

3B Assoc., LLC v eCommission Solutions, LLC

2023 NY Slip Op 34247(U)

November 20, 2023

Supreme Court, New York County

Docket Number: Index No. 652280/2022

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
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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3B ASSOCIATES, LLC, 3B GROUP, INC., Plaintiff, - v - ECOMMISSION SOLUTIONS, LLC, PAUL HOFFMANN, GRETCHEN HOFFMANN Defendant.	<table border="0"> <tr> <td style="padding-right: 10px;">INDEX NO.</td> <td style="border-bottom: 1px solid black; padding-left: 10px;">652280/2022</td> </tr> <tr> <td style="padding-right: 10px;">MOTION DATE</td> <td style="border-bottom: 1px solid black; padding-left: 10px;">06/19/2023, 06/22/2023</td> </tr> <tr> <td style="padding-right: 10px;">MOTION SEQ. NO.</td> <td style="border-bottom: 1px solid black; padding-left: 10px;">002 003</td> </tr> </table> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>	INDEX NO.	652280/2022	MOTION DATE	06/19/2023, 06/22/2023	MOTION SEQ. NO.	002 003
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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31, 40, 41, 43, 45, 55, 56, 59, 60
 were read on this motion to/for AMEND CAPTION/PLEADINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 32, 33, 34, 35, 36, 37, 38, 39, 42, 44, 46, 47, 48, 49, 50, 51, 52, 53, 54, 57, 58, 61, 62, 63, 64
 were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

Upon the foregoing documents, the plaintiffs’ motions to amend (Mtn. Seq. No. 002) and to consolidate this action with *3B Associates, LLC v eCommission Solutions, LLC*, index no. 657537/2017 (the **Breach Action**) are both granted.

By way of procedural background, pursuant to a Decision and Order dated April 6, 2022, this Court granted the plaintiffs’ motion for partial summary judgment against eCommission Solutions, LLC (**eCommission**) in the Breach Action (the **Breach Decision**; index no. 657537, NYSCEF Doc. No. 255). On June 30, 2022, the plaintiffs’ commenced this action against eCommission, Paul Hoffman, and Gretchen Hoffman alleging that they are unable to collect on their judgment from the Breach Action because Mr. Hoffman fraudulently transferred over \$4 million from eCommission to himself and his wife (NYSCEF Doc. No. 5, ¶ 59).

On March 21, 2023, the Appellate Division, First Department vacated the Breach Decision, denied summary judgment and remanded the Breach Action for further proceedings because there remained factual issues (the **Appellate Decision**; index no. 657537, NYSCEF Doc. No. 272). Following the Appellate Decision, the plaintiffs move to consolidate this action with the Breach Action while the defendants cross-move to stay this action until the resolution of the Breach Action.

I. Plaintiffs' motion to amend

The plaintiffs' motion to amend the First Amended Verified Complaint (the **FAC**; NYSCEF Doc. No. 5) is substantively unopposed. The only reason given by the defendants against granting the motion is that amending the FAC is unnecessary because this case should be stayed pending resolution of the Breach Action. As will be discussed below, the defendants' request for a stay is denied.

For the avoidance of doubt, because the proposed amendments would not result in surprise or prejudice and are not palpably insufficient as a matter of law, granting the motion to amend is appropriate (*McGhee v Odell*, 96 AD3d 449, 450 [1st Dept 2012]).

II. Plaintiffs' motion to consolidate and defendants' cross-motion to stay

There is a preference for consolidation in the interest of judicial economy and ease of decision-making where there are common questions of law and fact (*Progressive Ins. Co. v Countrywide Ins. Co.*, 10 AD3d 518, 519 [1st Dept 2004]). The two cases involve the same question of law – whether eCommission is liable to the plaintiffs for breach of contract, which liability is the basis for which the plaintiffs allege that Mr. Hoffman’s transfers of money to himself and his wife were fraudulent. As such, consolidating the two cases for trial is appropriate and the motion is granted.

For completeness, the defendants’ cross-motion to stay this action until the resolution of the Breach Action is denied. A trial schedule for the Breach Action has not been set. Discovery in this action may be streamlined on the issue of whether Mr. Hoffman fraudulently transferred money to himself and his wife without delaying the Breach Action’s resolutions.

It is hereby ORDERED that the plaintiffs’ motion to amend the FAC is granted, and the Second Amended Verified Complaint in the proposed form (NYSCEF Doc. No. 31) shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that the plaintiffs’ motion to consolidate is granted and the above-captioned action be consolidated for trial with *3B Associates, LLC v eCommission Solutions, LLC*, index no. 657537/2017; and it is further

ORDERED that the consolidation and the consolidated action shall bear the following caption:

3B ASSOCIATES, LLC, 3B GROUP, INC.,

Plaintiff,

- v -

ECOMMISSION SOLUTIONS, LLC, PAUL HOFFMANN,
GRETCHEN HOFFMANN

Defendant.

And it is further;

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that, within 30 days of this decision and order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the Court (60 Centre Street, Room 141 B), who shall consolidate the documents in the actions hereby consolidated and shall mark the records to reflect the consolidation; and it is further

ORDERED that counsel for the plaintiff shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed; and it is further

ORDERED that service of this order upon the Clerk of the Court shall be made in hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for*

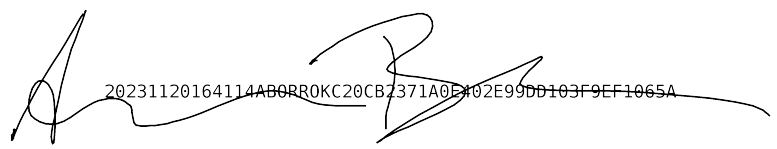
Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents being consolidated in the consolidated case file under the index number of the consolidated action in the New York State Courts Electronic Filing System or make appropriate notations of such documents in the e-filing records of the court so as to ensure access to the documents in the consolidated action; and it is further

ORDERED that, within 30 days of this decision and order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who is hereby directed to reflect the consolidation by appropriately marking the court's records; and it is further

ORDERED that the defendants’ cross-motion to stay this action is denied; and it is further

ORDERED that the parties shall attend a preliminary conference on **December 6, 2023 at 12pm.**


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11/20/2023
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE