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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HALSEY MINOR,
Plaintiff,
v.
SOTHEBY'S, INC.,
Defendant

No. C-08-4568 MMC

**ORDER GRANTING MOTION TO
DISMISS OR, IN THE ALTERNATIVE, TO
STAY; DISMISSING COMPLAINT;
VACATING HEARING**

Before the Court is defendant Sotheby's, Inc.'s ("Sotheby's) motion to dismiss, or, in the alternative, to stay, filed November 10, 2008, as amended November 24, 2008. Plaintiff Halsey Minor ("Minor") has filed opposition, to which Sotheby's has replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court deems the matter suitable for decision on the parties' submissions, VACATES the hearing scheduled for January 9, 2009, and rules as follows.

BACKGROUND

On September 2, 2008, Sotheby's filed a complaint against Minor in the Southern District of New York ("New York Action"), in which Sotheby's alleges it entered into three contracts with Minor, that under each contract Minor agreed to purchase at auction a work of fine art, and that Minor breached each contract by not paying the sum due thereunder. (See Barrows Decl., filed November 10, 2008, Ex. 2 ¶¶ 6-12.) On September 22, 2008,

1 Here, both the counterclaim in the New York Action and the complaint in the
2 California Action have been filed by the same plaintiff, Minor, against the same defendant,
3 Sotheby's. Each such pleading raises the same issues, specifically, whether Sotheby's
4 failed to adequately disclose its interest in the Peaceable Kingdom, and, if so, whether
5 Minor was injured by such omission. As set forth below, Minor argues that the first to file
6 rule nonetheless is inapplicable, and, alternatively, that if the rule is applicable, the Court
7 should exercise its discretion to allow the California Action to proceed.

8 Minor argues the first to file rule does not apply because the putative class members
9 in the California Action are not parties to the New York Action, and, consequently, the
10 "same parties" requirement is not met. Because a class has not been certified in the
11 California Action, however, Minor is the only plaintiff in the California Action at the present
12 time, and the "same parties" requirement is met. See Saleh v. Titan Corp., 353 F. Supp. 2d
13 1087, 1091 (S.D. Cal. 2004) (holding, for purposes of "first to file" rule, "putative class
14 members are not parties to an action prior to class certification"); Kidd v. Andrews, 340 F.
15 Supp. 333, 334-37 (W.D. N.Y. 2004) (holding first to file rule prohibited plaintiff, who had
16 filed individual action for damages arising from claim of assault by prison guard, from
17 serving as named plaintiff in later-filed class action suit seeking injunctive relief to prohibit
18 assaults by prison guards).

19 Minor next argues the first to file rule does not apply because Minor seeks different
20 remedies in the two actions. Where two actions filed in different districts involve the same
21 parties and the same issues, and "differ only as to the remedy sought," however, the "first
22 to file rule is applicable." See Pacesetter, 678 F.2d at 95-96.

23 Finally, Minor argues that if the first to file rule is applicable, the Court should decline
24 to exercise its discretion to dismiss the California Action. See Alltrade, Inc. v. Uniweld
25 Products, Inc., 946 F.2d 622, 628 (9th Cir. 1991) (noting "most basic aspect of the first-to-
26 file rule is that it is discretionary"); Pacesetter, 678 F.2d at 95 (noting rule not "rigid or
27 inflexible"). In particular, Minor argues such dismissal "would prejudice the rights of Minor
28 and all class members to the relief properly being sought now in the Northern District of

1 California.” (See Pl.’s Opp., filed December 15, 2008, at 10:25-28.) The instant action
2 was not “properly” filed herein, however, in light of Minor’s prior filing of a counterclaim
3 naming the same party as a defendant and presenting the same issues. In any event,
4 Minor fails to identify any legal bar, or even a practical impediment, to his pursuing against
5 Sotheby’s in the New York Action any additional forms of relief specified herein, and thus
6 Minor has not shown he would be prejudiced in any manner by a dismissal of the instant
7 action. Lastly, with respect to the members of the putative class, Minor fails to show that,
8 in the event Minor does not proceed in the New York Action with a claim on behalf of the
9 putative class, any putative class member who has a claim against Sotheby’s could not
10 proceed with such claims in an appropriate forum, and thus Minor has not shown any
11 putative class member would be prejudiced in any manner by a dismissal of the instant
12 action.

13 Accordingly, the Court finds the first to file rule is applicable and that dismissal of the
14 California Action is, under the circumstances presented, appropriate.¹

15 CONCLUSION

16 For the reasons stated above, Sotheby’s motion to dismiss is hereby GRANTED,
17 and the complaint is hereby DISMISSED, without prejudice to Minor’s pursuing his claims
18 against Sotheby’s in the New York Action and without prejudice to any putative class
19 member’s filing a claim in an appropriate forum.

20 **IT IS SO ORDERED.**

21
22 Dated: January 7, 2009

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MAXINE M. CHESNEY
United States District Judge

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¹In light of this finding, the Court does not address Sotheby’s alternative request to
28 stay ruling on the motion to dismiss, pending a decision by the Southern District of New
York as to whether to enjoin Minor from proceeding herein.