

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

ARRIS SYSTEMS, INC. : CIVIL ACTION  
: :  
v. : :  
: :  
NEXPLORATION CO. : NO. 06-4094

MEMORANDUM AND ORDER

McLaughlin, J.

November 1, 2006

This case involves a dispute between Arris Systems, Inc. ("Arris"), and Nexploration Co. ("Nexploration"), over work done pursuant to a website development contract. Nexploration has moved for abstention under Colorado River, or in the alternative, a stay of federal proceedings pending resolution of state court litigation. The Court will deny the motion.

On January 6, 2006, the parties entered into a contract, whereby Arris agreed to develop a website for Nexploration. Disputes arose between the parties, and in June, 2006, Nexploration filed a breach of contract suit against Arris in the Philadelphia County Court of Common Pleas. Arris has not answered Nexploration's complaint. It has instead filed initial objections and moved to stay the state court proceedings. An initial scheduling conference in the state court case was held on September 20, 2006.

Prior to this scheduling conference, Arris filed its own state court action against Nexploration in August, 2006, alleging breach of contract and violation of the Pennsylvania

Uniform Trade Secrets Act. Arris subsequently withdrew all claims against Nexploration in its state court suit and filed the instant federal action, alleging breach of contract, violation of the Pennsylvania Uniform Trade Secrets Act, and copyright infringement.

I. Colorado River Abstention

As a general rule, the pendency of an action in state court is no bar to proceedings concerning the same matter in a federal court having jurisdiction. Colo. River Water Const. Dist. v. United States, 424 U.S. 800, 817 (1976). In Colorado River, the Supreme Court recognized an exception to this general rule, whereby a federal court may defer to pending parallel state court proceedings based on considerations of "wise judicial administration," primary among which is conservation of judicial resources and comprehensive disposition of litigation. Id. This exception, according to the Court, is extraordinarily narrow, as federal courts have a "virtually unflagging obligation" to exercise jurisdiction. Id.

To prevail on a motion for abstention under Colorado River, a moving party must demonstrate the existence of (i) parallel federal and state cases, and (ii) "exceptional circumstances" that warrant abstention. See Spring City Corp. v. Am. Bldg. Co., 193 F.3d 165, 171 (3d Cir. 1999).

A. Parallel Federal and State Cases

The federal and state cases are not parallel because they raise different issues and allegations.

The threshold requirement for a federal court to entertain abstention is a contemporaneous, parallel state court proceeding. IFC Interconsult, AG v. Safeguard Int'l Partners, LLC, 438 F.3d 298, 306 (3d Cir. 2006). For cases to be parallel, they must involve the same parties and "substantially identical" claims, raising "nearly identical allegations and issues." Id. (quoting Yang v. Tsui, 416 F.3d 199, 205 n.5 (3d Cir. 2005)).

In this case, the state proceeding and federal proceeding are contemporaneous and the parties are the same. The claims, however, are not substantially identical. In addition to various state law claims, Arris' federal complaint contains an allegation of copyright infringement. Although state law contractual issues may be pivotal in determining ownership of the copyright, the complaint seeks remedies available exclusively through federal copyright laws.

B. Extraordinary Circumstances

Even if the state and federal suits were parallel, Nexploration has failed to demonstrate the requisite "extraordinary circumstances" to warrant Colorado River abstention.

To determine whether extraordinary circumstances exist for purposes of Colorado River abstention, courts must weigh six factors: (i) whether one court has first obtained jurisdiction over a relevant res; (ii) whether the federal court is inconvenient; (iii) whether abstention would aid in avoiding piecemeal litigation; (iv) whether the state court first obtained

jurisdiction; (v) whether federal or state law applies; and (vi) whether the state action is adequate to protect the federal plaintiff's rights. Rycoline Prods., Inc. v. C & W Unlimited, 109 F.3d 883, 890 (3d Cir. 1997). In weighing these factors, the Supreme Court has emphasized that the final decision rests "on a careful balancing of the important factors as they apply in a given case, with the balance heavily weighted in favor of the exercise of jurisdiction." Moses H. Cone Mem'l Hosp. v. Merc. Constr. Corp., 460 U.S. 1, 16 (1983).

Factors one and two are irrelevant. There is no relevant res, and neither state nor federal court is more or less convenient.

Factor three - avoidance of piecemeal litigation - weighs in favor of the federal court exercising jurisdiction. Federal courts have exclusive jurisdiction over copyright claims, and therefore, the federal court is the only forum that can exercise jurisdiction over all claims between the parties.

Factor four - which court first obtained jurisdiction - weighs slightly in favor of abstention. Although it is true that the state court proceeding preceded the federal proceeding, the state court action is still in its nascent stages.

Factor five - which law applies - weighs in favor of the federal court exercising jurisdiction. Arris' federal complaint alleges copyright infringement, a claim over which federal courts have exclusive jurisdiction. Although state law may play a pivotal role in determining ownership of the

copyright, ownership is only one essential element of Arris' copyright infringement claim.

And finally, factor six - ability of the state action to protect the federal plaintiff's rights - weighs in favor of the federal court exercising jurisdiction. The state court proceeding is inadequate to protect Arris' rights under the copyright statute because there is exclusive federal jurisdiction over copyright claims.

Since three of the four relevant factors weigh in favor of the federal court exercising jurisdiction, Nexploration has failed to demonstrate the requisite extraordinary circumstances to warrant Colorado River abstention.

## II. Stay

Nexploration has also failed to demonstrate that this Court should stay proceedings pending the outcome of the state court litigation. Nexploration argues that a stay is appropriate in cases like this where "peripheral" copyright issues accompany state law breach of contract claims. At this stage of the litigation and on this record, it is premature for the Court to evaluate the merits of Arris' copyright claims. Therefore, Nexploration's request for a stay is denied.

An appropriate Order follows.

