

GMF 157 LP v Inspirit Dev. & Constr. LLC

2025 NY Slip Op 33300(U)

September 4, 2025

Supreme Court, New York County

Docket Number: Index No. 651670/2025

Judge: Joel M. Cohen

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

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GMF 157 LP, ON BEHALF OF ITSELF AND ON BEHALF
OF ALL OTHERS SIMILARLY SITUATED,

Plaintiff,

- v -

INSPIRIT DEVELOPMENT AND CONSTRUCTION LLC,
ALEX R. CHIESI

Defendants.

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INDEX NO. 651670/2025

MOTION DATE 05/09/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22

were read on this motion to DISMISS.

Defendants Inspirit Development and Construction, LLC (“IDC”) and Alexander Chiesi (“Chiesi” and with IDC “Defendants”) move to dismiss Plaintiff GMF 157 LP’s (“Plaintiff” or “GMF”) Complaint pursuant to CPLR 3211(a)(4) based on a prior pending action, pursuant to CPLR 311(a)(7) for failure to state a claim, and pursuant to CPLR 3211(a)(1) based on documentary evidence. Defendants additionally request an award of costs and reasonable attorneys’ fees as a sanction for frivolous conduct pursuant to 22 NYCRR 130-1.1

For the reasons discussed below, Defendants’ motion is **granted**.

BACKGROUND

This action stems from a long-running dispute regarding a residential renovation project at 157 West 57th Street.

In May 2017, GMF and IDC entered into a contract under which IDC would manage and perform renovations on a unit in the building (NYSCEF 1 [“Complaint”] ¶ 6). Three years later,

IDC commenced a plenary action asserting claims for breach of contract, wrongful termination, and the like against GMF (*Inspirit Development and Construction LLC v. GMF 157 LP*, Index No. 652022/2020) (the “Pending Action”). GMF in turn asserted a counterclaim for breach of contract and brought a third-party claim against Chiesi for fraud, which was ultimately dismissed (NYSCEF 8 [Answer in Pending Action]; *Inspirit Dev. and Constr., LLC v GMF 157 LP*, 203 AD3d 430, 432-33 [1st Dept 2022]).

The same day that IDC’s motion for summary judgment was denied in the Pending Action, GMF initiated a separate action against IDC and Chiesi asserting a single claim for trust fund diversion under Article 3-A of the Lien Law (Index No. 654907/2023 [the “2023 Article 3-A Action”]). This Court dismissed that action without prejudice pursuant to CPLR 3211(a)(4) “without prejudice to any arguments that may be raised in the Pending Action” (NYSCEF 13 [Decision and Order Dismissing 2023 Article 3-A Action]).

Shortly thereafter, GMF moved in the Pending Action for leave to amend its answer to assert a counterclaim for trust fund diversion against IDC and Chiesi, which mirrored the allegations asserted in the dismissed 2023 Article 3-A Action. The court in the Pending Action (Bannon, J.) denied the motion because GMF had known the facts underlying the new claim for years and because the amendment would be prejudicial given the procedural posture of the case, as the Note of Issue had been filed more than a year prior (NYSCEF 14 at 4).

On February 18, 2025, in a consolidated opinion the First Department unanimously affirmed both this Court’s dismissal of the 2023 Article 3-A Action *and* Justice Bannon’s subsequent denial of GMF’s motion for leave to amend to add the Lien Law 3-A claim in the Pending Action (*GMF 157 LP v Inspirit Dev. & Constr., LLC*, 235 AD3d 493, 494 [1st Dept 2025]).

Undeterred, on March 26, 2025, GMF commenced the present action (“2025 Article 3-A Complaint”) asserting—for the third time—the same trust fund diversion claims (NYSCEF 16 [Redline of 2023 and 2025 Complaints]).

Defendants move to dismiss the present action, contending (not surprisingly) that GMF’s claims arise out of the same series of transactions and alleged misconduct at issue in the Pending Action, which is precisely what this Court held in dismissing the 2023 Article 3-A Action under CPLR 3211(a)(4). Defendants argue (again, not surprisingly) that permitting the case to proceed would undermine the finality of the determinations made by this Court, by Justice Bannon, and most importantly and comprehensively (because it considered the combined effect of both trial court decisions) the Appellate Division, First Department.

DISCUSSION

I. Defendants’ motion to dismiss is granted

Pursuant to CPLR 3211(a)(4), the Court has broad discretion to grant dismissal “if there is another action pending between the same parties for the same cause of action...” (*Whitney v Whitney*, 57 NY2d 731, 732 [1982]). This Court has already determined—and the First Department affirmed—that the Pending Action qualifies as “another action pending” with respect to these claims between the same parties for purposes of CPLR 3211(a)(4) (NYSCEF 13; *GMF 157 LP*, 235 AD3d at 494).

GMF does not dispute that its allegations in this action arise out of the same subject matter as the Pending Action. Rather, it argues that “[i]t cannot be, and Defendants cite no law for their proposition, that the combined effect of [this Court’s] prior decision [in the 2023 Article 3-A Action] and Justice Bannon’s decision is to deny completely GMF’s right to bring its

meritorious Article 3-A claim” (NYSCEF 21 at 8). What GMF ignores, however, is that it made that same argument—unsuccessfully—to the First Department.

Indeed, GMF stressed that its perfection of both appeals simultaneously “allow[ed the First Department] to consider the joint effect of” the dismissal of the 2023 Article 3-A Action and the denial of leave to amend in the Pending Action (NYSCEF 4 in Case No. 2024-03436 [Appellant’s Brief] at 5). Having successfully timed both appeals to be heard and decided together, GMF argued—as it effectively does again here—that the combined effect of the two trial court decisions “leaves GMF without a forum in which to pursue the Trust Claim on behalf of itself and on behalf of known and unknown beneficiaries” (*id.* at 21). While the First Department presumably *could have* accepted that argument and exercised its discretion to modify or reverse either this Court’s dismissal or Justice Bannon’s denial of leave to amend to permit GMF to assert its Lien Law claim in one case or the other, it did not do so. Instead, it affirmed this Court’s determination that the stand-alone Lien Law action was subject to dismissal under CPLR 3211(a)(4) while *at the same time* affirming that GMF was precluded from asserting the Lien Law claim in the Pending Action (*GMF 157 LP*, 235 AD3d at 495).

GMF now asks this Court to let it have another go at precisely the same claim, dragging Defendants along for the costly ride in yet another action. Having emphatically argued that the Appellate Division must consider the joint effect of the two decisions (this Court’s and Justice Bannon’s), GMF’s remedy is with the Court of Appeals—not with this Court under a new index number. As nothing has changed since the First Department’s consideration of the same facts and circumstances, Defendants’ motion to dismiss pursuant to CPLR 3211(a)(4) is **granted**.

In light of the foregoing, the Court need not address Defendants’ arguments pursuant to CPLR 3211(a)(7) and CPLR 3211(a)(1).

II. Defendants' request for sanctions under 22 NYCRR 130-1.1 is granted

The Court has discretion to "...award to any party or attorney in any civil action or proceeding before the court...costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct" (22 NYCRR 130-1.1[a]). Conduct is frivolous, if, "it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law" (*id.* [c][1]).

GMF's 2025 Article 3-A complaint is virtually identical to its 2023 complaint, the dismissal of which was affirmed by the First Department because it involved the same parties, premises, project and underlying contract in the Pending Action. Furthermore, as noted above, GMF repeats precisely the same argument about the joint effect of this Court's dismissal of that claim and Justice Bannon's denial of leave to amend to include the claim in the Pending Action that it unsuccessfully made to the First Department.

Plaintiff argues that because their Article 3-A claims were never decided on the merits, their attempts to re-assert them are not frivolous (NYSCEF 21 at 18). Plaintiff cites no authority that sanctions under 22 NYCRR 130 1.1 require prior rulings on the merits. Plaintiff's reliance on *Novikov v Oceana Holding Corp* (46 Misc 3d 561, 567-568 [Sup Ct, Kings County 2014]) is misplaced: the *Novikov* court determined that petitioner's conduct was not frivolous because while prior actions were not dismissed on the merits, the new action sought to correct procedural pleading issues and included new facts. Here, nothing has changed since the First Department affirmed the dismissal of these claims, yet Plaintiff has persisted and required Defendants to expend additional resources defending a claim that has been soundly rejected multiple times. The fact that the rejections were based on Plaintiff's failure to timely raise the claim in the

appropriate action (the Pending Action) rather than on the merits does not render the duplicative maneuver in this *third* action any less frivolous.

Defendants' request for sanctions is **granted**, and Defendants shall recover their reasonable costs and attorneys' fees incurred in connection with defending this action.

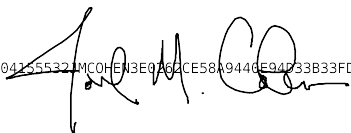
Therefore, it is

ORDERED that Defendants' motion to dismiss and for an award of sanctions is **GRANTED**, and this action is dismissed; it is further

ORDERED that, pursuant to the Court's award of sanctions under 22 NYCRR 130-1.1, Defendants shall recover from Plaintiff their costs and reasonable attorney's fees incurred in defending this action; and it is further

ORDERED that within 14 days of this decision and order, Defendants may submit an application supporting the amount of the fees awarded above, and Plaintiff may respond thereto within 14 days of said application.

This constitutes the decision and order of the Court.

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JOEL M. COHEN, J.S.C.

9/4/2025
DATE

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE