

Trinidad v All Faiths Cemetery
2025 NY Slip Op 35548(U)
January 14, 2025
Supreme Court, Queens County
Docket Number: Index No. 701212/2024
Judge: Mojgan C. Lancman
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. MOJGAN C. LANCMAN

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JUAN TRINIDAD, ALTAGRACIA TRINIDAD, FERNANDO
TRINIDAD, ANSELMA TRINIDAD, JOSE TRINIDAD, Index No.: 701212/2024
CARLOS TRINIDAD, ANTONIO TRINIDAD,

Motion Seq. No.: 2

Plaintiffs,

Motion Date: 7.17.2024

-against-

Motion Cal. No.: 50

ALL FAITHS CEMETERY,

Defendant.

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Presently before the Court is the motion filed by the defendant, All Faiths Cemetery (“All Faiths” or the “Defendant”), for an Order dismissing the amended complaint filed by the plaintiffs, Juan Trinidad, Altagracia Trinidad, Fernando Trinidad, Anselma Trinidad, Jose Trinidad, Carlos Trinidad and Antonio Trinidad (collectively, the “Plaintiffs”) (*see* NYSCEF Doc. Nos. 41-52).

This action (“the “Present Action”) and a prior special proceeding (the “Prior Special Proceeding”) arise out of the alleged wrongful disinterment and relocation of the remains of Manuel Fernando Trinidad (the “Decedent”) by All Faiths.

The Decedent, who passed away on June 19, 2010, was the owner of a grave at All Faiths Cemetery, which is located at 67-29 Metropolitan Avenue, Middle Village, New York (the “Cemetery”). The Decedent was buried in said grave, known as Section 10, Map 8, Block 4, Grave No. 33 (“Grave No. 33”), on June 24, 2010.

In or about February 2021, the Decedent’s remains were disinterred from Grave No. 33 and reinterred in Grave No. 34.

In April 2022, the Plaintiffs herein, who are children of the Decedent, commenced the Prior Special Proceeding against, *inter alia*, All Faiths by filing a petition in this Court under index number 715002/2022. In the Prior Special Proceeding, the Petitioners (the Plaintiffs herein) requested that the Decedent’s remains be relocated to their original resting place, Grave No. 33.

Ultimately, pursuant to a Court Order issued in the Prior Special Proceeding, the Decedent’s remains were disinterred from Grave 34 and reinterred in Grave No. 33 in March 2024.

The Plaintiffs commenced the Present Action on January 17, 2024.

On May 10, 2024, the Plaintiffs filed an amended complaint in the Present Action, contending, in essence, that the Defendant “unlawfully disinterred and relocated the remains of the Decedent” (*see* NYSCEF Doc. No.: 27). The amended complaint asserts causes of action grounded in gross negligence, breach of contract and negligent infliction of emotional distress, and seeks compensatory and punitive damages.

The Defendant moves to dismiss the amended complaint in the Present Action pursuant to CPLR § 3211[a] [4]. The predicate for the motion is that the Present Action is duplicative of the Prior Special Proceeding. For the following reasons, the motion is granted in part and denied in part.

I. Factual Background and Procedural History

The Decedent, who passed away on June 19, 2010, owned Grave No. 33.

In accordance with his wishes, the Decedent was buried with his wife, Antolina Agueda de la Rosa de Trinidad (“Antolina”), in Grave No. 33 on June 24, 2010.

Although Decedent paid for and was buried at Grave No. 33, the Defendant erroneously issued a deed naming Luis Trinidad (“Luis”), one of the Decedent’s sons, as the owner of Grave No. 33.

In or about February 2021, at the request of Luis, the Decedent’s remains were disinterred from Grave No. 33 and reinterred in Grave No. 34. The Defendant did not, however, request a family tree or affidavit from Luis stating that there were no other persons required to consent to the disinterment. Moreover, the Defendant’s records incorrectly identified the owner of Grave No. 33 as Luis.

In the Prior Special Proceeding, former Supreme Court Justice Cassandra A. Johnson issued an Order, dated March 13, 2024 and filed on March 14, 2024, which, *inter alia*, granted permission to disinter the Decedent from Grave 34 and to reinter his remains to Grave No. 33 (“Justice Johnson’s Order”). This process occurred on March 28, 2024.

There has been no activity in the Prior Special Proceeding since March 20, 2024, which is when Justice Johnson’s Order was served with notice of entry by the Petitioners, who are the Plaintiffs in the Present Action. A notice of appeal has not been filed in relation to Justice Johnson’s Order and the time to do so has expired.

II. Discussion

Pursuant to CPLR § 3211 [a] [4], “[a] party may move for judgment dismissing one or more causes of action asserted against him [or her] on the ground that ... there is another action pending between the same parties for the same cause of action in a court of any state or the United States; there is another action pending between the same parties for the same cause of action in a court of any state or the United States; the court need not dismiss upon this ground but may make such order as justice requires”

Under the subject statute, “a court has broad discretion in determining whether an action should be dismissed based upon another pending action where there is a substantial identity of the parties, the two actions are sufficiently similar, and the relief sought is substantially the same” (*HSBC Bank USA, N.A. v Pena*, 187 AD3d 724, 724 [2d Dept 2020]; *see Feldman v. Harari*, 183 AD3d 629 [2d Dept 2020]; *Mason ESC, LLC v Michael Anthony Contr. Corp.*, 172 AD3d 1195 [2d Dept 2020]).

The critical element in considering a motion to dismiss made under CPLR § 3211 [a] [4], is whether both actions arise out of the same subject matter or series of alleged wrongs (*see Board of Mgrs. of the 1835 E. 14th St. Condominium v Singer*, 186 AD3d 1477 [2d Dept 2020]; *DAIJ, Inc. v Roth*, 85 AD3d 959 [2d Dept 2011]). Thus, “it is not necessary that the precise legal theories presented in the first action also be presented in the second action as long as the relief . . . is the same or substantially the same” (*Board of Mgrs. of the 1835 E. 14th St. Condominium v Singer*, 186 AD3d 1477 [internal quotation marks and citations omitted]).

“In deciding a motion to dismiss based on the pendency of another action, the analysis is similar to that employed in entertaining a motion predicated on forum non conveniens. Additionally, a major concern, as a matter of comity, is to avoid the potential for conflicts that might result from rulings issued by courts of concurrent jurisdiction. Generally the court which has first taken jurisdiction is the one in which the matter should be determined and it is a violation of the rules of comity to interfere. However, the practice of determining priorities between pending actions on the basis of dates of filing is a general rule, not to be applied in a mechanical way, regardless of other considerations. Special circumstances warrant deviation from the general, first-filed rule, if the action sought to be restrained is vexatious, oppressive or instituted to obtain some unjust or inequitable advantage” (*St. Paul Fire & Marine Ins. Co. v Getty Properties Corp.*, 228 AD3d 971, 973-974 [2d Dept 2024] [internal quotation marks and citations omitted]).

The Court analyzes the factors to be considered on a CPLR § 3211 [a] [4] motion below.

First, the Prior Special Proceeding and the Present Action arise out of the same claimed wrong: the disinterment by the Defendant of the Decedent from Grave No. 33 to Grave No. 34. This factor weighs in favor of the Defendant.

Second, all the parties in the Present Action were parties to the Prior Special Proceeding. Here, the Plaintiffs herein were the Petitioners in the Prior Special Proceeding, and the Defendant herein was a Respondent in the Prior Special Proceeding. Thus, there is a substantial identity of the parties, “which generally is present when at least one plaintiff and one defendant is common in each action” (*JPMorgan Chase Bank, N.A. v Luxama*, 172 AD3d 1341, 1342 [internal quotation marks and citations omitted]). This factor also weighs in the Defendant’s favor.

The Prior Special Proceeding and the Present Action are not sufficiently similar and the relief sought in each is different. Although the subject matter of the Prior Special Proceeding and the Present Action are related in that both arise out of the disinterment of the Decedent, the relief sought in each matter is different (*see generally Jaber v Elayyan*, 16 AD3d 693 [2d Dept 2019]). Here, the primary relief sought in the Special Proceeding was the internment of the Decedent from Grave No. 34 to Grave No. 33. This relief was granted by Justice Johnson’s Order. In contrast, the

Present Action seeks monetary and punitive damages based upon the Defendant's alleged gross negligence, breach of contract and negligent infliction of emotional distress. The factors that the Prior Special Proceeding and the Present Action are not substantially similar and seek different relief weigh in favor the Plaintiffs (*see Melis v Blake Stone, LLC*, 227 AD3d 882 [2d Dept 2024]).

The final factor to be considered is whether the Prior Special Proceeding is pending. This is a critical factor because when a prior action is no longer pending, a motion to dismiss a second action must be denied (*see id.*). Justice Johnson's Order granting the application to disinter the Decedent from Grave No. 34 and reinter his remains was filed on March 14, 2024. This process took place on March 28, 2024. The Defendant filed this motion on June 18, 2024, approximately 50 days after the Decedent's remains were reinterred. Thus, the Prior Special Proceeding was not pending at the time the Defendant's motion was made in that the primary relief sought therein had been granted (*see id.*; *Hempstead Housing Authority v Middle Country Resources Management, Inc.*, 216 Ad3d 621 [2d Dept 2023]).

The Plaintiffs opposition states as follows on the issue the pendency of the Prior Special Proceeding: "the Court [former Justice Johnson] has already granted the relief sought in the Petition by authorizing the removal of Decedent's remains from Grave #34 and return to their original resting place, and said disinterment and reinterment has already been performed. In sum, ... the 2022 Proceeding has been finally adjudicated and there are no further proceedings to be held."

This factor of whether the Prior Special Proceeding is pending weighs strongly in favor of the Plaintiffs.

After weighing all relevant factors, the Court concludes that dismissal of the Present Action is not warranted. Although former Justice Johnson's Order adjudicated the Special Proceeding, a finding that the Plaintiffs agree took place, the disposition of the Prior Special Proceeding is not formally memorialized by an Order or a Judgment. Accordingly, to formalize its disposition, the Plaintiffs are directed to file a motion to discontinue the Prior Special Proceeding. The Present Action is stayed pending the issuance of an Order that discontinues the Prior Special Proceeding. This determination is authorized by CPLR § 3211 [a] [4]: "the court need not dismiss upon this ground but may make such order as justice requires"; and is in keeping with the underlying purpose of the subject statutory provision: that Courts should not entertain duplicative lawsuits.

III. Conclusion

For the reasons stated above, it is hereby:

ORDERED, that the Defendants' motion is granted in part and denied in part; and it is further,

ORDERED, that the Plaintiffs are directed to file a motion to discontinue the Prior Special Proceeding entitled *Juan Trinidad, et al., v All Faiths Cemetery, et al.*, index number: 715002/2022; and it is further,

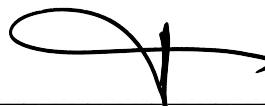
ORDERED, that the Present Action is stayed until such time as an Order discontinuing the Prior Special Proceeding is issued; and it is further,

ORDERED, that the motion is otherwise denied; and it is further,

ORDERED, that the Defendant shall serve a copy of this Order with Notice of Entry upon the Plaintiffs via NYSCEF by February 14, 2025.

This constitutes the Decision and Order of the Court.

Dated: Jamaica, New York
January 14, 2025



MOJGAN C. LANCMAN, J.S.C.

