

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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COUNTY OF SUFFOLK,

(LGK 5852)

Plaintiff,  
-against-

Index No.: CV-07-1644

GEORGE R. SIMPSON, JEAN SIMPSON,  
CHARLOTTE SIMPSON, OFFICE  
MANAGEMENT SYSTEMS CORP. and  
SUFFOLK RESEARCH SERVICE, INC.,

Defendants.  
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MEMORANDUM OF LAW

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**PRELIMINARY STATEMENT**

This Memorandum of Law is submitted in opposition to the motion by the defendants, George R. Simpson and Jean Simpson, to dismiss this action upon the alleged grounds of improper service of process upon the defendant, George R. Simpson, and the pendency of a previously commenced action, erroneously termed “improper venue”. This is an action for injunctive relief and for money damages arising from the defendants’ misappropriation of the plaintiff’s proprietary real property ownership information.

For the reasons set forth below, it is respectfully submitted that the instant action was properly commenced and is properly maintained. Service of process has been properly effected upon the moving defendants and personal jurisdiction has been obtained. Accordingly, the defendants’ motion should be denied in all respects.

**POINT I**

**SERVICE OF PROCESS WAS PROPERLY  
MADE ON THE MOVING DEFENDANTS**

At the outset, it must be noted that the movants purport to seek relief on behalf of the defendant, Charlotte Simpson, despite the fact that they appear in this action pro se (and notwithstanding the fact that the time to effect service has not yet expired). It is, therefore, axiomatic that, since they are not attorneys, they can not represent any other party in this action and have no standing to seek relief on behalf of any other party. Accordingly, this Court should not entertain any requests by the movants for relief on behalf of any other party.

To the extent the motion seeks dismissal of this action as against the defendant, George R. Simpson, based upon alleged insufficiency of the service of process effected upon him on May 14, 2007, the application is now moot because service upon the defendant, George R. Simpson, was accomplished by personal delivery of the Summons and Complaint to him on June 5, 2007, as indicated in the Return of Service by Michael L. Fusilli, a copy of which is annexed to the accompanying Affirmation as Exhibit "A". This service clearly satisfies F.R.C.P. Rule 4 (e).

The moving papers admit that service upon the defendants, Jean Simpson, Office Management Systems Corp. and Suffolk Research Service, Inc., was properly made. Accordingly, *in personam* jurisdiction over these parties, as well as George R. Simpson, has been obtained.

**POINT II**

**THE EXISTENCE OF A PRIOR ACTION IS NOT  
A GROUND FOR DISMISSAL OF THIS ACTION**

It is apparent that the moving defendants, George R. Simpson and Jean Simpson, misapprehend the term “venue”, as they have couched their application for dismissal upon the ground of the pendency of a prior action under the heading “improper venue”. No arguments in support of a claim of improper venue are set forth in the moving papers and none can be made, as venue is properly placed in this Court. In fact, venue could not possibly be placed anywhere else.

While the moving defendants, George R. Simpson and Jean Simpson, argue the “pendency” of the action previously commenced under Case No. 05-CV-0715 as a ground for dismissal of this action, they fail to reveal that they never appeared, answered, or participated, in any manner, in that action. The only defendant who answered there was Stephanie Fagan (the daughter of the moving defendants), who has participated and appeared at conferences before Magistrate Judge Michael L. Orenstein. The defendants, George R. Simpson and Jean Simpson, never filed notices of appearance, answers, motions or papers of any kind, nor did they ever appear at any of the several conferences before Magistrate Judge Orenstein. They did not, in any manner, submit to the jurisdiction of this Court.

A motion for a default judgment was made in the prior action and was denied by this Court, with leave to renew. However, after a review of the service of process in that action, it was determined that commencement of a new action would be the best way to proceed, in accordance with discussions during the course of conferences before Magistrate Judge Orenstein. A further conference is currently scheduled for July 13, 2007.

It is, therefore, clear that the prior action is not being actively pursued against the moving defendants here. Accordingly, they should not be heard to complain that they are being subjected to defending duplicative litigation. They are not. They may, however, now appear and defend this action, if they are so inclined. It should be noted that the two corporate defendants are in default and a motion for judgment against them has been filed.

In any event, the pendency of a prior action is not a ground enumerated in F.R.C.P. Rule 12 as a basis for dismissal. It has been held that the pendency of a prior action between the same parties respecting the same subject matter does not mandate dismissal. See, e.g., Coseka Resources (U.S.A.) Ltd. v. Jordan, 75 F.R.D. 694 (D.C.Okl. 1977), Private Medical Care Foundation, Inc. v. Califano, 451 F.Supp. 450 (D.C.Okl., 1977), Purcell v. Summers, 126 F.2d 390 (4<sup>th</sup> Cir., 1942). This is particularly so since jurisdiction in the prior action is questionable and there is no possibility of inconsistent determinations.

pendency of a prior action. Accordingly, the within motion should be denied in its entirety, together with such other and further relief as to this Court may seem just and proper.

Dated: Hauppauge, New York  
June 7, 2007

Respectfully submitted,

CHRISTINE MALAFI  
Suffolk County Attorney

By:

A handwritten signature in black ink, appearing to read 'Leonard G. Kapsalis', written over a horizontal line.

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