

AVCO CORPORATION
a Delaware corporation,

Plaintiff

vs.

KS BEARINGS, INC.,
a Delaware corporation,

Defendant

: IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA

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: NO. 02-01,626

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: **MOTION TO STAY**

Date: April 3, 2003

OPINION and ORDER

Before the Court for determination is Defendant KS Bearing, Inc.'s ("KS") Motion to Stay filed January 13, 2003. KS is asking this Court to stay the proceedings begun in this Court on September 16, 2002 (Pennsylvania action) because KS had instituted a suit against Plaintiff Avco Corporation ("Avco") in a Texas state court (Texas action). In the Texas action, KS has brought a declaratory judgment action against Avco seeking a "declaration that [KS] has no duty to indemnify Defendants, that it has not breached any express or implied warranties, if any, to Defendants, that it is not liable to Defendants for any alleged fraud, that it is not liable to Defendants for any damages, fees, or expenses of any kind or nature relating to certain claims asserted by Defendants against KS...." Defendant's Original Petition for Declaratory Judgment at 1, *KS Bearings, Inc. v. Avco Corporation*, cause number E-167954 (Jefferson County, Texas).

The issue before the Court is whether an action in a Pennsylvania court should be stayed when the defendant in the Pennsylvania action has previously filed a declaratory judgment action in a Texas court to determine its liability to the Pennsylvania plaintiff with

regard to the various bearings it sold the Pennsylvania plaintiff. The Court will not stay the Pennsylvania action. KS has attempted to use the Texas declaratory judgment action to establish a preemptive defense to the Pennsylvania action. KS chose the Texas court as the forum for its declaratory judgment action in order to secure a favorable judgment. Therefore, KS comes to this Court with unclean hands and the Court cannot grant the equitable relief it seeks.

The main point of contention in this action and the Texas action is KS' possible liability regarding the bearings it manufactured and that were installed in engines manufactured by Avco. KS manufactures various types of bearings. The Textron Lycoming (Textron) division of Avco manufactures piston aircraft engines in Williamsport, Pennsylvania. One such engine was the TIO-540-AE2A. KS sold Avco the crankshaft and connecting rod bearings that were used in the TIO-540-AE2A engine. The TIO-540-AE2A engine was the main power plant for the Malibu Mirage aircraft manufactured by The New Piper Aircraft Corporation.

Initial problems with the crankshaft and connecting rod bearings first began to surface around 1998. Several Malibu Mirage aircraft began to experience engine problems. In 2000, there were two incidences of engine failure that caused emergency landings and aircraft damage. In 2000, Textron issued special advisories and recalls to Malibu Mirage owners on two separate occasions. Textron made the necessary repairs to the engines and replaced the crankshaft and connecting rod bearings. A Malibu Mirage owner also sued Avco for personal injuries suffered from the failure of the TIO-540-AE2A engine in a court in Texas (*Walker v. Cutter Aviation, Inc., The New Piper Aircraft, Inc., and Avco Corporation d/b/a Textron Lycoming Engine Division*, No. 1:00-435 (E.D. Tex)). In that suit, Avco brought a third-party

claim against KS for contribution and/or indemnification. In June 2002, Avco dismissed the third-party claim against KS in that Texas action.

Textron continued to investigate and evaluate the bearings manufactured by KS and used in the TIO-540-AE2A engine. Textron believed and presently alleges that the KS manufactured bearings were defective. Avco contacted KS to address the situation regarding the bearings and hopefully resolve the situation in an amicable manner. Representatives from Avco and KS met in May and August 2002 to discuss the situation. At the May 2002 meeting, Avco showed KS a copy of a complaint that it would file in this Court if the negotiations did not produce the expected result. On September 9, 2002, KS filed its Original Petition for Declaratory Judgment in Jefferson County, Texas. On September 16, 2002, Avco initiated the above captioned matter by filing a Praecipe to Issue a Writ of Summons. A Writ of Summons was issued on September 16, 2002. Avco filed a complaint on October 3, 2002 asserting claims for indemnity; breach of express warranty; breach of implied warranty of merchantability breach of implied warranty of fitness for a particular purpose; breach of contract; fraud in inducement; and negligence.

KS contends that this Court should stay the suit before it while the Texas suit is litigated. KS argues that since both matters arise from the same nucleus of facts and involve the same issue, the possible liability of KS to Avco regarding the bearings used in the TIO-540-AE2A engine, it would be in the interests of preventing duplicative effort on the part of the parties and preserving judicial resources to allow the matter to be decided in one action. KS also asserts that the case should be stayed as a matter of comity to allow another sovereign state that first acquired jurisdiction over the matter the opportunity to decide it. If the Court was to

grant the stay, KS asserts that Avco would not suffer prejudice because both party's rights can be fully adjudicated in the Texas action and the Pennsylvania action can be resumed if the Texas action does not result in a judgment.

In opposition, Avco contends that the Pennsylvania action should not be stayed. Avco argues that the case should not be stayed because KS has failed to meet the requirements of a *lis pendens* defense. Avco argues that the Texas and Pennsylvania cases are not the same case and the relief requested in each case is different, especially considering the relief in the Texas case is a declaratory judgment, while the relief in the Pennsylvania case is monetary. Avco also argues that KS should not be granted the equitable relief of a stay because it does not have clean hands in this matter. Avco contends that KS instituted the Texas declaratory judgment action in anticipation of the Pennsylvania suit and is forum shopping. Avco asserts that KS undertook this action while Avco believed the two were engaged in good faith negotiations to resolve the matter amicably. Thus, Avco argues that KS should not be given the equitable relief it seeks.

The resolution of whether or not to grant the stay is not governed by the requirements for a *lis pendens* defense. The purpose behind the defense of *lis pendens* is "to protect a defendant from harassment by having to defend several suits on the same cause of action at the same time." *Cruthcfield v. Eaton Corp.*, 806 A.2d 1259, 1262 (Pa. Super. 2002). In order to establish a defense of *lis pendens* "it must be shown that the prior case is the same, the parties are the same, and the relief requested is the same." *Ibid*; *Cardenas v. Schober*, 783 A.2d 317, 327 (Pa. Super. 2001). The burden of establishing these three criteria is on the party moving to dismiss or stay the action based on *lis pendens*. *Procacina v. Sussen*, 447 A.2d 1023, 1025

(Pa. Super.1982). A party will fail to meet its burden if it merely asserts that prior action is pending. *Ibid*. If a *lis pendens* defense can be raised, a court has the option to dismiss or stay the subsequent proceeding. *Crutchfield*, 806 A.2d at 1262.

The defense of *lis pendens*, and whether KS has carried its burden in establishing that defense, is not an issue in deciding whether to grant KS' motion to stay. One of the elements necessary to establish the defense is lacking. The Texas action seeks a declaratory judgment, while the Pennsylvania action seeks monetary relief. Thus, KS would not be able to establish that the relief requested in the Texas and Pennsylvania actions is the same. *Pennox Technologies, Inc. v. Foster Medical Corp.*, 546 A.2d 114, 115 (Pa. 1988) (“*Lis pendens* has no application where the relief requested in the separate actions is different.”); *Raw v. Lehnert*, 357 A.2d 574 (Pa. Super. 1976) (*Lis pendens* is not available as a defense when the relief requested in the first action is equitable and the relief requested in the second is monetary.); *Glazer v. Cambridge Industries, Inc.*, 422 A.2d 642 (Pa. Super. 1980) (*Lis pendens* is not available because the prior action sought equitable relief and the later action sought monetary relief.). This is probably why KS has not raised the defense of *lis pendens*.

Instead, KS has asked the court to use its equitable power to stay the matter. As such, the requirements of a *lis pendens* defense do not apply in the Court's evaluation of KS' request. In order to determine whether the Court should grant KS' request for a stay, the Court must evaluate the request using principles that guide the Court's exercise of its equitable power.

While “the pendency of a foreign action does not serve as a bar to an action brought in a Pennsylvania court, the court has the inherent, equitable power to stay the proceedings in the second suit during the pendency of the prior suit.” *Singer v. Dong Sup Cha*, 550 A.2d 791,

793 (Pa. Super. 1988); *see, Klein v. City of Philadelphia*, 465 A.2d 730, 731 (Pa. Cmwlth. 1983). A court may exercise this equitable power when the prior suit “may resolve or moot the case which has been stayed.” *Gwynedd Properties v. Bd. of Supervisors*, 635 A2d 714, 715 (Pa. Cmwlth. 1993) (citing *Klein*, 465 A.2d at 731). A court may also exercise this equitable power to avoid “duplication of effort and waste of judicial resources that would result from allowing both cases to proceed simultaneously in a race to judgment.” *Klein*, 465 A.2d at 731.

Since the decision to stay an action rests on the court’s equitable power, the Court’s decision must also be guided by equitable principles. One such principle is the doctrine of clean hands. The equity maxim of clean hands states that “ ‘ he who comes into a court of equity must come with clean hands.’” *In re Estate of Pedrick*, 482 A.2d 215, 222 (Pa. 1984) (quoting *Re Cross’ Estate*, 179 A. 38 (Pa. 1935)). “The doctrine of unclean hands is derived from the unwillingness of a court to give relief to a suitor who has conducted himself so as to affect the moral sensibilities of the judge, and the doctrine has nothing to do with the rights and liabilities of the parties.” *Lucey v. Workman’s Compensation Appeal Bd.*, 732 A.2d 1201, 1204 (Pa. 1999). The doctrine of clean hands does not apply to collateral matters, but to the equitable relationship that exists between the parties. *Pedrick*, 482 A.2d at 223. The doctrine of clean hands does not require the party to have led a blameless life as to other matters, but “it does require that [he] shall have acted fairly and without deceit as to the controversy in issue.” *Lucey*, 733 A.2d at 1204. The doctrine of clean hands is “a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequity or bad faith relative to the matter in which he seeks relief.” *Ibid.*

Regardless of whether or not the Texas suit might resolve some of the issues in the pending Pennsylvania action, the doctrine of clean hands has tied this Court's. The courts of this Commonwealth have held that declaratory relief cannot be used to determine the validity of a defense in anticipation of an upcoming action. *See, Commonwealth Dep't of Gen. Services v. Frank Briscoe, Inc.*, 466 A.2d 1336, 1340-41 (Pa. 1983); *Pennox Technologies*, 546 A.2d at 115. Such an action is an attempt to pick a favorable forum that could determine the matter before the subsequent plaintiff gets an opportunity to have the case heard in the forum of his choosing. *See, Frank Briscoe, Inc.*, 466 A.2d at 1340-41; *Pennox*, 546 A.2d at 115. Usually, a plaintiff is allowed to select his own forum and great deference is paid to that selection. *Pennox*, 546 A.2d at 116. Permitting a prospective defendant to file anticipatory declaratory judgment in a favorable forum would divest the plaintiff of this opportunity.

The *Frank Briscoe, Inc.* and *Pennox* cases seem to establish a policy that the courts of Pennsylvania should not allow declaratory relief to be used by a prospective defendant to begin the battle on the ground of its choosing. This policy would also seem to suggest that any attempt by the defendant to use declaratory relief in this manner should be frowned upon. Using declaratory judgment like this is merely forum shopping and operating in a manner solely to gain a tactical advantage.

That is why the Court must deny KS' motion to stay the proceedings. KS has engaged in a practice that is frowned upon in this Commonwealth in order to seek an advantage in its dispute with Avco over the crankshaft and connecting rod bearings. KS is using the declaratory judgment action in Texas to determine its liability, if any, to Avco and establish a defense to the Pennsylvania suit. KS initiated the Texas declaratory judgment action on September 9,

2002. This was after Avco presented KS with a complaint in May 2002 that it intended to file in a Pennsylvania court if the negotiations broke down. Reading the hand writing on the wall and not wanting to take any chances, KS initiated the declaratory judgment action in Texas to establish that it was not liable to Avco and preempt Avco's Pennsylvania action.

KS asserts that it is not acting surreptitiously, but only wants to resolve the matter in a forum where the parties were previously engaged in a similar matter (*Walker, supra*). A closer and more critical examination of KS' actions reveals that KS' venture into the Texas forum is to obtain a favorable result. In an earlier suit in Texas, Avco voluntarily dismissed KS as a third-party. KS' selection of Jefferson County, Texas as the forum for the declaratory judgment action is an attempt to return to a place of past success and to hopefully enjoy future success.

This is especially true when one considers that Texas' connections to the dispute regarding the bearings are minuscule. Avco is a Delaware corporation with its principle place of business in Rhode Island. Textron is located in Williamsport, Pennsylvania. The engines at the center of the controversy were manufactured in Williamsport where the beguiled bearings were installed. KS is a Delaware corporation with its principle place of business in South Carolina. The crankshaft and connector arm bearings at issue were manufactured in KS' Greensburg, Indiana plant. The only connection that Texas would seem to have to the dispute regarding the bearings is the previous *Walker* action. Without this there would seem to be no connection to Texas that has anything to do with this case. As such, the choice of Texas as the forum to decide the declaratory judgment action is an attempt to forum shop and avoid a perceived home court advantage that Textron might have in Lycoming County.

If KS' goal was to preempt Avco's Pennsylvania suit it could hardly be said to be coming before this Court with clean hands. KS has chosen to forum shop so that it could have the issues in this controversy determined in its favor. Therefore, KS' actions have directly affected the equitable relationship between it and Avco and the issues involved in the case before this Court. This makes the application of the clean hands doctrine appropriate and necessitates the denial of KS' motion to stay.

The Court will deny KS' motion to stay the proceedings before this Court while its declaratory judgment action is proceeding in a Texas Court. KS has asked the Court to use its inherent equitable powers to stay the matter. However, the Court cannot exercise this power to grant KS the relief KS seeks since it does not come to this Court with clean hands. KS has engaged in forum shopping initiating a preemptive strike to defeat Avco's Pennsylvania suit. Thus, the motion to stay must be denied.

ORDER

It is hereby ORDERED that Defendant KS Bearing, Inc.'s ("KS") Motion to Stay filed January 13, 2003 is denied.

BY THE COURT:

William S. Kieser, Judge

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