

Advanced Aerofoil Tech. AG v MissionPoint Capital Partners LLC
2016 NY Slip Op 05231
Decided on June 30, 2016
Appellate Division, First Department
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Decided on June 30, 2016

Mazzarelli, J.P., Renwick, Moskowitz, Gische, Gesmer, JJ.

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[*1] Advanced Aerofoil Technologies AG, Plaintiff-Appellant, —

v

MissionPoint Capital Partners LLC, Defendant-Respondent.

Cole Schotz P.C., New York (James T. Kim of counsel), for appellant.

William F. Sheehan of the bar of the District of Columbia and State of Maryland, admitted pro hac vice, Barnesville, MD, for respondent.

Order, Supreme Court, New York County (Eileen Bransten, J.), entered April 23, 2015, which, to the extent appealed from, granted defendant's motion to dismiss the complaint to the extent of precluding plaintiff from claiming that any of its confidential information was misappropriated and that nonparty Flowcastings, GmbH, is its direct

competitor, unanimously affirmed, with costs.

The motion court correctly determined that the doctrine of collateral estoppel bars plaintiff from litigating two factual issues that were determined in a prior arbitration proceeding commenced by plaintiff, namely, whether any of plaintiff's confidential information was misappropriated and whether nonparty Flowcastings was its direct competitor (*see Kaufman v Eli Lilly & Co.*, 65 NY2d 449, 455 [1985]). That the instant action arises out of a nondisclosure agreement between plaintiff and defendant while the arbitration was held in connection with an agreement between plaintiff and its former employees is of no consequence. Plaintiff's core claim is the same in both: that confidential information was wrongly taken from it and used to start a competing company.

Since plaintiff is the party sought to be collaterally estopped, it is of no consequence that defendant was not a party to the arbitration ([*3 E. 54th St. N.Y., LLC v Patriarch Partners Agency Servs. LLC*, 110 AD3d 516](#) [1st Dept 2013]).

We have considered plaintiff's remaining arguments and find the unavailing.

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JUNE 30, 2016

CLERK

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