

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

RCN TELECOM SERVICES, INC.	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	NO. 04-264
	:	
DELUCA ENTERPRISES, INC.,	:	
d/b/a HANOVER CROSSING, NORTH	:	
Defendant	:	
	:	
v.	:	
	:	
JAINDL LAND COMPANY,	:	
Third Party Defendant	:	

MEMORANDUM

STENGEL, J.

February 28, 2006

On July 12, 2005, this court issued an Opinion finding that DeLuca had violated the Cable Act by entering into an exclusive agreement to provide cable services to a new housing development. The effect of this agreement was to deny RCN, a competitor, the ability to provide cable services to the same subdivision. Following this Opinion, RCN and DeLuca have agreed to a settlement of their dispute and agree that the claim brought by RCN against DeLuca may be dismissed. DeLuca has a claim for indemnification against Jaindl, the third party defendant. Jaindl seeks to have the case transferred to state court because there is no longer a federal question.

This court's original jurisdiction was based on RCN's Cable Act¹ claim, which raised a federal question.² DeLuca's claim for indemnification against Jaindl raised state law claims which were proper in this case under this court's supplemental jurisdiction.³ Now that the federal question has been resolved, the only claims remaining are under Pennsylvania state law. Jaindl wants to refer these claims to the Court of Common Pleas of Lehigh County; Deluca prefers to continue to litigate in federal court.

This court has the discretion to continue to exercise supplemental jurisdiction over the remaining claims. 28 U.S.C. § 1367(a), which covers supplemental jurisdiction, states:

Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all claims that are so related to claims in the action within such original jurisdiction that they form of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

28 U.S.C. § 1367(a) (2005).

Further, section 1367(c) applies in this case and provides:

The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if--

¹The Cable Communications Policy Act of 1984, 47 U.S.C. § 541 (a) (2).

²This court has jurisdiction to hear cases involving federal questions. 28 U.S.C. § 1331.

³Where federal jurisdiction is proper, the district court has jurisdiction over related state law claims. 28 U.S.C. § 1367.

- (1) the claim raises a novel or complex issue of State Law,
- (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
- (3) the district court has dismissed all claims over which it has original jurisdiction, or
- (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c) (2005).

In this case, it appears clear that DeLuca's claim against Jaindl arose out of the exact same case and controversy that originally gave this court jurisdiction under 28 U.S.C. § 1331. Namely, DeLuca seeks compensation from Jaindl for losses it suffered as a result of Jaindl's exclusivity contract⁴ that violated the Cable Act. The issues involved are neither complex nor unique. It is not uncommon for a federal court to maintain jurisdiction to decide state law claims which remain after the federal claim has been decided. See Day v. Pennsylvania R.R. Co., 172 F. Supp. 506 (E.D. Pa. 1959) (court used its discretion to maintain supplemental jurisdiction over the defendant's claim for indemnification after liability under federal statutes had already been established).

Many of the issues in this case have been resolved and the court is well familiar with the remaining claim and with the interesting background to this litigation. At first glance, judicial efficiency and economy would suggest that the case should stay here.

⁴Jaindl originally entered into the exclusivity agreement with Service Electric Cable Television, Inc. Jaindl sold the land to DeLuca, a developer, subject to the agreement. It was this agreement which gave Service Electric the right to provide cable services to the subdivision to the exclusion of RCN.

Keeping the case in this court may lead to a quicker resolution, may avoid further discovery and could save the parties some costs.

However, it appears that this case may not yet be ready for trial. The liability case is less than clear in that DeLuca will have a claim for indemnification only if it must pay RCN under their settlement agreement. At this point, there may not be any basis for liability in the action by DeLuca against Jaindl, because DeLuca has not yet had to pay anything to RCN.

For the reasons discussed with counsel during a telephone conference held on January 19, 2006, the damages in this case remain speculative. It is possible that DeLuca will not incur any money damages pursuant to its agreement with RCN, and there is no way of knowing the extent of DeLuca's possible damages for another two years.

There is no way this court can schedule a trial at this time without severe prejudice to DeLuca's claim for damages. That is, if this case were to be tried in federal court in the next three months, a reasonable schedule given the limited issues, the need for only minimal discovery and the anticipated lack of dispositive motions, DeLuca would likely face a motion for a nonsuit or an adverse jury verdict because of the speculative nature of its damages claim. The better course would be to dismiss this case from the federal court and preserve DeLuca's right to bring an indemnification action in state court in the event it incurs a significant liability to RCN under the settlement agreement. By agreement of the plaintiff and defendant, the Cable Act claim may be dismissed. The remaining claim

will be dismissed because all claims over which the court has original jurisdiction have been dismissed. An appropriate Order follows.

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Defendant	:	
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v.	:	
	:	
JAINDL LAND COMPANY,	:	
Third Party Defendant	:	

ORDER

AND NOW, this 28th day of February, 2006, upon consideration of Third Party Defendant's Motion to Transfer (Docket # 60), and the original Defendant's response thereto (Docket # 61), it is hereby **ORDERED** that the Motion is **GRANTED**.

- 1) By agreement of the plaintiff and defendants the Cable Act claim, which was the basis for Federal Jurisdiction, shall be dismissed.
- 2) The remaining claim by DeLuca against Jaindl shall be dismissed without prejudice as to DeLuca's right to refile its claim in the appropriate venue.
- 3) All claims asserted in the federal action are dismissed.
- 4) The Clerk of Courts shall mark this case closed for all purposes.

BY THE COURT:

/s/ Lawrence F. Stengel
LAWRENCE F. STENGEL, J.