

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

RANDY H. KAPLAN, individually
and as sole proprietor of the
law offices of Randy J. Kaplan

v.

MT. AIRY INSURANCE COMPANY

CIVIL ACTION

NO. 98cv4260

M E M O R A N D U M

Broderick, J.

May 17, 1999

Plaintiff Randy H. Kaplan brings this declaratory judgment action seeking a declaration that Defendant Mt. Airy Insurance Company ("Mt. Airy") owes a duty to defend and indemnify him in underlying legal malpractice actions. The underlying legal malpractice actions are based on Kaplan's alleged failure to protect asbestos-plaintiffs' interests in certain asbestos-related bodily injury settlement payments, which were purportedly stolen by Kaplan's former law partner, David Weinfeld.

Defendant Mt. Airy has filed a "Motion to Dismiss or Stay Proceeding." Plaintiff has opposed. For the reasons which follow, the Court will grant Defendant's motion to stay the federal declaratory judgment action, pending resolution of a parallel proceeding in state court.

Introduction

Randy Kaplan is a lawyer who obtained professional liability

insurance from Mt. Airy for claims made between September 1, 1994 and September 1, 1995. On September 28, 1994, Kaplan was named as one of the defendants in a RICO class action, Vierick v. Weinfeld, et al, Civil Action No. 94-5922, (E.D.Pa. filed Sept. 28, 1994) ("the RICO action"). Kaplan alleges that Mt. Airy agreed to defend Kaplan in the RICO action, but withdrew funding and failed to defend Kaplan in the Rico action. The RICO action was dismissed, without prejudice, on November 2, 1994.

On April 3, 1995, Kaplan was named a defendant in a malpractice action, Jones et al. v. Kaplan, Civil Action No. 95-1943, (E.D.Pa. filed April 3, 1995) ("the Malpractice action"). Kaplan alleges that Mt. Airy agreed to fund Kaplan's defense of the Malpractice action and retained counsel to defend Kaplan in that action. Kaplan alleges that Mt. Airy subsequently withdrew its funding of Kaplan's defense of the Malpractice action. The docket reflects that, by Order dated September 26, 1996, the Malpractice action was "dismissed without prejudice. This case is to remain in status quo and the Statute of Limitations is tolled . . . all discovery and settlement discussions will continue" Jones v. Kaplan, Civil Action No. 95-1943, (E.D.Pa Order dated Sept. 26, 1996).

On December 5, 1995, Mt. Airy filed a declaratory judgment action in the Court of Common Pleas of Montgomery County. ("The state declaratory judgment action"). The one count complaint seeks declaratory judgment that Mt. Airy has no duty to defend

Kaplan in the Malpractice action. Service of process was made upon Kaplan on December 6, 1995.

On January 30, 1998, Kaplan filed an Answer, New Matter, and Counterclaim in the state declaratory judgment action. In his state declaratory judgment counterclaims, Kaplan seeks declaratory judgment (counts I, II, V and VI), alleges breach of contract (counts III and VII) and bad faith (counts IV and VIII). All of these claims are based on Kaplan's relationship with Mt. Airy involving the liability policy, the RICO action and the Malpractice action.

On July 13, 1998, Kaplan filed the instant Federal declaratory judgment action. Kaplan's complaint asserts causes of action for declaratory judgment (counts I and II); breach of contract (counts III and V); and bad faith (counts IV and VI). All of these claims are likewise based on Kaplan's relationship with Mt. Airy involving the liability policy, the RICO action and the Malpractice action.

Mt. Airy seeks dismissal or stay of the federal declaratory judgment action. Kaplan has opposed.

Discussion

The Supreme Court of the United States has made clear that whether or not to entertain a declaratory judgment action is in the sound discretion of the district court. Wilton v. Seven Falls Co., 515 U.S. 277, 282 (1995). "In the declaratory

judgment context, the normal principle that federal courts should adjudicate claims within their jurisdiction yields to considerations of practicality and wise judicial administration." Id. at 288. The court's discretion to decline to hear a declaratory judgment action arises at the outset because "[i]f a district court, in the sound exercise of its judgment, determines after a complaint is filed that a declaratory judgment will serve no useful purpose, it cannot be incumbent upon that court to proceed to the merits before staying or dismissing the action." Id. at 288.

Accordingly, the Supreme Court has provided guidance in determining whether a federal court should abstain from entertaining a federal declaratory action where a similar state declaratory judgment action is pending. In determining whether to enter a stay, "a district court should examine 'the scope of the pending state court proceeding and the nature of defenses open there.'" Id. at 282, quoting Brillhart v. Excess Ins. Co. of America, 316 U.S. 491, 495 (1942). This inquiry requires consideration of "whether the claims of all parties in interest can satisfactorily be adjudicated in that proceeding, whether necessary parties have been joined, [and] whether such parties are amenable to process in that proceeding, etc." Id. Brillhart and Wilton make it clear that where another suit involving the same parties and same issues is pending in a state court, "a district court might be indulging in 'gratuitous interference' if

it permitted the federal declaratory action to proceed." Id.

A review of the scope of the state declaratory judgment action reveals that it is just as broad as the federal declaratory judgment action. In fact, the same parties and issues are involved in the state declaratory judgment action and the federal declaratory judgment action, and the available defenses are the same in both actions.

In addition, the claims of all of the parties in interest can satisfactorily be adjudicated in the state declaratory judgment action. Once again, the court notes that the parties in the two actions are identical, and that each of Kaplan's claims in the federal declaratory judgment action has already been brought as a counterclaim in the state declaratory judgment action.¹

Finally, it is clear that all necessary parties have been joined in the state declaratory judgment action so there is no question about amenability to process in the state declaratory judgment matter. Given the existence of a virtually identical preexisting state court action, this court will not exercise its discretion to entertain this federal declaratory judgment action.

The Supreme Court has noted that "where the basis for declining to proceed is the pendency of a state proceeding, a

¹ A comparison of the pleadings reveals that six of Kaplan's eight state court counterclaims are reproduced almost verbatim to form the six count federal complaint.

stay will often be the preferable course, because 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 matter in controversy." Id. at 288 fn. 2. Therefore, Defendant Mt. Airy's motion to stay this proceeding will be granted, and this action shall be stayed, assuring that "the federal action can proceed without risk of a time bar if the state case, for any reason, fails to resolve the matter in controversy." Id.

An appropriate Order follows.

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O R D E R

AND NOW, this 17th day of May, 1999; upon consideration of Defendant's motion to dismiss or stay proceeding and Plaintiff's response; for the reasons stated in the Memorandum filed on this date;

IT IS ORDERED: Defendant's motion to stay proceeding (Docket No. 4) is **GRANTED**. This action shall be stayed, assuring that it can proceed without risk of time bar if the state case, docketed at 95-22852 in the Court of Common Pleas of Montgomery County, fails to resolve the matter in controversy.

RAYMOND J. BRODERICK, J.