

<b>Hoffman v AT&amp;T Inc.</b>
2019 NY Slip Op 31811(U)
June 21, 2019
Supreme Court, New York County
Docket Number: 650797/2019
Judge: Barry Ostrager
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART IAS MOTION 61EFM

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ROBERT HOFFMAN,  
  
Plaintiff,

INDEX NO. 650797/2019

MOTION DATE 04/24/2019

- v -

MOTION SEQ. NO. 002

AT&T INC., RANDALL L. STEPHENSON, JOHN J. STEPHENS, SAMUEL A. DI PIAZZA JR., RICHARD FISHER, SCOTT T. FORD, GLENN H. HUTCHINS, WILLIAM E. KENNARD, MICHAEL B. McCALLISTER, BETH E. MOONEY, JOYCE M. ROCHÉ, MATTHEW K. ROSE, CYNTHIA B. TAYLOR, LAURA D'ANDREA TYSON, and GEOFFREY Y. YANG,

**DECISION + ORDER  
ON MOTION**

Defendants.

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HON. BARRY R. OSTRAGER:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 27, 28, 29, 30, 31, 32, 33, 42, 43, 44, 45, 46, 47, 48, 50, 51, 52, 53, 54, 55, 61, 62

were read on this motion to/for STAY

OSTRAGER, J.:

Defendants' motion to stay this action in favor of a subsequently filed and unquestionably more comprehensive federal action is denied without prejudice to renew for the following reasons.

This is a securities class action on behalf of the former shareholders of Time Warner Inc. ("Time Warner") alleging violations of the Securities Act of 1933 ("1933 Act") in connection with the June 2018 acquisition of Time Warner by AT&T, Inc. ("AT&T"). In order to acquire Time Warner, AT&T issued 1.185 billion shares of new AT&T stock pursuant to a Registration Statement that, plaintiff alleges, failed to disclose serious deterioration in AT&T's DirecTV and DirecTV Now business. New York resident Robert Hoffman initially filed this class action

complaint on February 7, 2019. On April 10, 2019 the Court granted *on consent* a motion to designate Scott & Scott Attorneys at Law LLP and Hedin, Hall LLP as co-lead counsel for the proposed class. Subsequently, a First Amended Class Action Complaint was filed on May 7, 2019 together with discovery requests. This Court has subject matter jurisdiction over this case. *See Cyan, Inc. v. Beaver Cnty. Emps. Ret. Fund*, 138 S. Ct. 1061, 1069, 1075 (2018). And, in the Commercial Division, discovery is not stayed by motion practice without leave of the Court.

On April 1, 2019 plaintiff Melvin Gross filed a federal complaint in the United States District Court for the Southern District of New York alleging violations of both the 1933 Act and the Securities Exchange Act of 1934 (the “1934 Act”), *Gross v. AT&T Inc.*, No. 19 Civ. 2892 (S.D.N.Y.) (Caproni, J.) (the “federal action”). The federal action asserts broader claims on behalf of classes of variously situated Time Warner and AT&T shareholders. Pursuant to the Private Securities Litigation Reform Act (“PSLRA”), the federal Court is presently considering applications by at least five sets of plaintiff’s counsel to be designated either lead counsel or co-lead counsel. The duration of that process is uncertain.

Prior to the creation of the Commercial Division of the New York State Supreme Court, and even thereafter, the general rule was that securities actions in this Court that were less comprehensive than related federal court actions, including actions first filed in this Court, should be stayed in favor of the more comprehensive federal court actions. *See, e.g., Barron v. Bluhdorn*, 68 A.D.2d 809 (1<sup>st</sup> Dep’t 1979). The general rationale of *Barron* and its progeny is that where there is a substantial overlap between the parties and issues and relief sought in both state and federal courts, staying the state court case would avoid the waste of judicial resources, potential inconsistent rulings, and duplication of effort. And, federal courts have been perceived to have a greater familiarity with securities law.

Clearly, after the United States Supreme Court's ruling in *Cyan, Inc. v. Beaver Cnty. Emps. Ret. Fund, supra*, and the creation of specialized commercial courts in New York, the reasoning of the *Barron* case cannot be mechanically applied. The circumstances present in this case do not lend themselves to the historical *Barron* analysis. Here, a New York plaintiff has initiated discrete claims on behalf of Time Warner shareholders that can be well on the way to judicial resolution while five sets of plaintiff's lawyers jockey for control of a federal court action that includes claims on behalf of individuals who are not members of the state court class as well as the members of the state court class. The liability issues in a 1933 Act case are, if anything, less complex than issues the Commercial Division resolves every week. Defendants are free to test the merits of plaintiff's claims before this Court, which is familiar with the issues in this case, and there is no reason to believe that the merits of plaintiff's claims cannot be resolved as efficiently and, perhaps, more expeditiously than the 1933 Act claims asserted in the federal action because the likelihood is that more than one set of counsel will be appointed to represent differently situated shareholders in the federal action and the pleadings in the federal court may not be fixed for an extended period of time. And, because the federal action involves broader issues and multiple classes of shareholders, the federal court may consider staying the 1933 Act claims in the federal action in favor of this earlier filed action. *See, e.g., Krieger v. Atheros Communications, Inc.*, 776 F. Supp. 2d 1053, 1057-63 (N.D. Cal. 2011) (staying state law claims under the *Colorado River* Doctrine while allowing 1934 Act claims to proceed).

In short, the "first filed" rule must have some vitality in a post-*Cyan* world. Otherwise, 1933 Act cases could never proceed in state court whenever a subsequently filed federal court action asserts claims in addition to 1933 Act claims.

If developments in the federal action provide sufficient cause for this Court to revisit the disposition of this motion to stay proceedings in this action, the Court will entertain a subsequent motion to stay this action. In the meantime, the case shall proceed.

June 21, 2019

*Barry R. Ostrager*  
BARRY R. OSTRAGER (J.S.C.)  
**BARRY R. OSTRAGER**  
JSC

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED			<input type="checkbox"/>	GRANTED IN PART		
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