

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBINSON BROG LEINWAND GREENE : CIVIL ACTION
GENOVESE & GLUCK, P.C. :
 :
 :
 v. : No. 05-2437
 :
 :
 PSB BANCORP, INC., et al :

ORDER-MEMORANDUM

AND NOW, this 21st day of September, 2005, “Defendant’s Motion to Dismiss the Interpleader Complaint,” filed by PSB Bancorp, Inc., is denied, Fed. R. Civ. P. 12(b)(6),¹ and the action is stayed pending a determination as to the validity of the PSB options in either state or federal court.

Plaintiff Robinson Blog Leinwand Greene Genovese & Gluck, P.C., a law firm, filed this interpleader action under 28 U.S.C. § 1335. The complaint asserts that plaintiff may be exposed to multiple claims because it holds in escrow share certificates issued by defendant PSB Bancorp to certain option holders.² PSB has demanded that the share certificates be released from escrow and returned to PSB, Complaint, ¶ 18; the option holders have demanded that the share certificates

¹ In deciding a motion to dismiss under Rule 12(b)(6), “all factual allegations and reasonable inferences [are regarded] as true and view[ed] . . . in the light most favorable to” the plaintiff. In re Schering Plough Corp. ERISA Litigation, – F.3d –, –, 2005 WL 1993990, at *3 (3d Cir., Aug. 19, 2005) (citation omitted). The complaint is properly dismissed only where plaintiff can prove no set of facts entitling him to relief. Id.

² This is one of five actions filed related to a dispute as to the validity of options to buy shares of PSB. The options were originally issued by First Bank of Philadelphia, converted to PSB options upon the merger of FBP and PSB, and later declared invalid by PSB. The actions are Lingle, et al. v. PSB Bancorp, Inc., et al., C.A. No. 02-1165; Conwell Ltd. Partnership v. PSB Bancorp, Inc., et al., C.A. No. 04-4227; Silverstein, et al. v. Fumo, et al., C.A. No. 05-1258; and Lingle, et al. v. PSB Bancorp, Inc., et al., C.A. No. 05-1764.

remain in escrow pending final adjudication of the validity of the options underlying the shares, Complaint, ¶ 19.³ Plaintiff, which represents the option holders in the related cases, filed this action intending to deposit the shares with the court and resign as escrow agent. Complaint, ¶ 23. PSB moves for dismissal, arguing that plaintiff will not be exposed to multiple suits,⁴ and that a pending state court action⁵ is the more appropriate forum to address the issue.

The pending state court action to which defendant refers is an equity action filed in the Philadelphia Court of Common Pleas in which PSB requests that plaintiff and one of its partners, David C. Burger, Esquire, be ordered to comply with the terms of the escrow agreement and return the shares certificates to PSB. Exhibit "1" to PSB's motion, at 9. That action "encompasses the competing claims" to the share certificates, NYLife Distributors, Inc. v. Adherence Group, Inc., 72 F.3d 371, 382 (3d Cir. 1995), and its pendency renders this action duplicative. This action, therefore, will be stayed pending the outcome of either the state court action or one of the related

³ The shares were issued upon the option holders' tender of the exercise price pursuant to a stipulation among the parties to Lingle v. PSB Bancorp, Inc., et al., C.A. No. 02-1165 (Lingle I). The stipulation followed an award of summary judgment in favor of the option holder plaintiffs, finding the options valid. The Third Circuit subsequently ordered Lingle I dismissed for lack of subject matter jurisdiction.

⁴ The remaining defendants are Raymond Silverstein, as Trustee, Carl A. Lingle, Conwell Ltd. Partnership, Gerald Lehrfeld, Joan Lehrfeld, Lynn Roseman, and Jay Roseman. These defendants are represented by Alan Milstein, Esquire - who also represents Robinson Brog in this action. Robinson Brog and Milstein together have represented these individuals in the related actions.

⁵ On May 13, 2005, PSB filed a complaint in equity in the Philadelphia Court of Common Pleas at PSB Bancorp, Inc., et al. v. Conwell Ltd. Partnership, et al., No. 1997, May Term 2005.

federal actions.⁶

BY THE COURT:

Edmund V. Ludwig, J.

⁶ “Where the basis for declining to proceed is the pendency of a state proceeding, a stay will often be the preferable course, insofar as it assures that the federal action can proceed without risk of a time bar if the state case, for any reason, fails to resolve the controversy.” NYLife, 72 F.3d at 383, quoting Wilton v. Seven Falls Co., 115 S. Ct. 2137, 2143 n.2 (1995).