

<b>Island Intellectual Prop. LLC v Reich &amp; Tang Deposit Solutions, LLC</b>
2017 NY Slip Op 08311
Decided on November 28, 2017
Appellate Division, First Department
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Decided on November 28, 2017

Richter, J.P., Kapnick, Webber, Oing, Singh, JJ.

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**[\*1] Island Intellectual Property LLC, et al., Plaintiffs-Respondents,**

**v**

**Reich & Tang Deposit Solutions, LLC, et al., Defendants-Appellants.**

Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP, Uniondale (David A. Loglisci of counsel), for appellants.

Kelley Drye & Warren LLP, New York (John Dellaportas and Kristina Allen of counsel), for respondents.

Order, Supreme Court, New York County (Shirley Werner Kornreich, J.), entered June 14, 2017, which, to the extent appealed from as limited by the briefs, denied defendants' motion to dismiss plaintiffs' fraud claim, denied defendants' motion to stay the action pending related federal actions, and granted plaintiffs' cross motion for partial summary judgment on the issue of liability on their breach of contract and indemnification claims, unanimously modified, on the law, plaintiffs' cross motion denied, and otherwise affirmed, without costs.

The motion court should not have entertained plaintiffs' cross motion for summary judgment, as the parties did not chart a course for summary judgment ([see \*Primedia Inc. v SBI USA LLC\*, 43 AD3d 685](#), 686 [1st Dept 2007]). Defendants objected to the court entertaining the motion as one for summary judgment and the court did not provide adequate notice of its intention to convert the motions pursuant to CPLR 3211(c) ([see \*Mihlovan v Grozavu\*, 72 NY2d 506](#), 508 [1988]).

The court properly determined that plaintiffs' fraudulent inducement claim, alleging a misrepresentation of then-present facts that was collateral to the parties' licensing agreement, was not duplicative of the breach of contract claim ([see \*GoSmile, Inc v Levine\*, 81 AD3d 77](#), 81 [1st Dept 2010], *lv dismissed* 17 NY3d 782 [2011]).

The court also providently exercised its discretion in denying defendants' motion for a stay in this action pending the subsequently commenced federal actions seeking to invalidate the patents that are the subject of the licensing agreement ([see e.g. \*Allied Props. v 236 Cannon Realty\*, 3 AD3d 318](#) [1st Dept 2004]; CPLR 2201).

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: NOVEMBER 28, 2017

CLERK

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