

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION— CIVIL**

EUN Y. WOO	:	October Term, 2010
<i>Plaintiff</i>	:	
v.	:	Case No. 02633
EUN AE OH ET AL.	:	
<i>Defendants,</i>	:	
EUN AE OH	:	
<i>Joinder Plaintiff</i>	:	Commerce Program
v.	:	
V. MOON AHN ESQUIRE	:	Control No. 11062993
<i>Joinder Defendant</i>	:	

MEMORANDUM OPINION

Plaintiff, Eun Young Woo (“Woo,”) is the owner of half the stock of J.P. Food Services, Inc. (the “Corporation,”) an entity which owns 100% of a convenience store located in Philadelphia, Pennsylvania. Defendant Eun Ae Oh (“Oh,”) owns the remaining half of the Corporation’s stock.

In August 2010, Oh commenced against Woo and other Defendants a derivative lawsuit on behalf of the Corporation (the “August 2010 Action”).¹ In that action, Oh asserted that Woo refused to provide Oh with full and accurate accounting of the affairs of the Corporation, paid herself excessive compensation, and refused to properly share

¹ J.P. Food Services, Inc and Eun Ae Oh v. Eun Young Woo and Joon Park, Case No. 1008-01386.

corporate profits with Oh.²

Subsequently, Defendants in the August 2010 Action filed a Motion to Dismiss the Action for Improper Venue. In the Response to the Motion to Dismiss for Improper Venue, Oh conceded that the August 2010 Action should proceed to Arbitration. Based upon Oh's concession, this Court granted the motion, dismissed the August 2010 Action, and sent it to Arbitration.

In October 2010, Woo commenced the instant action against Oh (the "Instant Action"). The Amended Complaint in the Instant Action seeks rescission of the Stock Purchase Agreement by which Oh acquired half of the Corporation's stock. Defendant Oh filed timely Counterclaims to Woo's Amended Complaint, and also filed a Joinder Complaint against an individual who is not a party to the August 2010 Action which is now proceeding in Arbitration. Subsequent to Oh's Counterclaims and Joinder Complaint, Woo filed Preliminary Objections to Oh's Counterclaims. The Preliminary Objections of Plaintiff Woo assert that all three counts asserted in the Counterclaims should be dismissed under the doctrine of *lis pendens*.³

In Pennsylvania, the doctrine of *lis pendens* applies if the moving party satisfies the "identity test." Under the identity test, "dismissal of a later cause of action may be appropriate when the same parties are involved, the same rights are asserted, and identical relief is sought in each action."⁴

Furthermore—

where the *lis pendens* identity test is not strictly met
but the action involves a set of circumstances where
the litigation of two suits would create a duplication of

² J.P. Food Services, Inc and Eun Ae Oh v. Eun Young Woo and Joon Park, ¶ 44.

³ Preliminary Objections of Plaintiff Woo to the Counterclaims of Defendants, ¶¶ 12-16.

⁴ PNC Bank v. Bluestream Tech., Inc., 2010 Pa. Super. 215; 14 A.3d 831, 835 (Pa. Super. 2010).

effort on the part of the parties [and] waste judicial resources ... the trial court may stay the later-filed action.⁵

In this case, the moving party has not strictly met the identity test because the Instant Action involves a Joinder Defendant who is not a party in the August 2010 Action which is now proceeding in Arbitration. However, the Instant Action appears to involve circumstances that could lead to a duplication of effort on the part of the parties, as well as waste of judicial resources. Since the identity test has not been satisfied and litigation in the Instant Action could lead to duplicative efforts and judicial waste, the Preliminary Objections of Plaintiff Woo to the Counterclaims are overruled, and the Instant Action is stayed pending resolution of the Arbitration Proceedings captioned J.P. Food Services, Inc. et al. v. Eun Young Woo et al. Case No. 1008-01386.

An Order consistent with this Opinion shall be contemporaneously filed therewith.

By The Court,

Arnold L. New, J.

Dated: October 17, 2011

⁵ PNC Bank v. Bluestream Tech., Inc., 14 A.3d at 839 (Pa. Super. 2010).