

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

PRESENT: SCARPULLA, SALIANN Justice

PART 39

19 ENTERTAINMENT, INC.

INDEX NO. 159672/2015

MOTION DATE 4/18/2016

- v -

MCDONALD, MICHAEL

MOTION SEQ. NO. 001

The following papers, numbered 1 to _____, were read on this application to/for _____
Notice of Motion/ Petition/ OSC - Affidavits - Exhibits No(s) _____
Answering Affidavits - Exhibits No(s) _____
Replying No(s) _____

Upon the foregoing papers, it is ordered that the motion is decided in accordance with the accompanying memorandum decision.

DATE: 9/23/2016

Signature of Scarpulla, Saliann, JS

- 1. CHECK ONE : [] CASE DISPOSED [X] NON-FINAL DISPOSITION
2. APPLICATION : [] GRANTED [] DENIED [] GRANTED IN PART [X] OTHER
3. CHECK IF APPROPRIATE : [] SETTLE ORDER [] SUBMIT ORDER
[] DO NOT POST [] FIDUCIARY APPOINTMENT [] REFERENC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 39

-----X
19 ENTERTAINMENT, INC.,

Plaintiff,

DECISION/ORDER
Index No. 159672/2015

-against-

MICHAEL MCDONALD, MICK MANAGEMENT, INC.

Defendants.

-----X
HON. SALIANN SCARPULLA, J.:

In this action stemming from the breach of a talent management agreement, defendants Michael McDonald (“McDonald”) and Mick Management, Inc. (“Mick”) (collectively, “Defendants”) move (in motion sequence 001) for an order, pursuant to CPLR § 2201, to stay this action.

Plaintiff 19 Entertainment, Inc. (“Plaintiff” or “19 Entertainment”) is a New York corporation that develops and manages the winner and some contestants from each season of *American Idol*, the television singing competition. 19 Entertainment launched the careers of numerous singers, including Phillip Phillips (“Phillips”). During the summer of 2011, Phillips auditioned for the eleventh season of *American Idol* and was chosen as one of 24 semi-finalists in January 2012. 19 Entertainment requires each season’s semi-finalists to “negotiate and execute a written management agreement prior to the selection of the top 10-13.” After Phillips was picked as a semi-finalist, 19

Entertainment presented him with a management agreement (“Agreement”) which he was required to execute, following an opportunity to negotiate its terms with the aid of an attorney, in order to continue in the competition.

Plaintiff made a presentation to all semi-finalists giving a general description of the Agreement and informed them that Plaintiff would pay for an experienced entertainment attorney to collectively represent the semi-finalists during negotiations. Plaintiff gave the semi-finalists a choice of three pre-selected attorneys, each of whom made a presentation to the semi-finalists. Following these presentations, Phillips and the other semi-finalists chose Laurie L. Soriano from King, Holmes, Paterno & Berliner, LLP¹ to represent them. On January 27, 2012, after what Plaintiff describes as a week’s worth of intensive and good faith negotiations between the parties’ counsel, Phillips executed the Agreement. On May 23, 2012, Phillips was announced as the *American Idol* eleventh season winner.

Post-win, 19 Entertainment provided Phillips with a talent manager to oversee Phillips’ career, including all major decision and upper-level discussions, and a day-to-day manager, picked by Phillips, to handle logistics. Phillips selected Rit Venerus (“Venerus”) as his business manager. Plaintiff claims that “[t]hrough its services and efforts made under the Agreement’s terms, 19 Entertainment helped successfully transition Phillips from an *American Idol* winner to a breakout star.” Plaintiff marketed

¹ Now known as King, Holmes, Paterno & Soriano, LLP.

and promoted Phillips' albums and secured sponsorships, endorsements, and marquee appearance and performance opportunities.

From July 6 to December 17, 2013, Phillips performed as the opening act for John Mayer ("Mayer") on his "Born and Raised" tour (the "Tour"). Plaintiff alleges that Defendant Michael McDonald, founder of defendant Mick Management, Inc., was Mayer's talent manager and that Phillips first met Defendant McDonald while on tour with Mayer. According to the complaint, McDonald & Venerus had a preexisting business relationship and personal friendship and, at the time that Phillips met McDonald, Venerus also worked as Mayer's business manager.

Plaintiff contends that Defendants knew that Phillips was managed by 19 Entertainment because Plaintiff's employees contacted Phillips during the Tour and McDonald met with and interacted with Plaintiff's employees. Phillips traveled with McDonald to South America in September 2013, where they spent time together outside the presence of 19 Entertainment's employees. Once Phillips returned from South America, he told Plaintiff to copy Venerus on all communications between Plaintiff and Phillips and that he would not make any decisions without input from Venerus.

Plaintiff allege that, in 2014, Phillips' representatives started to raise numerous issues concerning Plaintiff's management of Phillips. And, in February 2014, Soriano contacted Plaintiff about issues regarding Phillips' day-to-day manager and mentioned the idea of Phillips terminating Plaintiff. Plaintiff told Soriano that the Agreement gave Plaintiff the right to cure any issues, and claims that it then resolved the issues raised by

Soriano. Subsequently, Plaintiff assisted Phillips with the release of his second album, which generated “significantly weaker” sales than his first album.

On December 22, 2014, Plaintiff received a letter from Phillips’ attorney in which Phillips stated that he was unilaterally terminating the Agreement, which Plaintiff states is prohibited by the Agreement. Then, on January 22, 2015, Phillips filed a petition with the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California (the “California Labor Commission” or “CLC”). That action, *Phillip Phillips v. 19 Entertainment, Inc., et al*, Case No. TAC-38383, among other things, seeks a determination that Plaintiff violated California’s Talent Agencies Act (“TAA”) and that the Agreement is therefore void and unenforceable. It is currently pending before the CLC.²

19 Entertainment states that shortly after filing the CLC petition, Phillips hired Defendants as his personal manager in violation of the Agreement. The complaint claims that Defendants induced Phillips to “skirt” his obligations under the Agreement, including making commission payments to 19 Entertainment. Plaintiffs also state that Defendants made false statements to music industry insiders that they replaced Plaintiff as Phillips’ manager.

² In a letter, dated May 25, 2016, Plaintiff informed me that it filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Southern District of New York. The bankruptcy action, *In re 19 Entm’t, Inc.*, No. 16-11121 (SMB) (Bankr. S.D.N.Y. filed Apr. 28, 2016), automatically stayed Phillip Phillips’ pending action before the CLC. In a response letter, dated May 26, 2016, Defendants noted that Phillips may apply to Bankruptcy Court to lift the automatic stay and that Plaintiff may also agree to a lifting of the stay. Accordingly, Defendants concludes that Plaintiff’s bankruptcy filing is “of no consequence with regard to [D]efendants’ pending stay motion.”

Plaintiff brought this action against Defendants on September 21, 2015, alleging tortious interference with contract, tortious interference with prospective contractual relations and unjust enrichment. 19 Entertainment seeks compensatory and punitive damages as well as attorney fees.³

Defendants now move to stay the action pursuant to CPLR § 2201, pending the resolution of the proceeding that Phillips initiated before the California Labor Commission.

Discussion

Under CPLR § 2201, a court “may grant a stay of proceedings in a proper case, upon such terms as may be just.” Defendants argue that this Court should grant a stay in this action to promote judicial efficiency - the first-filed California proceeding may result in a finding that the Agreement between Plaintiff and Phillips is unenforceable, rendering Plaintiff’s claim of tortious interference with contract unprovable. Defendants also contend that a stay would serve the interests of comity and respect California’s public policy in that it would recognize the CLC’s “special competence” to resolve the question of the Agreement’s validity. Lastly, Defendants argue that the equities favor a stay because granting a stay would result in little if any prejudice to Plaintiff (*i.e.* only the

³ On June 2, 2016, Plaintiff filed an adversary complaint in the New York Bankruptcy Court against Phillip Phillips (Case No. 16-11090) for, among other things, breach of the Agreement and to recoup monies that it alleges Phillips owes to Plaintiff under the Agreement.

delay of this action) whereas denial of a stay would result in significant prejudice to Defendants who would be “forced to defend costly and potentially unnecessary litigation.”

Plaintiff, in opposition, argues that Defendants do not meet the standard for a stay because they cannot demonstrate “complete identity” of the parties in this action and the CLC case as Phillips is not a party here and Defendants are not parties in the California action. Plaintiff also argues that resolution of the CLC proceeding would not dispose of all of the claims in this case.

Generally, “only where the decision in one action will determine all the questions in the other action, and the judgment on one trial will dispose of the controversy in both, is a stay justified; this requires a complete identity of the parties, the causes of action and the judgment sought.” *952 Associates, LLC v. Palmer*, 52 A.D.3d 236, 236-237 (1st Dept. 2008). However, stays have also been upheld in cases where the parties and issues in two actions were not completely identical but where a stay’s issuance was supported by “the familiarity of the [other] court with the issues, the substantial identity of the parties, and interdependence of the issues.” *Certain Underwriters at Lloyd’s London v. Pneumo Abex Corp.*, 36 A.D.3d 441 (1st Dept. 2007); *see also Asher v. Abbott Laboratories*, 307 A.D.2d 211 (1st Dept. 2003) (holding that a stay may be appropriate where there is “substantial identity” between two actions after considering “issues of comity, orderly procedure, and judicial economy”); *Concord Associates, L.P. v. EPT Concord, LLC*, 101 A.D.3d 1574 (3d Dept. 2012) (finding that where many of the factual issues in the case before it and a related federal action were “sufficiently similar,” even

though the parties and issues in the two cases were not “completely identical,” a stay was appropriate as it would “further the interests of justice by preventing inequitable results and promote orderly procedure by furthering the goals of comity and uniformity.”).

The primary dispute in the CLC proceeding is whether Plaintiff violated the TAA by acting as an unlicensed talent agency in the course of its work with Phillips. If the CLC finds that Plaintiff acted as an unlicensed agent, then Phillips seeks a determination that the Agreement is unenforceable and void ab initio. Plaintiff’s first cause of action here is that Defendants tortiously interfered with the very Agreement whose validity is the central issue of the CLC action.

Plaintiff’s other claims, although not identical to the claims in the CLC action, also contain overlapping issues and the CLC’s determination “may dispose of or limit issues which are involved in [this] action.” *Belopolsky v. Renew Data Corp.*, 41 A.D.3d 322, 323 (1st Dept. 2007) (citation omitted). Indeed, the CLC’s decision will directly affect whether 19 Entertainment is entitled to any monetary award in this action. Moreover, awaiting the resolution of the CLC proceeding first is in the interest of judicial economy, comity with California, and respect for its important public policy. And, if Plaintiff prevails in California, it can then return to New York to pursue this action. Accordingly, I grant a stay of this action.

In accordance with the foregoing, it is

ORDERED that the motion by defendants Michael McDonald and Mick Management, Inc. to stay the action pursuant to CPLR § 2201 is granted to the extent of

staying further proceedings in this action, except for an application to vacate or modify the stay; and it is further


ORDERED that either party may make an application by order to show cause to vacate or modify this stay upon the final determination of the proceeding known as *Phillip Phillips v. 19 Entertainment, Inc., et al*, Case No. TAC-38383, pending before the Division of Labor Standards, Department of Industrial Relations, State of California; and it is further

ORDERED that the defendants are directed to serve a copy of this order with notice of entry on the Trial Support Office (Room 158).

This constitutes the decision and order of the Court.

DATE :

9/23/2016


SCARPULLA, SALIANN, JSC