

**Minskoff Grant Realty & Mgt. Corp. v Breede**

2024 NY Slip Op 32669(U)

June 28, 2024

Supreme Court, New York County

Docket Number: Index No. 656040/2023

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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MINSKOFF GRANT REALTY & MANAGEMENT CORP,  
JEAN MINSKOFF GRANT, NINTH STREET  
ASSOCIATES, GENERAL PARTNERSHIP

Plaintiffs,

- v -

PATRICIA MINSKOFF BREEDE, PATRICIA MINSKOFF  
BREEDE, AS MINORITY PARTNER OF NINTH STREET  
ASSOCIATES, GENERAL PARTNERSHIP,

Defendants.

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INDEX NO. 656040/2023  
MOTION DATE 03/25/2024  
MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77

were read on this motion to STAY ARBITRATION AND DISMISS.

The motion by Plaintiffs Minskoff Grant Realty & Management Corp.’s, (“MGR”) Jean Minskoff Grant (“Grant”), and Ninth Street Associates General Partnership (“NSA”) to stay arbitration is **denied without prejudice**. The cross-motion by Defendants Patricia Minskoff Breede and Ninth Street Associates General Partnership’s (collectively “Defendants” or “Mrs. Breede”) to dismiss pursuant to CPLR 3211(a)(4) is **granted** to the extent that the Complaint is dismissed without prejudice to Plaintiffs seeking to assert the dismissed claims in the pending action *Patricia Minskoff Breede, individually and on behalf of 9<sup>th</sup> Street General Partnership v. Jean Minskoff Grant* (New York County Index No. 655239/2023) (the “Prior Action”).

## A. Background

This is a family business dispute. Plaintiffs commenced this action on December 5, 2023, and simultaneously moved to stay the arbitration styled as *Patricia Minskoff Breede v. Minskoff Grant Realty & Mgmt. Corp.* (AAA Case Number 01-23-0004-6446) (the “Arbitration”). Following oral argument on December 6, 2023 (NYSCEF 25 [Transcript]), the Court entered a temporary restraining order (“TRO”) staying the Arbitration “solely to the extent defendant Patricia Minskoff Breede asserts claims in her individual capacity” as opposed to derivatively (NYSCEF 16 [Order to Show Cause]).

Plaintiffs moved to reargue the TRO insofar as it denied a complete stay. Defendants cross-moved to dismiss pursuant to CPLR 3211(a)(4) in deference to the Prior Action.

Shortly after briefing was completed, on February 22, 2024, the parties submitted a stipulation (NYSCEF 56 [“Stipulation”]) withdrawing the pending motions without prejudice; providing that Defendants “shall withdraw” the Arbitration; and that “Plaintiffs shall consolidate this action into Index No. 655239/2023.” The Court, with reference to the Stipulation, entered orders terminating the pending motions and cross-motion (NYSCEF 57 and 58).

On February 28, 2024, Mrs. Breede, derivatively on behalf of NSA, served a notice of intention to arbitrate pursuant to CPLR 7503(c) (NYSCEF 67 [“Notice of Intent”]). Plaintiffs timely moved to stay. Defendants subsequently filed an Arbitration Complaint dated April 15, 2024, in an arbitration styled as *Patricia Minskoff Breede, derivatively on behalf of 9<sup>TH</sup> Street Associates General Partnership v. Minskoff Grant Realty & Mgmt. Corp.* (AAA Case Number 01-24-0003-2665) (the “Second Arbitration”). Defendants now move, again, to dismiss pursuant to CPLR 3211(a)(4) based on the Prior Action.

In “limited opposition” to the cross motion, Plaintiffs acknowledge that they agreed in the Stipulation to consolidate this action with the Prior Action. However, Plaintiffs argue that the Complaint should not be dismissed, but instead consolidated with the Prior Action. Plaintiffs have not, however, filed a motion to consolidate pursuant to CPLR 602(a).

### **B. Discussion**

CPLR 3211(a)(4) provides for dismissal if “there is another action pending between the same parties for the same cause of action... the court need not dismiss upon this ground but may make such order as justice requires.” The Court has “broad discretion” under CPLR 3211(a)(4), and dismissal is appropriate when essentially the same claims are being asserted under identical agreements “presenting a risk of inconsistent judgments” (*Alvarez & Marshal Valuation Services, LLC v Solar Eclipse Inv. Fund III, LLC*, 216 AD3d 447, 448 [1st Dept 2023]). The critical inquiry is whether “both suits arise out of the same subject matter or series of alleged wrongs” (*PK Rest., LLC v Lifshutz*, 138 AD3d 434, 436 [1st Dept 2016] *citing Syncora Guar. Inc. v J.P. Morgan Sec. LLC*, 110 AD3d 87, 96 [1st Dept 2013]).

CPLR 602(a) provides that consolidation may be ordered “upon motion.” Here, as noted above, no motion to consolidate has been filed. Accordingly, given the existence of common facts, the risk of inconsistent verdicts, and the waste of judicial resources that would result from two actions proceeding simultaneously, dismissal of this action is required (*Silver v Whitney Partners LLC*, 130 AD3d 512, 514 [1st Dept 2015]). Dismissal is without prejudice to Plaintiffs asserting claims and seeking relief, including a stay of the Second Arbitration, in the Prior Action (*Liberty Surplus Ins. Corp. v Harleystown Ins. Co. of New York*, 140 AD3d 621 [1st Dept 2016]). In light of the Court’s dismissal of the Complaint without prejudice, the Court does not address the merits of the Plaintiffs’ motion to stay the arbitration (*id.*).

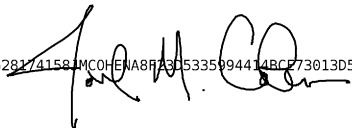
\* \* \* \*

Accordingly, it is

**ORDERED** that Plaintiffs' motion to stay the Second Arbitration is **DENIED WITHOUT PREJUDICE** to seeking such relief in the Prior Action; it is further

**ORDERED** that Defendants' motion to dismiss pursuant to CPLR 3211(a)(4) is **GRANTED** to the extent that the Plaintiffs' Complaint is **DISMISSED WITHOUT PREJUDICE** to raising their claims in the Prior Action.

This constitutes the decision and order of the Court. This case is disposed.

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JOEL M. COHEN, J.S.C.

6/28/2024  
DATE

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER  
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: