



LEXSEE 2008 U.S. DIST. LEXIS 35693

LAWYERS TITLE INSURANCE CORP., Plaintiff, v. MERIT TITLE CO., LLC, et al., Defendants.

Civil Action 08-00275 (HHK)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

549 F. Supp. 2d 90; 2008 U.S. Dist. LEXIS 35693

April 17, 2008, Decided

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff insurance company sued defendants, a title company and its owner, asserting a claim for breach of contract. Defendants moved for dismissal, or in the alternative, to stay the suit.

OVERVIEW: A contract between the insurance company and the title company required defendants to indemnify the insurance company for any court costs and losses that resulted from acts or omissions of defendants. The title company closed two transactions in which a real estate company acquired an illegitimate title to a property. The legitimate property owners sued the buyer who purchased the property from the real estate company, as well as the buyer's lenders. The insurance company defended the lenders pursuant to two title insurance policies and paid the lenders' losses. In that suit, the lenders filed a cross-claim for negligence against the title company for failing to identify or prevent the fraudulent real estate transaction. That claim remained pending in state court. In the instant suit, defendants alleged that the court should abstain from exercising its jurisdiction because the state court suit involved the same substantive issues and parties. The court disagreed. The Colorado River doctrine required that parallel litigation involve the same parties before both courts. There was nothing to indicate that the insurance company was joined in the pending state court suit.

OUTCOME: The court denied defendants' motion to dismiss, or in the alternative, to stay the suit.

LexisNexis(R) Headnotes

Civil Procedure > Federal & State Interrelationships > Abstention

Governments > Courts > Authority to Adjudicate

[HN1] Federal courts have a general duty to adjudicate controversies properly before them. Despite this unflinching obligation, there are various exceptions setting forth when a federal court may abstain from exercising jurisdiction. One of these exceptions permits a district court to abstain from exercising jurisdiction in certain exceptional circumstances of parallel, duplicative litigation in the interest of sound judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation. However, abstention is a very narrow exception to the rule, and the pendency of an action in the state court is no bar to proceedings concerning the same matter in the federal court having jurisdiction.

Civil Procedure > Federal & State Interrelationships > Abstention

Governments > Courts > Judicial Comity

[HN2] The abstention doctrine established in Colorado

River is really a doctrine of comity, created to assure judicial efficiency and to reflect abiding respect for other courts. Comity does not contemplate abstention from jurisdiction in one court when a party is absent from a separate suit pending before another court. Accordingly, the Colorado River doctrine of abstention requires that parallel litigation involve the same parties before both courts.

COUNSEL: [**1] For LAWYERS TITLE INSURANCE CORPORATION, Plaintiff: Raighne Coleman Delaney, LEAD ATTORNEY, BEAN, KINNEY & KORMAN, P.C., Arlington, VA; Christopher A. Glaser, BEAN, KINNEY & KORMAN, P.C., Arlington, VA.

For MERIT TITLE COMPANY, LLC, Defendant: Kenneth D. Bynum, LEAD ATTORNEY, BYNUM & JENKINS, PLLC, Alexandria, VA.

JUDGES: Henry H. Kennedy, Jr., United States District Judge.

OPINION BY: Henry H. Kennedy, Jr.

OPINION

[*91] AMENDED MEMORANDUM OPINION AND ORDER

Lawyers Title Insurance Corp. ("Lawyers Title") brings this action for damages against defendants Merit Title Company, LLC ("Merit") and Brenda Hopkins alleging that defendants are in breach of contract for failing to indemnify Lawyers Title for costs associated with a fraudulent real estate transaction. Before the court is the motion of the defendants to dismiss, or in the alternative to stay [# 2].

Upon consideration of the motion, the opposition thereto, and the record of this case, the court concludes that the motion must be denied.

I. BACKGROUND

Lawyers Title entered into a contract with Brenda Hopkins through an agency agreement signed in 1992. Several years later, Hopkins replaced her name in the agency agreement with that of Merit. Hopkins is the sole member of [**2] Merit. Under the Terms and Conditions

of the Agency Agreement, Merit agreed that:

Agent shall be liable and agrees to indemnify and save harmless Principal for all attorney's fees, court costs, expenses, liability, damage, and loss or aggregate of losses resulting from acts or omissions of Agent . . .

Pl.'s Ex. 1 at 28.

In 2005, Lion Real Estate Development & Management, LLC ("Lion") acquired the illegitimate title to a property owned by Eugene and Josie Tucker. Imposters allegedly appeared as the Tuckers and signed the deed in the Tuckers' names. Several months later Lion sold the same property to David Swain who financed the purchase with mortgages from two lending institutions. Hopkins closed both transactions and collected a premium for the issuance of Lawyers Title insurance policies from both of Swain's lenders, but never actually issued the insurance policies to them. Hopkins has now deposited those premiums with the Clerk of the Superior Court of the District of Columbia.

The Tuckers sued Swain and his lenders in the Superior Court of the District of Columbia to clear title on their property. *See Tucker v. Swain*, 05-cv-0004890 (D.C. Super. Ct.). Although Lawyers Title was not [**3] a party to the *Tucker* suit, it undertook its contractual obligation to defend the two lenders against demands asserted by the Tuckers, and paid both lenders' losses. In the *Tucker* case, the two lenders filed a cross-claim asserting negligence claims against Merit for allegedly failing to identify or prevent the fraudulent real estate transaction. That claim remains pending before the Superior Court.¹

1 On the same day that defendants filed their motion to dismiss in this court, they also purportedly filed to join Lawyers Title to the *Tucker v. Swain* case pending before the Superior Court.

Lawyers Title filed this suit because defendants purportedly failed to indemnify Lawyers Title for costs related to the *Tucker* case.

ANALYSIS

Alleging that the *Tucker* case deals with the same

substantive issues and involves the same pertinent parties as are involved here, defendants move to dismiss, or in the alternative to stay, this action due to the Superior Court's asserted concurrent jurisdiction. Defendants argue that moving forward with parallel litigation in separate forums is improper because it is an inefficient and wasteful use of judicial resources. [*92] Lawyers Title rejoins that it is not a [**4] party to the Superior Court suit referred to by defendants, thus, there is no parallel litigation that would warrant dismissal or stay of this action.

[HN1] Federal Courts have a general duty to adjudicate controversies properly before them. *See Reiman v. Smith*, 304 U.S. App. D.C. 196, 12 F.3d 222, 223 (D.C. Cir. 1993). Despite this "unflagging obligation," the Supreme Court has articulated various exceptions setting forth when a federal court may abstain from exercising jurisdiction. *See Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817, 96 S. Ct. 1236, 47 L. Ed. 2d 483 (1976) (discussing exceptions to the duty to exercise jurisdiction). One of these exceptions permits a district court to abstain from exercising jurisdiction in certain exceptional circumstances of parallel, duplicative litigation in the interest of sound "judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." *Id.* at 817. However, abstention is a very narrow exception to the rule, and the pendency of an action in the state court is no bar to proceedings concerning the same matter in the federal court having jurisdiction. *Id.*

[HN2] The abstention doctrine established in *Colorado River* is really [**5] a doctrine of comity, "[c]reated to assure judicial efficiency and to reflect abiding respect for other courts." *Consumers Union v. Consumer Product Safety Commission*, 192 U.S. App. D.C. 93, 590 F.2d 1209, 1219 (D.C. Cir. 1978), *rev'd on*

other grounds, 445 U.S. 375, 100 S. Ct. 1194, 63 L. Ed. 2d 467 (1980). As the court in *Consumers Union* asserts, comity does not contemplate abstention from jurisdiction in one court when a party is absent from a separate suit pending before another court. *Id.* (collecting cases from the U.S. Supreme Court and Circuit Courts). Accordingly, the *Colorado River* doctrine of abstention requires that parallel litigation involve the *same parties* before both courts. *See generally Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 98 S. Ct. 2552, 57 L. Ed. 2d 504 (1978); *Handy v. Bransford*, 355 U.S. App. D.C. 446, 325 F.3d 346 (D.C. Cir. 2003); *Foster-el v. Beretta U.S.A. Corp.*, 163 F. Supp. 2d 67 (D.D.C. 2001).

Defendants argue that civil action *Tucker v. Swain* is a suit pending before the Superior Court that is parallel to this suit brought by Lawyers Title. While it is true the two suits share a similar set of pertinent facts, defendants fail to demonstrate that the two suits involve the same parties. Defendants purport they moved to join Lawyers Title to the *Tucker* case. However, [**6] nothing in the record demonstrates that Lawyers Title has been joined to the pending litigation in the Superior Court or that there exists any guarantee Lawyers Title will be joined in the future. Because Lawyers Title is not a party to the *Tucker* case, there is no parallel litigation that would justify this court in abstaining from jurisdiction.

III. CONCLUSION

For the foregoing reasons, it is this 17th day of April 2008, hereby

ORDERED, that defendants' motion to dismiss, or in the alternative to stay, is **DENIED**.

Henry H. Kennedy, Jr.

United States District Judge