naghieh then deliberately sought to unnecessarily drag out the project to earn monthly fees. The Federal Complaint alleges Naghieh recommended Manda as construction manager and that Manda assisted in this scheme to essentially cheat the owner Red Hook 160 LLC. The remaining defendants in the Federal action consist of other subcontractors hired at the direction of Naghieh who further conspired with Naghieh to harm the owner and the Federal plaintiff.

The Federal complaint spells out Manda's duties in great

detail (see, Federal Complaint, ¶¶48-65 [NYSCEF Doc. No. 19]) and alleges Manda breached its contract by "(i) failing to act in the best interest of RH160, (ii) failing to plan, prosecute and manage the work in a cost effective and economical manner, (iii) failing to properly issue bid packages to subcontractors and enter into written subcontracts that complied with the CM Agreement, (iv) failing to perform cost-control management, (v) failing to coordinate subcontractor work; (vi) failing to protect work in place from damage during construction, and (vii) failing to provide required back-up documentation in support of payment applications" (id at ¶70). The Federal complaint alleges four more grounds to substantiate Manda's breach of contract, namely that Manda did not coordinate with subcontractors, failed to actually do work, overcharged for work and sought excessive fees (id at ¶¶71-74). Although a large portion of the Federal complaint is directed at CRI and Naghieh and includes RICO claims against the defendants, there are significant allegations directed at Manda. Paragraph 101 of the Federal complaint alleges that Manda could not substantiate its latest request for payment and consequently was not paid. That nonpayment prompted Manda's filing of a mechanic's lien which is the subject of this action.

Manda argues that the two actions are not similar because they involve different parties and different causes of action.

Manda stresses that "in this case, Manda is the plaintiff and seeks payment for unpaid invoices against Red Hook. Red Hook has not asserted any defenses of fraud or fantastical RICO claims nor could it since it now claims that all rights and obligations escheated to "Lender" that now allegedly escheated to the plaintiff in the federal action" (see, Memorandum in Opposition, page 16 [NYSCEF Doc. No. 24]). However, there are claims of fraud and breach of contract asserted against Manda in the Federal action. If the plaintiff in the Federal action prevails it would entirely inconsistent for Manda to prevail on its claims in this action. Indeed, there is no explanation presented why Manda could not counterclaim in the Federal action, dispute the allegations of fraud, RICO and breach of contract and insist that not only are those allegations baseless but they are entitled to foreclose the mechanic's lien. Of course, the same proof will be required in both actions, which will either vindicate the plaintiff in the Federal action or vindicate the defendants including Manda. Thus, both actions, at their core, are inextricably interwoven, making the adjudication of one binding on the other. The mere fact the Federal action includes others who participated in the alleged conspiracy and asserts claims against Naghieh, the supposed ringleader of the conspiracy does alter the fact that Manda's claims and defenses are the same in both actions. Further, whether the Federal action has any merit

does not override the fact there is another action pending foreclosing the current lawsuit. To be sure, if the Federal action is dismissed then Manda would be permitted to pursue its claims in state court and a dismissal of a Federal action would surely bolster its mechanic's lien claims. However, at this juncture the Federal lawsuit sufficiently encompasses all of Manda's claims here rendering this action barred by its Federal counterpart.

Therefore, based on the foregoing, the motion seeking to dismiss the action on the grounds there is a Federal action pending is granted.

So ordered.

ENTER:

DATED: July 17, 2023  
Brooklyn N.Y.

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Hon. Leon Ruchelsman  
JSC