

**Knowyourmeme.com Network, Inc. v Elraviv**

2021 NY Slip Op 32416(U)

November 22, 2021

Supreme Court, New York County

Docket Number: 650667/2021

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ANDREW BORROK PART 53**

*Justice*

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KNOWYOURMEME.COM NETWORK, INC., PALISADES  
CAPITAL, INC.,

Plaintiff,

- v -

ORI ELRAVIV, MINDAD INC, MINDAD DIGITAL LTD

Defendant.

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INDEX NO. 650667/2021

MOTION DATE 04/05/2021,  
08/31/2021

MOTION SEQ. NO. 001 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 25, 30, 40, 41

were read on this motion to/for DISMISSAL

The following e-filed documents, listed by NYSCEF document number (Motion 003) 31, 32, 33, 34, 35, 36, 37, 38, 39

were read on this motion to/for INJUNCTION/RESTRAINING ORDER

Upon the foregoing documents and for the reasons set forth on the record (11.22.21), the cross-motion to dismiss (Mtn Seq. No. 3) must be granted pursuant to CPLR § 3211(a)(5) because the issue of whether the Plaintiffs must bring this action in Israel is *res judicata* (*Knowyourmeme.com Network v Nizri*, 2021 US Dist LEXIS 186230 [SDNY Sept. 28, 2021]), and the motion (Mtn. Seq. No. 3) for a preliminary injunction and the motion to dismiss (Mtn. Seq. No. 1) must be denied as moot.

Previously, by Summons and Verified Complaint, dated October 7, 2020, the Plaintiffs commenced an action (Index No. 655087-2020; the **Prior Action**) in New York County captioned *Knowyourmeme.com Network, Inc., and Palisades Capital, Inc. v Jacob Nizri, We Endeavor Ltd., and Literally Media Ltd.* Pursuant to 28 USC §§ 1331, 1441 and 1446, on

November 23, 2020, the defendants in the Prior Action removed (Index 20-CV-9869) the Prior Action to the United States District Court for the Southern District of New York (the SDNY). In the Prior Action, the Plaintiffs brought claims sounding in breach of contract, specific performance, fraudulent inducement or fraudulent misrepresentation, negligent misrepresentation, interference with contractual relationship, intentional interference with prospective business advantage, and unjust enrichment seeking, among other things, \$64,500,000.

In the SDNY, the Plaintiffs sought either remand of the Prior Action arguing that Literally Media Ltd. was Brooklyn based and that there was no diversity or to add additional defendants which would destroy diversity and the defendants in the Prior Action moved to dismiss arguing, *inter alia*, that the action was barred by a forum selection clause in a letter of intent, dated September 17, 2018 by and between Liveleak Global Internet, Inc. and Literally Media Ltd., as amended (the LOI) mandated that the claims be brought in Israel.

The SDNY by Memorandum Decision and Order dated September 28, 2021 and adopting the Report and Recommendation dated August 30, 2021 rejected the argument that Literally Media Ltd. was a New York entity and dismissed the case pursuant to the doctrine of forum non-convenience based on the forum selection clause contained in the LOI. In doing so, the SDNY interpreted the forum selection clause in the LOI and held that the scope of the forum selection clause was not limited solely to claims for breach of the contract and included tort based claims citing *Fagbeyiro v Schmitt-Sussman Enterprises, Inc.*, No. 17-CV-7056 (VSV), 2018 WL 4681611, at \* 2 [SDNY Sept. 28, 2018] (quoting *Cfirstclass Corp. v Silverjet PLC*, 560 F

Supp2d 324, 329 [SDNY 2008]; *see also Convertier v Concourse Rehab. & Nursing, Inc.*, 985 NYS2d 683, 684 [NY App Div 2014]; *Magi XXI, Inc. v Stato della Citta del Vaticano*, 714 F3d 724 [2d Cir 2013]).


This action also arises out of the LOI (NYSCEF Doc. No. 10). Here, the Plaintiffs also assert claims sounding in fraudulent inducement or fraud misrepresentation, negligent misrepresentation, interference with contractual relationship, intentional interference with prospective business advantage, unjust enrichment, declaratory relief under GBS § 130, declaratory relief under GBS §133 and seeks, among other things, damages in the amount of \$64,500,000.

It is of no moment that now the Plaintiffs have added the defendants that the Plaintiffs sought (but were not permitted) to add in the Prior Action. The Plaintiffs had a full and fair opportunity to litigate whether they could maintain this action in the United States and the SDNY determined they can not. Stated differently, it does not matter that these defendants did not have an opportunity to litigate this issue. The Plaintiffs did and these claims which are, in sum and substance, the same claims asserted in the Prior Action (i.e., in that they are predicated on the LOI) must therefore be litigated in Israel. That is the holding of the Prior Action by the SDNY. For completeness, and for the reasons discussed at oral argument, the Plaintiff lacks standing to bring the GBS claims as the harm to the Plaintiff is not caused by any purported violation of the GBS. Thus, the cross-motion to dismiss (Mtn. Seq. No. 3) pursuant to CPLR 3211(a)(5) must be granted and the motion for a preliminary injunction (Mtn. Seq. No. 3) and the motion to dismiss

(Mtn. Seq. No. 1) must be denied as moot. The court has considered the Plaintiffs remaining arguments and finds them unavailing.

Accordingly, the action is dismissed without prejudice in the event that the Plaintiffs motion for reconsideration is granted by the SDNY.

11/22/2021  
DATE

  
ANDREW BORROK, J.S.C.

CHECK ONE:  CASE DISPOSED  DENIED  NON-FINAL DISPOSITION  OTHER

APPLICATION:  GRANTED  SETTLE ORDER  SUBMIT ORDER

CHECK IF APPROPRIATE:  INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE