

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

REGSCAN, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
DEAN MARK BREWER, et al.	:	NO. 04-6043

**MEMORANDUM AND ORDER**

**Baylson, J.**

**June 17, 2005**

Plaintiff claims federal jurisdiction under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1964(c) (“RICO”), and under the Lanham Act, 15 U.S.C. §1125(a), and asserts state law claims. Defendants are Dean Mark Brewer, Kevin Spruce, Bruce Regan, Gary Tabbert, and Citation Publishing, Inc.

There is a related case involving RegScan as the plaintiff and Citation Publishing, Inc. and Richard Martin as defendants, pending in the Court of Common Pleas of Lycoming County, Pennsylvania. RegScan, Inc. v. Citation Publishing, Inc., No 02-01,152 (C.C.P. Lycoming Co.). However, the Court of Common Pleas denied Plaintiff’s Motion to Amend its original complaint to assert RICO claims, whereupon this case was filed in this Court.

Initially, the Defendants sought to dismiss the RICO claims in this case under the Rooker-Feldman Doctrine, arguing that the state court’s ruling denying Plaintiff’s motion to amend its complaint to assert a RICO claim precluded this Court from exercising jurisdiction. In a Memorandum and Order dated April 13, 2005, this Court denied Defendants’ Motion to Dismiss under the Rooker-Feldman Doctrine. RegScan, Inc. v. Brewer, 2005 WL 874662 (E.D. Pa. Apr. 13, 2005). A detailed description of the state court’s ruling can be found in the April 13, 2005 Memorandum.

The undersigned then held a telephone conference on the procedural status of the case and agreed to allow the Defendants to present further arguments on the issue of abstention. The Court also directed Plaintiff to file a RICO Case Statement, setting forth in much greater detail Plaintiff's assertions under RICO.

Defendants' brief regarding abstention was filed on April 28, 2005. Plaintiff's RICO Case Statement and response regarding abstention were filed on May 6, 2005.

### **I. Abstention**

The Court has considered, but will deny, Defendants' request for abstention under Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976). Although the Supreme Court has allowed for the possibility of abstention when there exist parallel state proceedings, "[a]bstention from the exercise of federal jurisdiction is the exception, not the rule," and abstention is appropriate "only in the exceptional circumstances where the order to the parties to repair to the state court would clearly serve an important countervailing interest." Id. at 813 (quoting County of Allegheny v. Frank Mashuda Co., 360 U.S. 185, 188-89 (1959)); Addiction Specialists, Inc. v. Township of Hampton, 2005 WL 1389110 at \* 6 (3d Cir. June 14, 2005)("[A]bstention rarely should be invoked, and is only appropriate in a few carefully defined situations.")(quotations and citations omitted).

"The threshold question in applying the abstention doctrine is whether the federal and state actions are parallel." Flint v. A.P. Desanno & Sons, 234 F. Supp.2d 506, 510 (E.D. Pa. 2002)(Baylson, J.)(citing Ryan v. Johnson, 115 F.3d 193, 196 (3d Cir. 1997)). Generally, cases are considered "parallel" for the purposes of Colorado River when they are "truly duplicative." Marran v. Marran, 2004 WL 21448868 \*11 (E.D. Pa. 2003)(Baylson, J.)(quoting Rycoline

Products, Inc. v. C & W Unlimited, 109 F.3d 883, 890 (3d Cir. 1997)). “Actions are considered duplicative if the same parties are litigating the same issues.” Id. (citing Ryan, 115 F.3d at 196). The two cases “need not be identical,” however, as long as there is “a likelihood that the state litigation will dispose of all the claims presented in the federal case.” Flint, 234 F.Supp.2d at 510-11 (quoting CFI of Wisconsin, Inc. v. Wilfran Agricultural Industries, Inc., 1999 WL 994021 at \*2 (E.D. Pa. 1999)).

Here, Plaintiff argues that the state court proceedings are not parallel to the federal court action because the state court litigation will not dispose of any of the claims presented here. Defendants argue to the contrary that, although some changes have been made to the complaint in the federal litigation (such as that addition of several individual Defendants who are present or former officers of Defendant Citation Publishing, Inc.), the “thrust” of the complaint before this Court is the RICO claims, which Defendants argue have already been rejected by the state court on substantive grounds. (See Memorandum and Order of April 13, 2005 for the details of this argument).

In cases where the parties are not identical, “[t]he presence of additional parties in the state action does not destroy the parallel nature of the cases when all of the parties in the federal action are also parties in the state action.” Flint, 234 F.Supp.2d at 510 (citing Albright v. Sears, Roebuck and Co., 1995 WL 664742 at \*1 (E.D. Pa. 1995)). However, where, as here, there are additional parties in the federal action who are *not* parties in the state action, the parallel nature of the two actions is called into question. Nevertheless, this Court has previously found, under certain circumstances, that “despite the fact that the parties in the two actions are not identical, the claims in the federal action are essentially the same as in the state action and arise from the

same facts, and that the resolution of the state claims would dispose of the claims before the Court.” Great American Ins. Co. v. Stephens, 2005 WL 452349 at \*7 (E.D. Pa. 2005)(Baylson, J.).

Even if the two actions were deemed parallel here, however, the Court finds that the “exceptional circumstances” necessary to warrant abstention do not exist. In Colorado River, the Supreme Court identified six factors to be considered to determine whether such “exceptional circumstances” are present: (1) which court first assumed jurisdiction over property; (2) the inconvenience of the federal forum; (3) the desirability of avoiding piecemeal litigation; (4) the order in which jurisdiction was obtained; (5) whether federal or state law controls; and (6) whether the state court will adequately protect the interests of the parties. Id. at 818-19.

Here, the first factor is irrelevant, since neither court has assumed in rem jurisdiction over property. As to the second factor, Defendants have presented no arguments that the federal forum is inconvenient. The third factor – the desirability of avoiding piecemeal litigation – has been limited by the Third Circuit to cases in which there is “a strongly articulated *congressional policy* against piecemeal litigation in the specific context of the case under review.” Ryan, 115 F.3d at 198 (emphasis in original). Defendants have not argued that any such congressional policy exists here. Therefore, none of the first three factors weighs in favor of abstention.

The fourth factor weighs in favor of abstention, as the state court undeniably obtained jurisdiction before this Court. The fifth factor, however, weighs against abstention, since the RICO and Lanham Act claims are brought under federal law. As to the sixth and final factor, this Court does not question the adequacy of the state forum to protect the rights of the parties, so this factor “neither supports nor refutes abstention.” Flint, 234 F.Supp.2d at 514 (“The adequacy of

the state forum normally is only relevant when the state forum cannot adequately protect the rights of the parties.”)(citing Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 26-27 (1983)).

In considering this combination of factors, the Court has heeded the Supreme Court’s direction that “[n]o one factor is necessarily determinative; a carefully considered judgment taking into account both the obligation to exercise jurisdiction and the combination of factors counseling against that exercise is required. Only the clearest of justifications will warrant dismissal.” Colorado River, 424 U.S. at 818-19 (citation omitted). The Court has also considered, but cannot accept at this stage of the proceedings, Defendants’ argument that the “vexatious” nature of RegScan’s federal court complaint should weigh in favor of abstention. The Court finds that consideration of the Colorado River factors does not lead to the conclusion that “the clearest of justifications” is present here to warrant dismissal. Id. The Court therefore concludes this case does not present the “exceptional circumstances” necessary for abstention under Colorado River.

## **II. RICO Claims**

The Court has reviewed Plaintiff’s RICO Case Statement and finds that although Plaintiff has set forth in considerable and sufficient detail the alleged “predicate acts” as well as facts that would constitute a “pattern,” the RICO Case Statement is deficient in two respects:

1. Plaintiff identifies as the alleged “enterprise” the Defendant Citation Publishing, Inc. without explaining how, under the Supreme Court’s decision in Cedric Kushner Promotions, Ltd. v. King, 533 U.S. 158 (2001), the plaintiff can maintain a RICO case where the alleged enterprise is also a party defendant.

2. Plaintiff's allegations of causation appear to center on the allegation that Defendants have unfairly cut their costs and saved expenses by illegal practices, and thereby gained a competitive advantage against Plaintiff. The Court has a serious question as to whether such allegations are sufficient causation under RICO.

Therefore, Plaintiff shall file an additional Memorandum of Law on these issues concerning RICO within ten (10) days and Defendants shall respond within ten (10) days thereafter.

BY THE COURT:

/s/ Michael M. Baylson  
Michael M. Baylson, U.S.D.J.

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**ORDER**

AND NOW this 17<sup>th</sup> day of June, 2005, for the reasons stated in the foregoing Memorandum, and upon consideration of the Motion to Dismiss of Defendants (Docket No. 11), and the responses thereto, it is ORDERED that Defendants' request that the Court abstain from exercising jurisdiction under the Colorado River doctrine is denied.

As explained in the Memorandum, Plaintiff shall file an additional Memorandum of Law concerning the RICO claims within ten (10) days and Defendants shall respond within ten (10) days thereafter.

**BY THE COURT:**

/s/ Michael M. Baylson \_\_\_\_\_  
**Michael M. Baylson, U.S.D.J.**