

Vasilakos v Kaloidis

2024 NY Slip Op 31886(U)

May 30, 2024

Supreme Court, Kings County

Docket Number: Index No. 508389/2024

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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ANASTASIOS VASILAKOS and PANAGIOTA
VASILAKOS,

Plaintiff, Decision and order

- against -

Index No. 508389/2024

GEORGIA KALOIDIS,

Defendants, May 30, 2024

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #1 & #2

The plaintiffs have moved pursuant to CPLR §3213 seeking summary judgement in lieu of a complaint. The defendant has cross-moved seeking to dismiss the action on the grounds another action is pending. The motions have been opposed respectively. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

On February 6, 2019, the defendant Georgia Kaloidis and her husband, now deceased, Dimitrios Kaloidis, as co-borrowers executed a consolidated promissory note to the plaintiffs in interest in the amount of \$18,915,661, effective as of December 31, 2018. The maturity date of the note was June 30, 2020. The defendants did not make any payments at all. The plaintiffs now move seeking summary judgement concerning the note in the amount of \$24,423,495.81, as of February 29, 2024, plus accrued interest accruing at a daily rate of \$3,364.12 until judgement is entered. The defendant opposes the motion arguing that there is another action pending and the matter should be resolved in that other

action.

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]).

Thus, an examination of the other lawsuit is necessary. On

September 16, 2019 Dimitrios Kaloidis passed away and on November 19, 2019 his will was admitted to probate in Nassau County Surrogate's Court. On May 14, 2020 the same plaintiff's in this action submitted a notice of claim against the defendant here as co-executor of her husband's estate (as well as the other co-executor Paul Kerantzas) seeking payment pursuant to the promissory note that is the subject of this action. The validity of that claim was challenged and although the plaintiff's here filed a motion for summary judgement in Surrogate's Court the case is proceeding with discovery. Thus, both actions involve, among other claims, the same promissory note and whether the plaintiffs may properly collect the amount due pursuant to the note.

The plaintiff's argue there is no identity of parties because the Surrogate's Court action seeks payment of the note from the Estate of Dimitrios Kaloidis while this action seeks payment from Georgia Kaloidis. Thus, even if the plaintiff's prevail in the Surrogate action that cannot result in any judgement against the defendant Georgia. However, that distinction elides the true issue in both cases, namely the validity of the note. Indeed, the validity of the note was first raised in the Surrogate's Court. There is no reason why another court, namely this lawsuit, must endeavor to also consider the validity of the same note. To be sure, the death of Dimitrios

prompted the Surrogate Court proceeding and the notice of claim based upon the promissory note. It may be that the delay regarding any determination about the note prompted this action to circumvent a lengthy and unending discovery process taking place in the Surrogate's Court. However, even if that is true, that does not justify this unnecessary lawsuit. Furthermore, while it is true that the Estate of Dimitrios is legally distinct from Georgia Kaloidis and any determination in the Surrogate action will not result in a judgement directed at Georgia, there can be no dispute the plaintiff's specifically filed the notice of claim in the Surrogate action to recover payment pursuant to the promissory note. It is further true that an action commenced in Surrogate's Court is not similar to an action to recover sums pursuant to a promissory note. However, that fact does not bar a dismissal of this action. In Bank of New York v. Levy, 123 AD2d 589, 506 NYS2d 767 [2d Dept., 1986] the plaintiff sued the defendant seeking to recover the balance of a loan due. The plaintiff and the defendant were both sued in a Federal lawsuit alleging securities and other fraud. The court held that "in view of the fact that resolution of the Federal suit may encompass the plaintiff's claim herein and in view of the identity of parties and issues in both cases, it was appropriate for Special Term to stay the proceeding before it, pending the outcome of the Federal class action suit" (id). Again, in El


Greco Inc., v. Cohn, 139 AD2d 615, 527 NYS2d 256 [2d Dept., 1988] a lawsuit seeking recovery on a promissory note was stayed pending a Federal action. The court explained that "the parties in the two actions are virtually identical, the issues to be resolved overlap, and, moreover, the record discloses that a more complete disposition of the parties' respective contentions can be obtained in the earlier-commenced Federal action. Additionally, considering the similarity of the issues involved, the imposition of a stay further avoids the risk of inconsistent adjudications, duplication of proof, and the potential waste of judicial resources" (id). Therefore, where another action is pending that will resolve all the issues of the present action the present action should not be permitted to continue. Thus, as noted, there is another action pending which adequately addresses the plaintiff's claims. Consequently, the motion seeking to dismiss this action based upon the pending Surrogate's Court action is granted.

The motion seeking summary judgement in lieu of a complaint is not rendered moot.

So ordered.

ENTER:

DATED: May 30, 2024
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC