

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

BUTERA, BEAUSANG, COHEN & )  
BRENNAN, P.C. )  
 ) Civil Action  
v. )  
 )  
LAUREEN M. RYAN, TRUSTEE, ) No. 00-2509  
CHAPTER 11 TRUSTEE OF THE )  
ESTATE OF RAYMARK INDUSTRIES, )  
INC. )

**MEMORANDUM**

**Padova, J.**

**December , 2000**

This matter arises on the Defendant Laureen M. Ryan’s Motion for Summary Judgment and Plaintiff Butera, Beausang, Cohen & Brennan, P.C.’s Motion for Summary Judgment or for Partial Summary Judgment and/or Declaratory Relief. The parties have filed numerous responses, replies, affidavits, and supporting memoranda. In addition, prior to the filing of these motions, oral argument was held on Defendant’s Motion for Stay of Proceedings, at which the basic issues underlying these motions were addressed. The motions are fully briefed and ripe for consideration. For the reasons that follow, the Court grants Defendant’s Motion and dismisses this action pursuant to the first-filed rule.<sup>1</sup> Accordingly, the Court denies Plaintiff’s Motion in its entirety.

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<sup>1</sup>Though Defendant moves for grant of summary judgment pursuant to the first-filed rule, the appropriate action by a court under the rule is to dismiss, transfer or stay the proceedings. Ward v. Follett Corp., 158 F.R.D. 645, 648 (N.D. Cal. 1994) (citing Alltrade, Inc. v. Uniweld Products, Inc., 946 F.2d 622, 623 (9th Cir. 1991)). The Court dismisses the instant action.

## **I. Background**

The instant case relates to another case formerly before this Court, Raymark Industries, Inc. v. Butera, Beausang, Cohen & Brennan, Civil Action No. 97-0034. In that action, Raymark Industries, Inc. (“Raymark”) sought the return of a \$1 million non-refundable retainer paid to Michael Beausang of the law firm Butera, Beausang, Cohen & Brennan (“Butera”). By Order dated December 1, 1997, this Court granted summary judgment in favor of Butera, and held that Butera was entitled to retain its \$1 million fee. Raymark Industries, Inc. v. Butera, Beausang, Cohen & Brennan, No. Civ. A. 97-0034, 1997 WL 746125, at \*1 (E.D. Pa. Dec. 1, 1997), aff’d, Ryan v. Butera, Beausang, Cohen & Brennan, 193 F.3d 210 (3rd Cir. 1999).

On or about March 18, 1998, Raymark filed a voluntary petition for relief pursuant to Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Utah; the case was subsequently transferred to the United States Bankruptcy Court for the District of Connecticut. (Def.’s Mem. at 3). On October 7, 1998, the bankruptcy court ordered appointment of a Chapter 11 trustee (“Trustee”) in the bankruptcy cases of Raymark Industries and its corporate parent, Raymark Corporation. (Id.) On or about March 16, 2000, the Trustee commenced an adversary proceeding against Butera in the United States Bankruptcy Court for the District of Connecticut. (Id.) In the suit, the Trustee alleges that Raymark paid a pre-petition retainer to Butera with either actual intent to hinder, delay or defraud creditors, or without receiving reasonably equivalent value at a time when Raymark was insolvent, all in violation of federal bankruptcy law. (Def.’s Mem. at 4). The Trustee contends that payment of the retainer to Butera was part of an overall scheme by Raymark and others to hinder, delay and defraud creditors. (Id.)

Butera filed the instant action on May 16, 2000.<sup>2</sup> Butera asks for injunctive, equitable and monetary relief; specifically, it asks that the Court enjoin the Trustee from further litigation of the adversary proceeding in the Connecticut bankruptcy court, and enforce the determinations and judgments by this Court in its December 1997 opinion.<sup>3</sup> Butera also seeks damages in the form of reimbursement of reasonable costs and counsel fees. In the alternative, Butera seeks a declaratory judgment, pursuant to Rule 57 of the Federal Rules of Civil Procedure, with respect to the res judicata effect of certain aspects of the 1997 ruling.

## **II. Legal Standard**

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). An issue is “genuine” if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is “material” if it might affect the outcome of the case under governing law. Id.

## **III. Discussion**

At the threshold, Defendant asserts that this action should be dismissed pursuant to the first-filed rule. Under the first-filed rule, in cases of federal concurrent jurisdiction and absent exceptional

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<sup>2</sup>The procedural posture for this case is somewhat unusual. Rather than filing a motion for a writ to enforce the judgment pursuant to the 1997 action under Rule 69 of the Federal Rules of Civil Procedure, Plaintiff instead filed the instant action, and included a request for attorneys’ fees and litigation costs.

<sup>3</sup>Plaintiff seeks the same relief with respect to the enforcement of determinations by Bankruptcy Judge Thomas Twardowski of the United States Bankruptcy Court for the Eastern District of Pennsylvania, in his August 9, 1996 Order in the case of In re: Raymark Industries, Inc., Case No. 89-20233T.

circumstances, the court which first has possession of the subject must decide it. Premier Design, Ltd. v. Western Money Sys., Civ. A. No. 93-1850, 1993 WL 313506, at \*1 (E.D. Pa. July 30, 1993). The rule allows a district court to transfer, stay or dismiss an action when a similar complaint has already been filed in another federal court. Ward v. Follett Corp., 158 F.R.D. 645, 648 (N.D. Cal. 1994) (citing Alltrade, Inc. v. Uniweld Products, Inc., 946 F.2d 622, 623 (9th Cir. 1991)). In deciding whether to apply the rule, courts look to three threshold factors: the chronology of the two actions, the similarity of the parties, and the similarity of the issues. Id. One of the principle goals of the first-filed rule is to avoid duplicative litigation. Colorado River Water Conserv. Dist. v. U.S., 424 U.S. 800, 817 (1976).

The Court concludes that the first-filed rule applies to bar this Court's jurisdiction over the instant action.<sup>4</sup> Here, the three factors are met: the Connecticut action was filed on March 18, 2000, some two months prior to the filing of the instant action on May 16, 2000. The parties involved in the actions are identical, and the issues in the instant case involve res judicata inquiries with respect to issues as they affect the first action. Furthermore, applying the first-filed rule in this case would avoid duplicative litigation in Connecticut and the Eastern District of Pennsylvania. The Court therefore agrees with Defendant that the first-filed rule applies.

Plaintiff, however, disputes that the Connecticut action was the first-filed action. Rather, it

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<sup>4</sup>Defendant also contends that the suit is barred under the Barton Doctrine, which precludes a party from bringing suit against a court-appointed bankruptcy trustee for acts done in her administrative capacity, without first obtaining leave from the appointing court. Barton v. Barbour, 104 U.S. 126, 129 (1881); Western N.Y. & P.R. Co. v. Penn. Ref. Co., 137 F. 343, 360 (3d Cir. 1905); In re Linton, 136 F.3d 544, 546 (7th Cir. 1998) (extending rule for court-appointed receivers to cover court-appointed bankruptcy trustees). Because the Court determines that the suit is barred under the first-filed rule, it need not consider this theory for judgment in favor of the Defendant. Likewise, and for the same reason, the Court need not examine Plaintiff's supposed malicious prosecution claim.

contends that because the instant action “arises out of the Court’s decision and judgment of December 1, 1997, and is the functional equivalent of a Rule 69 motion in the original case of Raymark v. Butera, this action would be considered the ‘first filed’ for purposes of applying the First Filed rule.” (Pl.’s Resp. in Opp. to Trustee’s Statement of Mat. Facts Not in Dispute ¶9). However, the practical similarity between this action and a Rule 69 motion does not change the fact that Plaintiff chose to file a new action, and not a Rule 69 motion, and therefore subjected itself to potential jurisdictional defenses that otherwise might not have been available to Defendant.<sup>5</sup> In this situation, the Court disagrees with Plaintiff’s characterization, and concludes that the Connecticut action is the first-filed action for purposes of the first-filed rule.

Neither is this a case in which the Court would be justified in retaining jurisdiction notwithstanding the first-filed rule. District courts do possess the discretion to retain jurisdiction given appropriate “compelling circumstances” justifying departure from the rule. EEOC v. University of Penn., 850 F.2d 969, 971 (3d Cir. 1988). In particular, the court should not apply the first-filed rule if the facts of the case show forum-shopping, bad faith, or inequitable conduct. Id. at 972. Here, however, the Court can discern no such “compelling circumstances” that would warrant the Court to retain jurisdiction and refrain from applying the first-filed rule. Concluding that the first-filed rule applies, the Court therefore lacks jurisdiction over this case.

Even if this Court, however, were to retain jurisdiction over this case notwithstanding the first-filed rule, exercise of its authority under the All Writs Act and its inherent power to enforce its

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<sup>5</sup>By this, the Court expresses no opinion as to the validity of the issue preclusion arguments raised by Plaintiff, or as to the possibility that a res judicata determination with respect to certain prior findings might be dispositive in the Connecticut proceeding.

order to provide the relief sought by Butera would be inappropriate.<sup>6</sup> Butera asks this Court to use its writ power to support res judicata principles that would bar, in whole or in part, the Connecticut adversary proceeding. Ordinarily, the doctrines of collateral estoppel and res judicata provide adequate assurance that one court's resolution of a controversy will be respected by other courts. DeNardo v. Murphy, 781 F.2d 1345, 1348 (9th Cir. 1986). Nevertheless, under the All Writs Act, a federal court may enjoin parties before it from attempting to relitigate decided issues and to prevent collateral attack of its judgments. See In re: March, 988 F.2d 498, 500 (4th Cir. 1993); DeNardo, 781 F.2d at 1348; Wood v. Santa Barbara Chamber of Commerce, Inc., 705 F.2d 1515, 1523-24 (9th Cir. 1983). Courts may grant injunctions "where such action is necessary to prevent harassment . . . through the repeated filing of baseless complaints." Adams v. American Bar Association et al., 400

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<sup>6</sup>The same is true with respect to Defendant's request for declaratory judgment. Declaratory judgment actions are governed by 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57. Section 2201 provides, in relevant part: "In a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a). The Advisory Committee Notes from the 1937 adoption of Federal Rule of Civil Procedure 57 provide that "[a] declaratory judgment is appropriate when it will 'terminate the controversy' giving rise to the proceeding" and that "when declaratory relief will not be effective in settling the controversy, the court may decline to grant it." Fed. R. Civ. P. 57, cmt.

The decision whether or not to entertain a declaratory judgment request lies 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 "if 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.

Here, the declaratory judgment would not serve any function not otherwise available by raising the issue preclusion arguments in the Connecticut bankruptcy court. Furthermore, such a declaratory judgment might not terminate the Connecticut action. Therefore, declaratory judgment in this situation, like exercise of the writ authority, would not be appropriate.

F. Supp. 219, 227 (E.D. Pa. 1975); see also Shafii v. British Airways, PLC, 83 F.3d 566, 571 (2d Cir. 1996) (noting that injunction appropriate where a litigant engages in filing of repetitive and frivolous lawsuits). Issuance of such an injunction is proper when it is “apparent that the litigation is baseless.” Adams, 400 F. Supp. at 228; Calesnick v. Redevelopment Auth. of Phil., 696 F. Supp. 1053, 1055 (E.D. Pa. 1988). This power extends to injunctions restricting filings of meritless pleadings where the pleadings raise issues identical or similar to those already adjudicated. In re Oliver, 682 F.2d 443, 445 (3d Cir. 1982). However, such injunctions are extreme remedies that should be narrowly tailored and sparingly used. Id.; Abdul-Akbar v. Watson, 901 F.2d 329, 332 (3d Cir. 1990); In the Matter of Packer Ave. Assoc., 884 F.2d 745, 746 (3d Cir. 1989) (citation omitted).

The Court can discern no basis to justify this Court’s use of its writ authority to grant the remedy Butera requests. This case does not involve multiple filings of frivolous actions, nor would Plaintiff be left without adequate remedy in the absence of such a writ. To the extent that res judicata principles might apply, Butera can raise those issues before the Connecticut court. The extreme remedy of intervention by this Court into the proceeding of another federal court is not required. Therefore, even if this Court retained jurisdiction despite the first-filed rule, it would decline to exercise its writ authority in this case.

The Court recognizes that Plaintiff raises serious issue preclusion arguments, particularly in view of this Court’s extensive analysis of the retainer fee in its 1997 opinion. Nevertheless, the Court offers no opinion here with respect to the success of those preclusion arguments, or to the extent to which the determinations of this Court in its 1997 opinion may be dispositive to the Connecticut proceeding. The Court sees little reason to delve into these issues when they may be addressed properly and fully before the Connecticut bankruptcy court. In the interests of avoiding duplicative

litigation under the first-filed rule, the Court concludes that it lacks jurisdiction over this case, and further concludes that even if it were to retain jurisdiction, granting the relief sought by the Plaintiff would not be appropriate under these circumstances. The Court therefore grants Defendant's Motion and dismisses this action, and denies Plaintiff's Motion in its entirety.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT  
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LAUREEN M. RYAN, TRUSTEE, CHAPTER 11 TRUSTEE OF THE ESTATE OF RAYMARK INDUSTRIES, INC.	)	No. 00-2509
	)	
	)	

**ORDER**

**AND NOW**, this            day of December, 2000, upon consideration of Defendant  
Laureen M. Ryan's Motion for Summary Judgment (Docket No. 14), and all responses thereto,

**IT IS HEREBY ORDERED** that said Motion is **GRANTED**, and the instant action is  
**DISMISSED** pursuant to the first-filed rule. It is further **ORDERED** that:

1. Plaintiff Butera, Beausang, Cohen & Brennan's Motion for Summary Judgment or  
for Partial Summary Judgment and/or Declaratory Relief (Docket No. 15) is  
**DENIED** in its entirety.
2. The Clerk shall close this case for statistical purposes.

BY THE COURT:

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John R. Padova, J.