

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

CONTINENTAL CASUALTY COMPANY

CIVIL ACTION

v.

NO. 11-1508

GAUTHIER, HOUGHTALING &  
WILLIAMS, LLP, ET AL.

SECTION "F"

ORDER AND REASONS

Before the Court is defendants' Motion to Dismiss or, Alternatively, Motion to Stay. For the reasons that follow, defendants' Motion to Dismiss is DENIED, and defendants' Motion to Stay is GRANTED.

Background

This is a declaratory judgment action brought by an insurer, Continental Casualty Company, to determine coverage under a liability policy issued to its insureds, John W. Houghtaling, II and the law firm of Gauthier, Houghtaling & Williams, LLP (GHW), with respect to state court lawsuits filed by defendants Spyridon C. Contogouris and Stephen A. Baldwin, pending in Louisiana state court.

As pre-history to this lawsuit are four separate lawsuits filed by Contogouris and Baldwin, all arising out of the same joint business venture gone awry. All four lawsuits contain allegations that various parties' omissions and misrepresentations induced Contogouris and Baldwin to improvidently transfer their interests

in the business venture. Contogouris and Baldwin first filed a federal lawsuit, which is pending in this Court, and subsequently filed three state court actions, which are pending in three different parishes.<sup>1</sup> Defendants here anticipate that their three state court lawsuits will be consolidated before the Orleans Parish Civil District Court.

The three state court lawsuits underlie the present declaratory action.<sup>2</sup> In the underlying state court lawsuits, Contogouris and Baldwin assert claims against Houghtaling and GHW for legal malpractice, breach of fiduciary duty, conversion, detrimental reliance, conspiracy, abuse of rights, and abuse of process. Contogouris and Baldwin also name as a defendant Houghtaling's and GHW's legal professional liability insurer. Initially unaware of the insurer's identity, Contogouris and Baldwin first named as the insurer the XYZ Insurance Company.

Later, GHW forwarded the company a copy of one of defendants' state court petitions, along with a request for coverage, Continental - the actual insurer - instituted this action for

---

<sup>1</sup> The only differences between defendants' federal and state lawsuits appear to be that the federal lawsuit names different defendants than the state lawsuits, and asserts a federal claim in addition to several state law claims.

<sup>2</sup> Defendants' federal lawsuit, while somewhat related, does not "underlie" the present declaratory action suit, because it does not include as defendants Houghtaling, GHW, and their insurer, and therefore does not implicate the coverage and duty to defend questions at issue here.

declaratory judgment.<sup>3</sup> Continental seeks a declaration that, under Houghtaling's and GHW's professional liability policy, there is neither coverage nor a duty to defend in connection with defendants' state court lawsuits.

After Continental filed this suit, Contogouris and Baldwin filed a motion to name Continental as a defendant in their state court proceedings. Meanwhile, also after Continental filed suit, Contogouris and Baldwin urged this Court not to consolidate their federal action with Continental's present action. The Court granted that motion.<sup>4</sup>

Contogouris and Baldwin now seek to dismiss, or, alternatively, to stay Continental's declaratory judgment action. They assert that Continental instituted its declaratory action in anticipation of Defendants' substitution of Continental for XYZ Insurance Company in the state court proceedings, and that the issues presented in the declaratory judgment action will be resolved in the state court proceedings. This Court agrees. Judicial economy demands it.

I.

"The district court...is not required to provide declaratory

---

<sup>3</sup> Continental has denied coverage.

<sup>4</sup> While the federal action arises out of the same business venture, it involves different parties and requests some different relief. Therefore, this Court ruled that defendants' federal action and Continental's declaratory judgment action should not be consolidated.

judgment relief, and it is a matter for the district court's sound discretion whether to decide a declaratory judgment action." Mission Insurance Co. v. Puritan Fashions Corp., 706 F.2d 599, 601 (5th Cir. 1983). This discretion has been characterized as "broad, though not unfettered," in that the Court may not dismiss a declaratory judgment action on the basis of "whim or personal disinclination" but instead must balance various considerations before exercising its discretion to dismiss an action. St. Paul Insurance Co. v. Trejo, 39 F. 3d 585, 590-91 (5th Cir. 1994). The Court considers the following factors in exercising its discretion to decide, stay, or dismiss:

- 1) whether there is a pending state action in which all of the matters in controversy may be fully litigated,
- 2) whether the plaintiff filed suit in anticipation of a lawsuit filed by the defendant,
- 3) whether the plaintiff engaged in forum shopping in bringing the suit,
- 4) whether possible inequities in allowing the declaratory plaintiff to gain precedence in time or to change forums exist,
- 5) whether the federal court is a convenient forum for the parties and witnesses, and
- 6) whether retaining the lawsuit in federal court would serve the purposes of judicial economy,
- [and 7)] whether the federal court is being called on to construe a state judicial decree involving the same parties and entered by the court before whom the parallel state suit between the same parties is pending.

Id. The U.S. Supreme Court has observed that when another suit "involving the same parties and presenting opportunity for ventilation of the same state law issues is pending in state

court," a court's consideration of the declaratory judgment action may constitute "gratuitous interference." Wilton v. Seven Falls Co., 515 U.S. 277, 283 (1995) (affirming a Fifth Circuit decision upholding a district court's ruling to stay a declaratory judgment action pending the resolution of a later-filed state court suit).

II.

This declaratory judgment action raises the same factual and legal issues that are presently being litigated in state court. The risk that parallel proceedings in two courts would result in inconsistent policy interpretations and piecemeal litigation weighs in favor of staying the present action – pending Continental's substitution into, as well as consolidation and resolution of, the state court proceedings.<sup>5</sup>

Application of the Trejo factors compels this result. Nearly every factor weighs against the Court entertaining the present action. First, it is clear that all of the matters in controversy in this declaratory judgment lawsuit may be fully litigated in the pending state court lawsuits. Pending Continental's successful substitution in the Orleans Parish Civil District Court litigation, coverage must be decided along with all state law issues. Second, the Court finds, and, indeed, Continental concedes, that Continental's action was anticipatory. Third, the sequence of

---

<sup>5</sup> The Court declines to dismiss the present action prior to substitution, consolidation, and resolution.

events suggests an appearance of forum shopping, and Continental does not rebut it.<sup>6</sup> Fourth, inequities exist in allowing Continental to change forums, in that Continental appears to be using this declaratory judgment action to avail itself of an otherwise unavailable federal forum.<sup>7</sup> The fifth Trejo factor weighs slightly against dismissal. Clearly, this Court is just as convenient a forum for the parties and witnesses as the Orleans Parish Civil District Court. However, even though this factor tilts against dismissal, it also supports a stay. Sixth, retaining the declaratory judgment action here in federal court will not serve judicial economy, as long as Continental is substituted in the state court actions, and those suits are consolidated.<sup>8</sup> See St. Paul Insurance Co. v. Trejo, 39 F. 3d 585, 590-91 (5th Cir. 1994).

For the foregoing reasons, defendants Contogouris and Baldwin's motion to stay Continental's declaratory judgment action is GRANTED pending Continental's substitution into and

---

<sup>6</sup> Continental does not deny its own forum shopping, but instead argues that the defendants were forum shopping too.

<sup>7</sup> It is undisputed that Continental could not remove the state court actions because no federal questions are presented and because complete diversity between the parties is lacking.

<sup>8</sup> The seventh factor is inapplicable in this case, because this Court is not being called on to construe any state judicial decree. See St. Paul Insurance Co. v. Trejo, 39 F. 3d 585, 591 & n.8 (5th Cir. 1994).

consolidation and resolution of the state court actions. The motion to dismiss is DENIED. This case is administratively closed pending resolution of all state court litigation.

New Orleans, Louisiana, September 19, 2011

  
\_\_\_\_\_  
MARTIN L. C. FELDMAN  
UNITED STATES DISTRICT JUDGE