

FILED

August 5, 2022

Hon. Robert J. Mega, P.J.Ch.

O'TOOLE SCRIVO, LLC
James DiGiulio, Esq. (013582006)
Kyle Vellutato, Esq. (033392011)
14 Village Park Road
Cedar Grove, New Jersey 07009
(973) 239-5700
*Attorneys for Defendants,
Matthew Richards and Mars
Media, LLC*

NIK LAMAS-RICHIE and RELIC AGENCY,
INC., a California Corporation,

Plaintiffs

v.

MATTHEW RICHARDS and MARS
MEDIA, LLC, a New Jersey Limited
Liability Company,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: UNION COUNTY
DOCKET NO. UNN-L-1018-22

Civil Action

ORDER

THIS MATTER having been opened to the Court by O'Toole Scrivo, LLC, attorneys for defendants Matthew Richards and Mars Media, LLC (collectively, "Defendants"), by way of motion for an Order dismissing the Complaint filed by plaintiffs Nik Lamas-Richie and Relic Agency Inc. ("Plaintiffs"); and the Court having considered the papers submitted by the parties and argument of counsel, if any; and for good cause having been shown,

IT IS on this 5 ^{August} day of ~~July~~, 2022,

ORDERED that Defendants' Motion to Dismiss is hereby **GRANTED**; and it is further

ORDERED that Plaintiffs' Complaint is dismissed in its entirety, and the Plaintiffs' are directed to plead any purported claims and defenses in the civil action pending in the United States District Court for the District of New Jersey, captioned Matthew Richards, et al. v. Nik Lamas-Richie, et al., Civil Action No. 2:22-cv-01209; and it is further

ORDERED that a copy of the Order shall be deemed served on all counsel upon being uploaded to the New Jersey e-Courts filing system.

/s/ Robert J. Mega

HON. ROBERT J. MEGA, P.J.Ch.

Opposed
 Unopposed

Statement of Reasons Attached.

Statement of Reasons

Introduction

Presently before the Court is Defendants' Matthew Richards ("Richards") and MARS Media LLC ("Mars" and collectively with Richards the "Defendants") motion (a) dismissing Plaintiffs' Nik Lamas-Richie ("Lamas-Richie") and Relic Agency, Inc ("Relic" and collectively with Lamas-Richie the "Plaintiffs") complaint in its entirety pursuant to the first-filed rule, or, (b) alternatively dismissing Counts Five through Eight of Plaintiffs' complaint for failure to state a claim pursuant to R. 4:6-2(e) and staying the remainder of this case pending resolution of the Defendants' first-filed action in the United States District Court for District of New Jersey entitled Matthew Richards, et. al. v. Nik Lamas-Richie, et. al., Civil Action No.: 2:22-cv-01209-CCC-JR (the "Federal Action").

Factual Background

The Federal Action

On or about March 4, 2022, Defendants filed the Federal Action. Defendants asserted claims related to Plaintiffs' alleged breach of the parties' December 8, 2021 agreement (the "Agreement") and alleged tortious conduct committed by Plaintiffs. The parties in the Federal Action included an additional entity, not a party to the State Court action discussed infra, owned by Lamas-Richie – Richie Media Corporation ("Richie Media"). Defendants specifically alleged, that, between 2017 and 2021, Richards was a consultant for Relic. Defendants' main allegations in the Federal Action surround Plaintiffs' alleged failure to compensate Richards for his consulting work and failure to repay a personal loan Richards made to Lamas-Richie. Defendants also alleged that, to resolve their disputes regarding non-payment, the parties entered into the Agreement.

The Agreement provided that Lamas-Richie would serve as a consultant to Mars. Additionally, Lamas-Richie and Relic agreed to certain restrictive covenants and agreed to satisfy outstanding financial obligations for unpaid compensation and outstanding loan amounts. Defendants allege that Plaintiffs subsequently breached the Agreement and engaged in ancillary tortious conduct harming the Defendants. As a result of the alleged misconduct, Defendants commenced the Federal Action and asserted the following claims: (i) Account Stated, (ii) Book

Account, (iii) Breach of Contract, (iv) Tortious Interference with Prospective Economic Advantage, (v) Tortious Interference with Contractual Relations, (vi) Unjust Enrichment, (vii) Quantum Meruit, (viii) Injunctive Relief, (ix) Declaratory Judgment, (x) Breach of the Implied Covenant of Good Faith and Fair Dealing, (xi) Promissory Estoppel, and (xii) Libel and Slander.

The State Court Action

On April 4, 2022, one month after the Defendants initiated the Federal Action, Plaintiffs filed the complaint subject to this motion under docket Nik Lamas-Richie, et. al v. Matthew Richards, et. al, UNN-L-1018-22 (the “State Court Action”). The State Court action, in pertinent part, alleges causes of action surrounding the Agreement and alleged tortious conduct after the parties executed the Agreement. The State Court Action sets forth eleven (11) causes of action. Specifically, (i) Declaratory Judgment, (ii) Conversion, (iii) Breach of Contract, (iv) Breach of Implied Covenant of Good Faith and Fair Dealing, (v) Tortious Interference with Prospective Economic Advantage, (vi) Unjust Enrichment, (vii) Violation of the N.J. Trade Secrets Act, (viii) Misappropriation of Confidential Information, (ix) Misrepresentation, (x) Negligent Misrepresentation, and (xi) Unfair Competition.

Defendants’ Attempts to Have Plaintiffs Pursue Claims as Counterclaims in the Federal Action

On or about May 5, 2022, Defendants requested that Plaintiffs pursue their claims and defenses in the Federal Action. Plaintiffs did not respond. Again, on or about May 11, May 17, and May 19, 2022, Defendants again requested that Plaintiffs simply respond to the Federal Action so as to avoid piecemeal litigation. Plaintiffs have not responded to Defendants’ request to voluntarily dismiss the State Court Action and pursue any counter claims in the Federal Action.

Legal Arguments

Defendants’ Legal Argument

Defendants point the Court to New Jersey’s first-filed rule of comity originally promulgated in Sensient Colors, Inc. v. Allstate Ins. Co., 193 N.J. 373 (2008). Defendants take the position that the first-filed rule “requires that a court with jurisdiction over a matter ... defer to the court that first acquired jurisdiction over the dispute”, citing CTC Demolition Co., Inc. v. GMH AETC Management/Development LLC, 424 N.J. Super. 1, 6 (App. Div. 2012). Defendants also

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point the Court to Thompson v. Cit of Atlantic City, 190 N.J. 359 (2007) for the proposition that comity is applicable in matters where there are pending actions in Federal Court and Superior Court.

Defendants are also of the position that should the first-filed rule apply, it can be departed from if “special equities exist”, citing to Kitchens Int’l, Inc. v. Evans Cabinet Corp., 413 N.J. Super. 107 (App. Div. 2010). Those “special equities” include (1) evidence of forum shopping; (ii) the matter “involve[ing] ‘significant state interest[;]’” (iii) the possibility that granting “deference could contravene the forum state’s public policy[;]” or (iv) deference “...caus[ing] a party ‘great hardship and inconvenience’ to proceed with the ‘first-filed’ action and no unfairness to the other party to proceed in the later-filed case.” Id. at 115.

With such “special equities” in mind, Defendants believe that none exist in this matter. Defendants argue that the Federal Action was properly commenced in federal court based on diversity jurisdiction and no compelling state interest exists in order for the parties to litigate in two forums. Defendants also note that the State Court action is premised on the same facts as the Federal Action, involves the same parties, and similar legal issues. Defendants also argue that judicial economy calls for dismissal of the State Court Action and assertion of all claims in the Federal Action.

Plaintiffs’ Arguments in Opposition

In opposition, Plaintiffs argue that the first-filed rule was intended to apply only in situations where simultaneous actions were pending in neighboring states, not when similar actions are pending in federal court and state court in the same state, citing Sensient Colors Inc., 193 N.J. at 387. Plaintiffs argue that the purpose of the first-filed rule is for New Jersey “to have harmonious relation with [its] sister states”. Id. To support their argument, Plaintiffs argue that New Jersey Courts have consistently denied motions to dismiss under the first-filed rule where related actions are pending simultaneously in New Jersey state court and district court in the District of New Jersey, citing Kaselaan & D’Angelo Assocs., Inc v. Soffian, 290 N.J. Super 293 (App. Div. 1996) and Rycoline Products, Inc. v. C&W Unlimited, 109 F.3d 883, 887-888 (3d Cir. 1997).

Alternatively, Plaintiffs argue that even if the “first-filed rule” applies, there exists compelling reasons for this Court to retain jurisdiction. Plaintiffs note that the first-filed rule is

“not an inflexible doctrine” citing to Sensient Colors, 193 N.J. at 387. Plaintiff argues that once the party seeking dismissal establishes that there is a first-filed case in a court with jurisdiction and both cases involve substantially the same parties claims and issue, the party who seeks to move forward with the second-filed action must show the existence of certain “special equities”, citing Id. at 392.

Plaintiffs believe that certain special equities exist in this matter under Gosschalk v. Gosschalk, 48 N.J. Super. 566 (App. Div. 1958). Plaintiffs argue that a motion to dismiss should be denied when the first-filed action is subject to delay. Id. at 579-80. Plaintiffs argue that they would be subject to severe prejudice if this case were dismissed, given the extreme delays plaguing the United States District Court in New Jersey, citing a median filing to trial time of 65.9 months.

Defendant’s Reply

In reply, amongst other argument, Defendants point to the specific language of Sensient Colors Inc., which provides that an objective of the first-filed rule is to avoid duplicative and piecemeal litigation in different jurisdiction. Sensient Colors Inc., 193 N.J. at 373.

Law & Analysis

The First-Filed Rule Applies as Between Federal Courts and State Courts in the Same State

New Jersey has long adhered to "the general rule that the court which first acquires jurisdiction has precedence in the absence of special equities." Yancoskie v. Del. River Port Auth., 78 N.J. 321, 324, 395 A.2d 192 (1978); *see also* O’Loughlin v. O’Loughlin, 6 N.J. 170, 179, 78 A.2d 64 (1951). The first-filed rule, which has deep roots in federalism, has been recognized by many courts of other jurisdictions. See Riggs v. Johnson County, 73 U.S. (6 Wall.) 166, 196, 18 L. Ed. 768, 776 (1868) ("[T]he court that first obtains possession of the controversy, or of the property in dispute, must be allowed to dispose of it without interference or interruption from the co-ordinate court."); see also First Midwest Corp. v. Corporate Fin. Assocs., 663 N.W.2d 888, 890-91 (Iowa 2003); Medtronic, Inc. v. Advanced Bionics Corp., 630 N.W.2d 438, 448-49 (Minn.Ct.App.2001). Under the first-filed rule, a New Jersey state court ordinarily will stay or dismiss a civil action in deference to an already pending, substantially similar lawsuit in another

state, unless compelling reasons dictate that it retain jurisdiction. *O'Loughlin, supra*, 6 N.J. at 179, 78 A.2d 64.

The question is not whether a state court has the power to exercise jurisdiction over a case filed within its jurisdiction, but whether the court should restrain itself and not exercise that power. *Ibid.*; see also Gosschalk, 48 N.J. Super. at 579 (stating that trial court has "no compulsory duty . . . to stay a proceeding pending before it" because same cause of action has been instituted in another jurisdiction), aff'd o.b., 28 N.J. 73, 145 A.2d 327 (1958). If we are to have harmonious relations with our sister states, absent extenuating circumstances sufficient to qualify as special equities, comity and common sense counsel that a New Jersey court should not interfere with a similar, earlier-filed case in another jurisdiction that is "capable of affording adequate relief and doing complete justice." Thompson v. City of Atlantic City, 190 N.J. 359, 382, 921 A.2d 427 (2007). The litigation of substantially similar lawsuits in multiple jurisdictions with opposing parties racing to acquire the first judgment is not only wasteful of judicial resources, but anathema in a federal system that contemplates cooperation among the states. Thus, any comity analysis should begin with a presumption in favor of the earlier-filed action. Sensient Colors, Inc. v. Allstate Ins. Co., 193 N.J. 373, 386-88, 939 A.2d 767, 774-75 (2008).

Plaintiffs urge the Court to read the first-filed rule to only apply the first-filed rule in cases where lawsuits are filed in neighboring states – not in cases where a federal court has initial jurisdiction and a subsequent lawsuit is filed in state court. While Plaintiffs are correct in that there is a lack of published decisions addressing this circumstance, the Court finds that the purpose of the first-filed rule is to promote judicial economy and allow a single determination of the parties' controversy. Not only are Plaintiffs permitted to file a counterclaim in the Federal Action – they are required to. See F.R.C.P. 13(a)(1)(A)-(B) (defining a compulsory counterclaim).

In support of their position that "New Jersey Courts have consistently denied motions to dismiss under the first-filed rule where related actions are pending simultaneously in New Jersey state court and district court in the District of New Jersey", Plaintiffs point the Court to Kaselaan, 290 N.J. Super 293 (App. Div. 1996) and Rycoline Products, Inc., 109 F.3d 883, 887-888 (3d Cir. 1997). The Court finds that Plaintiffs' readings of Kaselaan and Rycoline Products, Inc. is misguided. Both cases are distinguishable. Both cases, Kaselaan and Rycoline Products, Inc. involved a plaintiff who filed a lawsuit in federal court and thereafter filed another lawsuit in state

court. The Court, in both cases denied motions to dismiss based on the entire controversy doctrine.

This matter is not being decided under the entire controversy doctrine, which “requires a party to “litigate all aspects of a controversy in a single legal proceeding.” Leisure Technology-Northeast, Inc. v. Klingbeil Holding Co., 137 N.J. Super. 353, 357, 349 A.2d 96 (App. Div. 1975). In other words, the entire controversy doctrine is only applicable when the same plaintiff brings two actions when all claims could have been asserted in the first matter. It precludes a plaintiff from bringing a second suit and asserting claims based on the same facts of a first suit. Ibid. This is not the case here. Accordingly, both Kaselaan and Ryocline Products, Inc. are distinguishable on such grounds. Both cases were analyzed under the guise of the entire controversy doctrine, inapplicable here.

Despite a lack of published decisions discussing these facts – a defendant in a federal action asserting what would be a compulsory counterclaim under F.R.C.P. 13(a) in a subsequent state court action, the Court finds that the purpose of the first-filed rule warrants dismissal. “[C]omity and common sense counsel that a New Jersey court should not interfere with a similar, earlier-filed case in another jurisdiction that is ‘capable of affording adequate relief and doing complete justice.’” Sensient Colors, Inc., 193 N.J. 373, 387, 939 A.2d 767 (2008) (quoting O’Loughlin v. O’Loughlin, 6 N.J. 170, 179, 78 A.2d 64 (1951)); see also Continental Ins. Co. v. Honeywell Int’l, Inc., 406 N.J. Super. 156, 173-75, 967 A.2d 315 (App.Div.2009). CTC Demolition Co., Inc. v. GMH AETC Mgmt./Development LLC, 424 N.J. Super. 1, 6, 34 A.3d 1258, 1261 (Super. Ct. App. Div. 2012). In this matter, the federal courts are “capable of affording adequate relief and doing complete justice” Sensient Colors, Inc., 193 N.J. at 387. As discussed supra, Plaintiffs are required to assert any claims they asserted here in the Federal Action under F.R.C.P. 13(a). The Court thus finds that the first-filed rule applies to the present case.

The State Court Action Involves Substantially the Same Parties, Claims, and Legal Issues

The first filed rule is warranted when the claims “involve substantially the same parties, the same claims, and the same legal issues.” American Home Products Corp. v. Adriatic Insurance Co., 286 N.J. Super. 24, 37 (App. Div. 1995); Sensient Colors, Inc. v. Allstate Ins. Co., 193 N.J. 373, 391, 939 A.2d 767, 777 (2008). Outside of Richie Media, the subsequently filed State Court Action involves the same parties, claims, and legal issues as the Federal Action. Both the Federal Action and the State Court Action surround the parties’ Agreement and subsequent tortious

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conduct surrounding performance of the Agreement. Accordingly, this present matter falls well within the intentions of the first-filed rule.

Special Equities do not Exist

The first-filed rule is not an inflexible doctrine. In New Jersey, the presence of special equities may lead a court to disregard the traditional deference paid to the first-filed action in another state and to exercise jurisdiction over a case filed in this state. Special equities are reasons of a compelling nature that favor the retention of jurisdiction by the court in the later-filed action. Special equities have been found when one party has engaged in jurisdiction shopping to deny the other party the benefit of its natural forum. See Margarum v. Moon, 63 N.J. Eq. 586, 589, 592, 53 A. 179 (Ch. Div. 1902) (declining to defer to creditor's first-filed action in another state that was instituted to evade New Jersey's laws protecting debtors from attachment of property). Sensient Colors, Inc., 193 N.J. at 387-88.

Plaintiffs urge the Court to find that, because of the delay in trying matters in the District of New Jersey, special equities exist so as for the Court to not exercise its discretion under Sensient Colors, Inc. The Court finds Plaintiffs' argument that a six year delay in the adjudication would severely prejudice Plaintiffs unavailing. Assuming that Plaintiffs are correct that there would be a six year delay in hearing the matter, Plaintiffs ignore the prejudice to both parties should the parties be forced to litigate in two forums. Should the matter proceed in state court, the parties are at risk of receiving inconsistent judgments in either action. Additionally, Plaintiffs are not without a remedy. They are permitted, in fact, obligated, to assert their counterclaims in the Federal Action.

Conclusion

For the reasons set forth above, the Court finds that (1) the first-filed rule applies and (2) special equities do not exist for the Court to not exercise its discretion. Accordingly, the Court finds that Plaintiffs' State Court Action is **DISMISSED** and the parties are to litigate their disputes in the Federal Court Action – which acquired jurisdiction first. The Court need not address Defendants' R. 4:6-2(e) claims.