

Seagrape Invs. LLC v Tuzman
2026 NY Slip Op 32021(U)
May 11, 2026
Supreme Court, New York County
Docket Number: Index No. 164196/2025
Judge: Anar Rathod Patel
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 45

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SEAGRAPE INVESTORS LLC,

Plaintiff,

- v -

KALEIL ISAZA TUZMAN, MICHAEL SINGER,
THE SINGER 1995 FAMILY TRUST,
INNOCREATIVE CAPITAL, LLC, KIT CAPITAL
(NEVIS) LLC, OBRA PIA, LTD., OBRA PIA (U.S.)
FEEDER, LP, OBRA PIA MANAGEMENT GP,
LTD., OBRA PIA, LTD., SURCUSAL COLOMBIA

Defendants.

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INDEX NO. 164196/2025

MOTION DATE 02/06/2026

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 33–54, 57–69, 71–73 were read on this motion to/for STAY/DISMISS.

Defendants Kaleil Isaza Tuzman (“Tuzman”), Michael Singer (“Singer”), The Singer 1995 Family Trust (“Trust”), Innocreative Capital, LLC (“Innocreative”), KIT Capital (Nevis) LLC (“KIT”), Obra Pia, Ltd. (“OP BVI”), Obra Pia (U.S.) Feeder, LP (“OP Feeder”), Obra Pia Management, GP, Ltd. (“OP Management”), and Obra Pia Ltd., Surcusal Colombia (the “Branch”) (collectively, “Defendants”) move to stay this action pursuant to CPLR §§ 2201 and 3211(a)(4), or, in the alternative, to dismiss the Complaint in its entirety pursuant to CPLR §§ 3211(a)(4), 3211(a)(5), and 3211(a)(7). For the reasons as set forth below, Defendants’ Motion to Stay the action is hereby granted.

Relevant Factual and Procedural History¹

This case arises from a series of transactions and prior litigation concerning various loan agreements and the financing of a luxury hotel development project. NYSCEF Doc. No. 1 (“Compl.”) at ¶¶ 21–37. In or around September 2012, Defendant Tuzman and Edward V. Mullen (“Mullen”)—principal of Seagrape—entered into a loan agreement (“Loan Agreement”) whereby Mullen provided a \$1,548,567 loan to Defendant Tuzman which became due and payable on or before January 31, 2013. *Id.* at ¶ 26; NYSCEF Doc. No. 2. In April 2013, Mullen agreed to extend the maturity date of the Loan Agreement to December 31, 2013, in exchange for the conversion of

¹ For purposes of this Motion, the Court hereby accepts the facts as alleged in the Complaint as true.

Mullen's prior equity investments in Defendant Tuzman's companies, JumpTV and KIT Media, Ltd., into debt. Compl. at ¶¶ 28–29.

On May 1, 2013, Defendant Tuzman and Mullen entered into an investment agreement (“Investment Agreement”) pursuant to which Mullen and Oaktree Partners LLP (“Oaktree”) lent KIT Media, Ltd. an additional \$1,850,000. NYSCEF Doc. No. 3. Plaintiff alleges that KIT Media, Ltd. and Defendant Tuzman defaulted and failed to make the required payments under the Investment Agreement. Compl. at ¶ 30.

In or around 2014, Defendant Tuzman advised Mullen that he was seeking financing for a luxury resort development project in Colombia (the “Project”), which he owned through Defendants OP BVI and the Branch. *Id.* at ¶ 31. Defendant Tuzman further stated that he had a contract with Viceroy Hotel Group to serve as the manager and that the Project had been appraised at \$28,200,000. In reliance on Defendant Tuzman's representations, on September 19, 2014, Mullen and Defendant Tuzman agreed to an addendum to the Investment Agreement (“Addendum”) pursuant to which Plaintiff replaced Mullen and Oaktree; Defendant OP Feeder replaced KIT Media, Ltd.; and Defendants Tuzman, KIT, and OP BVI each agreed to serve as guarantors (“Guarantors”) pursuant to the Investment Agreement. *Id.* at ¶ 33; NYSCEF Doc. No. 4. Under the terms of the Addendum, the parties acknowledged that the total outstanding amount due under the Investment Agreement was \$5,000,000, which became due and payable on March 31, 2015. Compl. at ¶¶ 34–36. In exchange for a \$1,000,000 reduction of the existing \$5,000,000 debt, OP Feeder issued 500 limited partnership units to Plaintiff. *Id.* at ¶ 36. Accordingly, the total outstanding balance pursuant to the Addendum was \$4,000,000. *Id.* Further pursuant to the terms of the Addendum, Guarantors agreed to pledge their interests in the Project as collateral, which they represented was appraised at \$28,200,000. *Id.* at ¶ 37.

In September 2015, Defendant Tuzman was indicted in the Southern District of New York on eight counts of securities and wire fraud. *Id.* at ¶ 38. Following the indictment, in reliance on Defendant Tuzman's representations that additional financing was required to protect the Project, Mullen wired \$441,000 to KIT. *Id.* at ¶ 39. Subsequently, Defendant Tuzman was found guilty on charges of conspiracy to commit securities fraud and conspiracy to commit wire fraud, and he agreed to seek out a third party to purchase the Project so that the investors could receive a return on their investments. *Id.* at ¶¶ 41–42. On August 23, 2016, GACP Latin America Partners, LLC (“GACP”) entered into a letter of intent (the “LOI”) to purchase the Project based on an alleged valuation of \$50,200,000, which, upon execution, would have paid Plaintiff its investment back in full. *Id.* at ¶¶ 43–44.

On August 25, 2016, Defendants OP BVI, KIT, OP Management, the Branch, Tuzman (collectively, “Defendant Debtors”), and Plaintiff entered into the Credit Security Acknowledgement (“CSA”) pursuant to which Plaintiff agreed to forbear from foreclosing on the Project to enable GACP to purchase the Project. *Id.* at ¶ 45; NYSCEF Doc. No. 5. In exchange for Plaintiff's forbearance, Defendant Debtors confirmed their joint and several obligation to pay the outstanding sum of \$4,694,806 and issued Plaintiff 137.5 additional limited partnership units in OP Feeder, for a total of 237.5 units with a value of \$2,882,018.00 as of July 31, 2016. Compl. at ¶¶ 47–48. Pursuant to § 5 of the CSA:

[T]he Debtors understand and accept that Seagrape relies on the Personal Guarantee defined in Section 5.6 of the Investment Agreement for the Guaranteed Balance, and the properties defined as “New Collateral” in the Addendum, as real-estate security for the Cash Amount Due (the “Secured Assets”) and, consequently, will grant Seagrape a first degree mortgage on the Secured Assets and commit not to grant any third party any kind of interest in such Secured Assets until such a first degree mortgage has been granted.

NYSCEF Doc. No. 5. at 2.

Pursuant to § 6 of the CSA:

[O]ther than as allowed under the “Fifth” Clause above, or as prohibited under the LP Agreement of the Feeder, any modification to the property rights of any of the Debtors on the Secured Assets, including any sale, mortgage, encumbrance, lien, or establishment of trust agreements in favor of any party, including equity holders, other than Seagrape, among others, must be first authorized in writing by Seagrape unless at the closing of such transaction or transactions the Cash Amount Due is immediately paid to Seagrape in full.

Id. Section 10 of the CSA states that “Debtors shall make their commercially reasonable best efforts to pay Seagrape the amount of US \$4,250,000 by September 1, 2016, and shall, in any event, refrain from making any payment to any other financial creditor before a payment in this amount is made to Seagrape.” *Id.*

On October 14, 2026, to enable GACP to provide Defendant OP BVI with a bridge loan in the amount of \$1,500,000 (“Senior Loan”), the parties entered into a subordination agreement (“Subordination Agreement”) pursuant to which Plaintiff agreed to (1) subordinate its claim against Defendant OP BVI to the Senior Loan and (2) not foreclose on the Project before March 31, 2017. Compl. at ¶¶ 56–57; NYSCEF Doc. No. 6. Plaintiff alleges that Defendant Tuzman failed to close a transaction with GACP by March 31, 2017, and, accordingly, Plaintiff provided formal written notice to GACP of its intent to declare a default under the CSA. Compl. at ¶¶ 61–62. On January 21, 2019, Plaintiff served a Statutory Demand under § 155 of the British Virgin Islands Insolvency Act, 2003, upon Defendant OP BVI seeking payment in the sum of \$5,099,917,49. *Id.* at ¶ 64.

On or about January 31, 2019, Defendants Innocreative and OP BVI entered into a legal defense loan agreement (“Litigation Loan”) pursuant to which Defendant Innocreative funded certain amounts in legal fees and expenses to Defendants. *Id.* at ¶¶ 66–67. Plaintiff alleges that Defendant Innocreative essentially became the principal of litigation brought by Defendant OP BVI against Seagrape, as it stood to receive nearly 100% of the financial benefit. *Id.* at ¶ 71.

On February 4, 2019, Defendant OP BVI brought an action in the Eastern Caribbean Supreme Court, Territory of the Virgin Islands, High Court of Justice (Commercial Division) (the “BVI Proceeding”) seeking to set aside the Statutory Demand. *Id.* at ¶ 74. The Court in the BVI

Proceeding conditionally set aside the Statutory Demand if Defendant OP BVI commenced an action on its claims in New York within thirty (30) days. *Id.* at ¶ 80. On June 24, 2019, Defendant OP BVI commenced litigation in the New York State Supreme Court, which was subsequently removed to the Southern District of New York (“*OP Litigation*”). *Id.* at ¶ 81.

On July 11, 2019, Defendants Trust and OP BVI entered into a second legal defense loan agreement (“Second Litigation Loan”) pursuant to which Defendant Trust agreed to loan Defendant OP BVI \$97,924.00. *Id.* at ¶ 85. Defendant Trust subsequently assigned the Second Litigation Loan to Defendant Innocreative. *Id.* On October 10, 2019, Defendant Innocreative and GACP entered into an assignment agreement (the “Assignment”) whereby GACP assigned the Senior Loan to Defendant Innocreative. *Id.* at ¶ 96. Plaintiff alleges that the Assignment breached §§ 5 and 6 of the CSA. *Id.* at ¶ 98.

On October 13, 2019, Defendants Innocreative, Tuzman, KIT, OP BVI, OP Feeder, OP Management, and the Branch entered into the First Amendment to Senior Loan Documents (“First Amendment”) and the Amended and Restated Consolidated Secured Line of Credit Promissory Note (the “Credit Line Note”), which consolidated and increased the amount of senior debt secured from \$1,500,000 to \$5,000,000. *Id.* at ¶¶ 98–99. Plaintiff alleges that the Credit Line Note and the related agreements breached the terms of the CSA. *Id.* at ¶ 107.

On October 21, 2019, Seagrape filed a separate federal action against certain of Defendants (“*Seagrape I*”). NYSCEF Doc. No. 54 at 14 (“Defs.’ Mem. in Supp.”). On September 25, 2020, the court in the *OP Litigation* granted the defendants’ motion to dismiss the first amended complaint. *Id.* at 13. On September 8, 2021, while Plaintiff’s motion for summary judgment was pending in *Seagrape I*, Plaintiff filed an additional action in federal court adding additional Defendants (“*Seagrape II*”). On July 26, 2023, the court in *Seagrape I* granted Plaintiff’s motion for summary judgment and entered judgment in favor of Plaintiff in the amount of \$8,512,752.32, but held that Plaintiff was barred from collecting on its judgment from Defendant OP BVI at this time, as the debt remained subordinated pursuant to the terms of the Subordination Agreement. *Id.* at 14. On September 15, 2025, the court in *Seagrape II* dismissed the action for lack of subject matter jurisdiction. *Id.* at 15. On October 14, 2025, Plaintiff filed notices of appeal in both *Seagrape I* and *Seagrape II* (collectively, the “Federal Actions”). *Id.* Defendants additionally filed a notice of appeal in *Seagrape I* on October 15, 2025. *Id.*

Plaintiff commenced the present action by the filing of a Summons and Complaint on October 29, 2025. The Complaint, which is identical to the third amended complaint filed in *Seagrape II*, alleges (1) breach of the CSA against Defendants OP BVI, the Branch, OP Management, and KIT; (2) tortious interference with contract against Defendants Singer, Trust, and Innocreative; (3) fraudulent transfer under New York Debtor and Creditor Law §§ 273, 276, and 276-a against all Defendants; and (4) malicious prosecution against all Defendants. On January 21, 2026, the parties appeared for a preliminary conference. NYSCEF Doc. No. 29. Defendants filed the instant motion on February 6, 2026 (NYSCEF Doc. Nos. 33–54); Plaintiff filed its opposition on March 6, 2026 (NYSCEF Doc. Nos. 57–69); and Defendants filed their reply on March 27, 2026 (NYSCEF Doc. No. 71).

Legal Analysis

Pursuant to CPLR § 2201, the Court “has broad discretion to grant a stay in order to avoid the risk of inconsistent adjudications, duplication of proof and potential waste of judicial resources.” *215 W. 84th St Owner LLC v. Ozsu*, 209 A.D.3d 401, 401 (1st Dept. 2022). A stay pending the determination of a related proceeding does not require the complete shared identity of parties, claims, and relief sought, rather, the Court may consider which action was commenced first, the stage of the respective proceedings, and whether a substantial overlap of issues and parties exists. *Asher v. Abbott Lab ’ys*, 307 A.D.2d 211, 211–12 (1st Dept. 2003).

Similarly, pursuant to CPLR § 3211(a)(4), the Court may “make such order as justice requires” pending another action between a substantial identity of parties arising out of the same subject matter or underlying transactions. *See Syncora Guarantee Inc. v. J.P. Morgan Sec. LLC*, 110 A.D.3d 87, 96 (1st Dept. 2013) (“[t]hus, where, as here, a plaintiff seeks the same damages for the same alleged injuries relating to the same transaction from close corporate affiliates, a court may properly make a finding that parties have ‘substantially similar’ identities”); *see also Shah v. RBC Cap. Markets LLC*, 115 A.D.3d 444, 445 (1st Dept. 2014) (under CPLR § 3211(a)(4), it is “inconsequential that different legal theories or claims were set forth in the two actions”). An action on appeal qualifies as a pending action for purposes of a motion to stay analysis. *See OneBeacon Am. Ins. Co. v. Colgate-Palmolive Co.*, 96 A.D.3d 541 (1st Dept. 2012) (action stayed pending the resolution of an appeal in a related action in Massachusetts).

Defendants argue that the Court should stay this action pursuant to CPLR §§ 2201 and 3211(a)(4) pending the adjudication of the appeals in the Federal Actions because (1) the Federal Actions were filed before this action; (2) allowing this action to proceed pending the appeals risks duplicative litigation; and (3) a stay is necessary to avoid inconsistent adjudications. Defs.’ Mem. in Supp. In opposition, Plaintiff contends that the action should not be stayed because there is no risk of duplicative litigation and that a stay would be highly prejudicial to Plaintiff. NYSCEF Doc. No. 57 (“Pl.’s Mem in Opp.”).

As set forth below, the Court finds that the relevant considerations under both CPLR §§ 2201 and 3211(a)(4) provide that a stay of this action pending the resolution of the Federal Actions appeals is warranted.

Substantial Identity of Parties, Claims, and Relief Sought

Substantial identity of parties is generally “present when at least one plaintiff and one defendant is common in each action.” *JPMorgan Chase Bank, Nat’l Ass’n v. Luxama*, 172 A.D.3d 1341, 1342 (2d Dept. 2019). Moreover, “[i]t is not necessary that the precise legal theories presented in the first action also be presented in the second action,” the more relevant inquiry is whether “both actions arise out of the same transaction, involve the same allegations... and seek the same recovery for the same alleged injuries.” *Syncora Guarantee Inc.*, 110 A.D.3d at 96 (internal citations and quotations omitted). Because the complaints filed in *Seagrape II* and the instant action are one and the same, the identity of the parties, causes of action, and relief sought are entirely identical, undoubtedly surpassing the “substantial overlap” standard set forth in *Asher v. Abbott Lab ’ys*.

Nonetheless, even if the Court were to consider *Seagrape I* on its own, the relevant factors under CPLR §§ 2201 and 3211(a)(4) still weigh heavily in favor of staying the instant action. In *Seagrape I*, the plaintiff—Seagrape Investors LLC—is identical to Plaintiff here, and the defendants—Kaleil Isaza Tuzman, KIT Capital Ltd., KIT Capital (Nevis) LLC, Obra Pia Ltd., Obra Pia (U.S.) Feeder, LP, Obra Pia Management, GP, Ltd., Obra Pia Ltd., Sursusal Colombia, Amanda Blaurack, Rosario Davi, Joseph P. Garland, and Kenneth A. Elan—substantially overlap with Defendants here. NYSCEF Doc. No. 47 (“*Seagrape I* Compl.”). Likewise, while the causes of action in *Seagrape I* do not share complete identity with those present here, in both actions Plaintiff seeks relief for alleged harms arising from the same set of facts surrounding the series of transactions between Plaintiff and Defendants concerning the Project. See *Syncora Guarantee Inc.*, 110 A.D.3d at 96; see also *White Light Prods., Inc. v. On the Scene Prods., Inc.*, 231 A.D.2d 90, 94 (1st Dept. 1997) (“A difference in the characterization of damages does not create ‘in and of itself, a substantial difference between the actions’”); *contra Uni-Rty Corp. v. New York Guangdong Fin., Inc.*, 117 A.D.3d 427, 429 (1st Dept. 2014) (denying stay where actions did not involve substantially similar issues). Moreover, the court in *Seagrape I* granted Plaintiff the relief it sought for the alleged harm, in the amount of a \$8,512,752.32 judgment entered in Plaintiff’s favor. Thus, the Court finds that there is a substantial overlap of the parties, claims, and relief sought in this action and *Seagrape I* and *Seagrape II*.

Judicial Economy and Comity

The “first in time” rule in New York provides that “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.” *Syncora Guarantee Inc.*, 110 A.D.3d at 95 (internal citations and quotations omitted). Where a related action is pending before a court of concurrent jurisdiction, “in the interest of judicial economy, the question is which court should defer, as a matter of comity, to the other in order to avoid vexatious litigation and duplication of effort, with the attendant risk of divergent rulings on similar issues.” *White Light Prods., Inc.*, 231 A.D.2d at 93–96.

Defendants argue that allowing this action to proceed simultaneously with the Federal Actions presents a serious risk of duplicative litigation and a waste of judicial resources. Defs.’ Mem. in Supp. at 17–18. Plaintiff does not meaningfully dispute this argument and instead contends that if the Second Circuit overturns the holding in *Seagrape II*, it will withdraw one of the identical actions. Pl.’s Mem. in Opp. at 8.

The Court finds that the issues presented in the instant action and in the appeals now pending in the Federal Actions—first filed in 2019 and 2021—contain substantially similar issues such that allowing this action to proceed risks duplicative litigation and inconsistent rulings. If the Second Circuit were to overturn *Seagrape II*, two identical actions would proceed in two distinct forums. The Court will not allow for the occurrence of such duplicative litigation solely based on a suggestion from Plaintiff, who chose to first commence litigation in federal court, that it will withdraw one of the identical actions. Furthermore, allowing this action to proceed, separate and apart from violating the “first in time” rule, would essentially “enable [Plaintiff] to gain a tactical advantage by steering the dispute into a forum it perceives as more favorable.” *Island Intellectual Property LLC v. TD Ameritrade, Inc.*, No. 152548/2025, 2026 WL 967779, at *3 (N.Y. Sup. Ct. Apr. 08, 2026). The Court will not authorize such judicial forum shopping.

The issues presented on appeal in *Seagrape I* further evidence the risks of inconsistent adjudications that proceeding in this Court would create. In Plaintiff's appellate brief filed in *Seagrape I*, Plaintiff's issues presented for review include whether Plaintiff subordinated its claim for payment only against Defendant OP BVI under the Subordination Agreement and whether certain Defendants breached the CSA. NYSCEF Doc. No. 73 at 16–17. Notwithstanding the risk of duplicative litigation in *Seagrape II*, these issues presented in *Seagrape I* are inextricable with and overlap the substantive issues being litigated in the instant action, such that permitting this action to proceed in parallel would result in precisely the duplication of effort and waste of judicial resources that CPLR §§ 2201 and 3211(a)(4) are designed to prevent. Specifically, said issues are identical to those this Court must determine in its resolution of Plaintiff's first claim in this action for breach of the CSA against Defendants OP BVI, the Branch, OP Management, and KIT. Thus, judicial economy is served by staying this action pending the resolution of the issues on the appeals which will dispose of or limit the issues presented here. *Belopolsky v. Renew Data Corp.*, 41 A.D.3d 322, 323 (1st Dept. 2007).

Absence of Prejudice to Plaintiff

Plaintiff's ultimate argument in opposition to the instant motion is that a stay pending the determination of the appeals in the Federal Actions is prejudicial because of a delay and a speculative risk of Defendants engaging in misconduct. The Court finds that Plaintiff will not suffer a cognizable prejudice from a stay because it retains its right to litigate this action if the Second Circuit dismisses one or both appeals. Plaintiff has failed to demonstrate to this Court that a stay pending the disposition of lawsuits Plaintiff itself chose to initiate and appeal in federal court would impose prejudice upon Plaintiff.

Accordingly, Defendants' Motion to Stay this action pursuant to CPLR §§ 2201 and 3211(a)(4) is hereby granted. The Court will not address the alternative relief sought to dismiss the Complaint as it is deemed as moot pursuant to the granting of the stay.

The Court has considered the parties' remaining contentions and finds them to be unavailing.


Accordingly, it is hereby

ORDERED that Defendants' Motion to Stay is GRANTED and the instant action is hereby stayed pending the determination of the appeals in the Federal Actions; and it is further

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ORDERED that the parties shall file a joint status letter regarding the appeals in the Federal Actions by the earlier of (1) November 12, 2026 or (2) within ten (10) days of any ruling on the appeals in the Federal Actions.

The foregoing constitutes the decision and order of this Court.

5/11/2026		
DATE		ANAR RATHOD PATEL, A.J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE