

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT**

Davis v. Commack Hotel, LLC

2022 N.Y. Slip Op. 06905 (N.Y. Ct. App. 2022) · No. 2019-08083 · Decided December 7, 2022

SUMMARY

The Appellate Division, Second Department affirmed the denial of the plaintiff's motion to stay a state personal-injury action pending resolution of a related federal action. The court held that the state and federal actions lacked substantial identity because the federal action involved alleged unconstitutional retaliation by Suffolk County and New York State Troopers, not the defendants in the state action.

OPINION

PER CURIAM.

Davis v Commack Hotel, LLC (2022 NY Slip Op 06905) Davis v Commack Hotel, LLC 2022 NY Slip Op 06905 Decided on December 7, 2022 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on December 7, 2022 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department BETSY BARROS, J.P.

ROBERT J. MILLER DEBORAH A. DOWLING BARRY E. WARHIT, JJ. 2019-08083 (Index No. 12197/11) [*1]Stanley Davis, etc., appellant, vCommack Hotel, LLC, etc., respondent, et al., defendant. Stanley Davis, Shirley, NY, appellant pro se. DECISION & ORDER In an action to recover damages for personal injuries, etc., the plaintiff appeals from an order of the Supreme Court, Suffolk County (David T. Reilly, J.), dated May 9, 2019.

The order denied the plaintiff's motion to stay this action pending a determination by the United States District Court, for the Eastern District of New York, in an action entitled Stanley Davis v County of Suffolk, et al., pending under Docket No. 18-CV-0303. ORDERED that the order is affirmed, without costs or disbursements.

On November 13, 2010, the plaintiff's son (hereinafter the decedent) was stabbed to death by the defendant Carlos Rodriguez during a party in a room at a hotel owned by the defendant Commack Hotel, LLC, doing business as Howard Johnson (hereinafter Howard Johnson).

The plaintiff, as administrator of the decedent's estate, commenced this action against Howard Johnson and Rodriguez asserting, inter alia, causes of action to recover damages for negligence, wrongful death, and conscious pain and suffering.

The plaintiff was awarded summary judgment against the defendants on the issue of liability, which order was affirmed, insofar as appealed from, by this Court (see *Davis v Commack Hotel, LLC*, 174 AD3d 501). On or about May 8, 2019, the plaintiff moved to stay this action pending the determination of an action pending in the United States District Court, for the Eastern District of New York, entitled *Davis v County of Suffolk, et. al*, which alleged unconstitutional retaliation against the plaintiff by the County of Suffolk and New York State Troopers.

The plaintiff's motion to stay this action was denied, as the Supreme Court determined that "the plaintiff's action in the Federal Court has no bearing on the merits of the instant litigation." The plaintiff appeals, and we affirm. "Except where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just" (CPLR 2201).

Although it has been held that "a stay pending determination of a related proceeding should be granted only when the other proceeding shares complete identity of parties, claims and relief sought," it has also been held that a stay may be warranted "when there is substantial identity between state and federal actions" (*Asher v Abbott Labs.*, 307 AD2d 211, 211).

"The latter instance is justified upon due consideration of issues of comity, orderly procedure, and judicial economy" (*id.*; see *Trinity Prods., Inc. v Burgess Steel LLC*, 18 AD3d 318, 319). Here, the plaintiff's motion for a stay was properly denied because there was not a substantial identity between the state and federal actions, as the federal action alleged unconstitutional retaliation against the plaintiff by the County of Suffolk and New York State Troopers, and did not involve any of the defendants named in this state action.

The plaintiff's remaining contentions are not properly before this Court. BARROS, J.P., MILLER, DOWLING and WARHIT, JJ., concur. ENTER: Maria T. Fasulo Clerk of the Court