

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

JDL VENTURES, LLC, *et al.* : Civil Action  
: :  
: :  
v. : :  
: :  
DAVE AND BUSTER'S, INC. : No. 04-2849  
: :  
: :

**MEMORANDUM AND ORDER**

Fullam, Sr. J. September , 2004

Defendant has filed a motion to stay proceedings, arguing that this Court should abstain from exercising jurisdiction under the principles enunciated in Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976). Defendant asserts that abstention is appropriate because of a Texas state court action it filed six months before Plaintiffs commenced this suit. The Texas litigation alleges that JDL breached certain contracts dealing with the placement of arcade games such as Skee-Ball at different facilities operated by Dave and Buster's; this litigation alleges that Dave and Buster's breached those same contracts.

In Colorado River, the Supreme Court recognized a limited exception, based on considerations of "wise judicial administration," to a federal court's "virtually unflagging

obligation" to exercise its jurisdiction. Id. at 817. The factors to be weighed in determining whether abstention is appropriate include: (1) whether a state court assumed jurisdiction over a res; (2) the inconvenience of the federal forum; (3) the desirability of avoiding piecemeal litigation; (4) the order in which each forum obtained jurisdiction; (5) whether state or federal law provides the rules of decision; and (6) whether the parties' rights would be adequately protected in state court.

I conclude that these factors militate in favor of abstention in the present case. There is no res at issue, but the Texas state court first acquired jurisdiction over the dispute by some six months. Although the issues have been framed differently, it is clear that the key to both suits is determining which party is in breach of the contract, and who owes what to whom. The issues involve the application of state, not federal, law (which state law is not entirely clear, although one of the contracts specifies Pennsylvania law). Plaintiffs do not dispute that Texas is more convenient to Defendant, which apparently is based there; nor do they dispute that Plaintiffs' rights can be fully vindicated in the state court litigation.

To proceed with the present litigation would plainly result in piecemeal consideration of what is really a unitary set of disputes.

In opposition to abstention, Plaintiffs attempt to distinguish between the two actions as involving "nonfeasance" and "misfeasance." However, the salient fact remains that both lawsuits concern the same parties and the same contracts.

Plaintiffs also argue that a federal court should abstain only in truly exceptional circumstances. I agree, but, when all of the applicable considerations militate in favor of abstention, the case is indeed "exceptional."

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**O R D E R**

AND NOW, this        day of September, 2004, upon consideration of Defendant's Motion to Stay Proceedings, and the response thereto,

IT IS hereby ORDERED that the motion is GRANTED and the above captioned action is STAYED pending the resolution of Dave & Buster's, Inc. v. JDL Ventures, L.L.C., Cause No. 04-00269, filed January 14, 2004 in the K-192nd Judicial District, Dallas County, Texas. The parties are directed to provide this Court with written status reports every ninety (90) days.

IT IS further ORDERED that the Clerk is directed to place this case into CIVIL SUSPENSE until further Order of this Court.

BY THE COURT:

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Fullam, Sr. J.