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| Teachers Retirement Sys. v Cablevision Sys. Corp. |
| 2005 NY Slip Op 30495(U) |
| June 22, 2005 |
| Supreme Court, New York County |
| Docket Number: 602513/03 |
| Judge: Herman Cahn |
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: STEPHAN CAMBI
0602513/2003

PART 99

TEACHERS RETIREMENT SYSTEM
VS
CABLEVISION SYSTEMS CORP.

INDEX NO. _____

MOTION DATE 2/1/05

MOTION SEQ. NO. 009

MOTION CAL. NO. _____

SEQ 9

VACATE

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

MOTION IS DECIDED IN ACCORDANCE WITH WRITING AND/OR AMENDMENT OF DECISION IN MOTION SEQUENCE.....

FILED
JUN 28 2005
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 6/22/05

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 49

-----X
TEACHERS RETIREMENT SYSTEM OF LOUISIANA,
on behalf of itself and all others similarly situated,

Index No. 602513/03

Plaintiff,

- against -

CABLEVISION SYSTEMS CORPORATION, CHARLES
F. DOLAN, JAMES L. DOLAN, THOMAS C. DOLAN,
PATRICK F. DOLAN, WILLIAM J. BELL, ANDREW B.
ROSENGARD, ROBERT S. LEMLE, HANK J. RATNER,
SHEILA A. MAHONEY, JOHN TATTA, CHARLES D.
FERRIS, RICHARD H. HOCHMAN, VICTOR ORISTANO,
VINCENT TESE, KATE McENROE, NOREEN
O'LOUGHLIN, MARTIN VON RUDEN, ISABEL MILLER,
MELANI GRIFFITH, RORIE PAPSCO, and JOSH SAPAN,

Defendants.
-----X

Herman Cahn, J.

Plaintiff moves (seq. no. 009) to vacate this court's order, dated June 10, 2004,
staying this action in favor of a similar action entitled *In re Cablevision/Rainbow Media
Tracking Stock Litig.*, Cons. C.A. No. 19819, which is pending before the Delaware Court of
Chancery, CPLR 2221 (a).

The underlying facts of this putative class action are fully set forth in the June
2004 decision and order, with which familiarity is presumed. That order permitted the parties to
apply for vacatur or modification of the stay, as plaintiff does on this motion.

The June 2004 decision found that the gravamen of both this and the Delaware
action is substantially the same; to wit, that the consideration received by the Rainbow Tracking
Stock shareholders was inadequate because the Exchange Transaction was effected when the

stock was depressed. The breach of contract and unjust enrichment claims in both actions are based on commonly alleged bad faith by the Cablevision directors in connection with the timing and motive for the exchange. Both actions similarly involve interpretation of the Cablevision charter. As the June 2004 decision concluded, at page 14:

The court does not deem it an appropriate use of its discretion to decide issues presently pending before another court in an action that was begun a year before the present action was commenced – when there is substantial overlap of claims and the entire relief sought here can be provided in the Delaware Action merely by the amendment of a complaint.

Plaintiff presents nothing on this motion sufficient to demonstrate that the reasons for the stay, as articulated in the June 2004 decision, no longer obtain. Plaintiff does not dispute that the putative classes in this and the Delaware action are the same; but notes that certain defendants here (i.e., six of the fourteen terminated Cablevision employees, plus Sapan and Rosengard) are not defendants there. That is insufficient to preclude stay relief on the ground of another action pending, which only requires that “at least one plaintiff and one defendant is common in each action” (*Morgulas v J. Yudell Realty, Inc.*, 161 AD2d 211 [1st Dept 1990]). That standard is amply satisfied here, where there is substantial identity of parties – largely, Cablevision and its directors.

Moreover, unlike Cablevision and its directors (who are named in the Delaware action), the defendants herein who are not named in the Delaware action are not critical to the recovery of the putative class, which seeks damages caused by alleged artificial depreciation of the Rainbow Tracking Stock.

Plaintiff is wrong to assert that the issues in the two actions are so different as to warrant vacatur of the stay. Both actions seek the same essential relief – damages for the

depreciation of the Rainbow Tracking Stock. While the complaint in the Delaware action does not precisely plead a cause of action alleging accounting malfeasance, the bedrock misconduct lying at the center of the two actions, as alleged, is the same; as observed in the June 2004 decision, at page 13:

A review and comparison of the respective complaints reveals that the plaintiffs in both actions allege that Cablevision and the Cablevision Directors breached fiduciary duties and contractual obligations by effecting the Exchange Transaction to serve the interests of the Dolan family to the detriment of the Rainbow Tracking Stock stockholders. Similarly, at the heart of both actions, is the claim that the consideration received by the Exchange Transaction was effected at a time when the Rainbow Tracking Stock was depressed.

The present procedural posture of the Delaware action militates even further in favor of continuation of the instant stay. Since the time of the June 2004 decision and order, the Chancery Court has granted plaintiff leave to intervene therein, and vacated its prior stay of the Delaware action (Transcript of Chancery Court Proceedings [4/19/05]).¹ As a consequence, plaintiff is free to assert any causes of action therein.

Indeed, the Chancery Court's vacatur of the Delaware action stay removes an express concern previously harbored by this court in the June 2004 decision (at 15), which gave rise to the order enabling the parties' to make this very motion (*id.*). As that stay no longer exists, and plaintiff has been granted leave to participate in the Delaware action, there is no sufficient ground to disturb the June 2004 stay of this action (*Whitney v Whitney*, 57 NY2d 731, 732 [1982] [court is vested with "broad discretion" in determining a motion to dismiss on the ground of another action pending, CPLR 3211 (a) (4)]).

¹ The referenced transcript was submitted under cover of a letter from Sullivan & Cromwell, LLP (counsel for the Cablevision defendants), dated April 21, 2005, copied to all counsel.

The motion to vacate the June 2004 stay is, therefore, denied.

Accordingly, it is

ORDERED that plaintiff's motion to vacate this court's order, dated June 10, 2004, staying this action in favor of a similar action entitled *In re Cablevision/Rainbow Media Tracking Stock Litig.*, Cons. C.A. No. 19819, which is pending before the Delaware Court of Chancery, is denied; and it is further

ORDERED that any party may make an application to vacate or modify this stay upon sufficient grounds therefor.

Dated: June 22, 2005

ENTER:



J. S. C.

FILED
JUN 28 2005
COUNTY CLERK'S OFFICE
NEW YORK