

Exhibit 21

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

EPISCOPAL DIOCESE OF §
FORT WORTH §
§
VS. § CIVIL ACTION NO. 4:10-CV-700-Y
§
THE RT. REV. JACK LEO IKER §

ORDER STAYING PROCEEDINGS

Before the Court are two motions to intervene (docs. 10, 12)-- one filed by The Episcopal Diocese of Fort Worth ("Intervenors") and the other by The Corporation of The Episcopal Diocese of Fort Worth ("Intervener Corporation"). After review of the parties' extensive briefing on these motions, the Court concludes that this cause should be stayed pending the outcome of the parallel state-court proceedings.

I. Background

The instant lawsuit involves a dispute between two groups of people who claim to be the rightful representatives of the Episcopal Diocese of Fort Worth ("the Diocese") and the Corporation of the Episcopal Diocese of Fort Worth ("the Corporation"). The Diocese is a Texas unincorporated association formed in 1983, and the Corporation is a Texas non-profit corporation that holds property in trust for the benefit of the Diocese. (App. to Intervenors' Reply 3 (doc. 18).) Upon its formation, the Diocese entered into membership with the Episcopal Church, a hierarchical religious denomination and a "province" of the Anglican Communion. (*Id.*) At the Diocese's 2007 and 2008 annual conventions, however, a majority of delegates voted to amend the Diocese's constitution to withdraw from the Episcopal Church and to join another denomina-

tion, the Anglican Province of the Southern Cone.¹ (*Id.*) Interveners, along with Intervener Corporation, align themselves with this group ("the majority faction"). Also aligned with the majority faction is Defendant, the Rt. Rev. Jack Leo Iker, who was elected bishop of the Diocese and ordained as a minister of the Episcopal Church in 1993, but apparently removed from the ordained ministry of the Episcopal Church in 2008 following the withdrawal of the majority faction. (*Id.*) Plaintiff aligns itself with the minority group of delegates ("the minority faction"), consisting of those who opposed the Diocese's withdrawal from the Episcopal Church. (*Id.*) In February 2009, the Episcopal Church convened a special meeting of the Fort Worth diocesan convention, attended exclusively by members of the minority faction. (*Id.*) Among other things, the attendees elected a provisional bishop to replace Iker and voted to reverse the constitutional amendments that had resulted from the 2007 and 2008 conventions. (*Id.* at 3-4.)

Each of the two factions purports to have taken the necessary legal steps to ensure that it is the true Diocese and Corporation. (Corporation's Proposed Compl. in Intervention 4, at ¶¶ 10-12 (doc. 12); Pl.'s Resp. Br. 3-4 (doc. 15.) And each group claims it has the right to control the property that the Corporation holds for the benefit of the Diocese, including the Diocese's seal and service marks. (Corporation's Proposed Compl. 3-4, ¶¶ 8-10; Pl.'s Compl. ¶¶ 9-11 (doc. 1).) Each group also challenges the legal validity of the other group's actions. (Corporation's Proposed Compl. 4, at ¶ 13; Pl. Resp. Br. 3-4.)

¹ In 2006, certain members of the soon-to-be majority faction apparently also filed amended articles of incorporation to remove all references to the Episcopal Church. (App. to Interveners' Reply 3.)

A. The state-court action

Against this backdrop, on April 14, 2009, attorneys Jonathan Nelson and Kathleen Wells, retained by certain members of the minority faction, filed a lawsuit in the 141st Judicial District Court, Tarrant County, Texas, naming the Diocese and Corporation as plaintiffs, though admittedly on behalf of only the minority-faction representatives. (*Id.* at 4.) Also named as a plaintiff in the case was the Episcopal Church, represented by Naman, Howell, Smith & Lee, PLLC ("Naman Howell"). (*Id.*) The lawsuit named as defendants certain individual members of the majority faction, including Iker, and sought control over the Diocese's property as well as a declaratory judgment as to the true identity of the bishop of the Diocese and the trustees of the Corporation. (*Id.*) The suit also named as a defendant "The Anglican Province of the Southern Cone's 'Diocese of Fort Worth' holding itself out as 'The Episcopal Diocese of Fort Worth.'" (*Id.*) The defendants, in turn, filed, among other things, a third-party petition against certain individual members of the minority faction. (*Id.*)

Subsequently, the majority-faction defendants filed a motion under Rule 12 of the Texas Rules of Civil Procedure asking the trial court to require Nelson and Wells to show their authority to file suit on behalf of the Diocese and Corporation. (*Id.*) On September 16, 2009, the trial court determined that Nelson and Wells had failed to establish that they had the authority to represent the Diocese and Corporation and barred those attorneys from appearing on behalf of the diocese and corporation "that is associated with Bishop Iker." (*Id.* at 4-5.) However, because the trial court did not bar Nelson and Wells from representing the

Diocese and Corporation, generally, and left their pleadings intact, the Court of Appeals of Texas, Fort Worth, conditionally granted a writ of mandamus on June 25, 2010, directing the trial court to bar Nelson and Wells from appearing on behalf of the Diocese and Corporation and directing the Court to strike the pleadings that Nelson and Wells had filed. (*Id.* at 7-9.) Consequently, on August 13, 2010, Nelson and Wells amended their state-court petition, naming the members of the minority faction who had retained them as plaintiffs and removing the Diocese and Corporation as plaintiffs. (Corporation's Proposed Compl. 8, at ¶ 29.)

B. The Trademark Registrations

According to Intervener Corporation, in May 2009, the Episcopal Church, along with certain members of the minority faction, enlisted Naman Howell attorney John Powell to file trademark applications with the United States Patent and Trademark Office ("USPTO") in an effort to register the Diocese's service marks on behalf of the Diocese. (*Id.* at 6, ¶¶ 19-21.) Intervener Corporation contends that the minority-faction members and the Episcopal Church lacked the authority to pursue those registrations. (*Id.* at 6-7, ¶¶ 21-22.) In addition, Intervener Corporation alleges that the USPTO rejected the minority group's initial applications and that, as of March 2010, Powell and those who retained him were still pursuing the trademarks. (*Id.* at 7, ¶ 25.) In any event, two trademarks were eventually registered in July and August 2010. (Pl.'s Compl. Exs. A, B.) Intervener Corporation challenges the legitimacy of those trademarks, alleging that Powell and those who retained him did not disclose the state-court

proceedings in the applications and that the USPTO was, therefore, unaware of the ownership dispute when it registered the trademarks. (Corporation's Proposed Compl. 8, at ¶ 26.)

C. The Instant Lawsuit

On September 21, 2010, Nelson, joined by the law firm of Vinson & Elkins, filed the instant lawsuit against Iker on behalf of Plaintiff under the name "Episcopal Diocese of Fort Worth." In its complaint, Plaintiff identifies itself as the Diocese and claims ownership of the Diocese's service marks. (Pl.'s Compl. 2-3, at ¶¶ 9-11.) Additionally, Plaintiff alleges that Iker has continued to use the service marks without Plaintiff's consent and is liable to Plaintiff for trademark infringement and dilution under the Lanham Act, 15 U.S.C. §§ 1051-1072. (*Id.* at 5-6, ¶¶ 20-34.) Plaintiff seeks injunctive relief, damages, attorneys' fees, and costs. (*Id.* at 6-7.)

In his answer, Iker contends that he has never claimed ownership of the marks at issue, that he only uses the marks in his capacity as bishop, and that, in any event, Plaintiff is not authorized to file suit on behalf of the Diocese. (Def.'s Answer 4-5, at ¶¶ 42-44 (doc. 7).) Iker also contends that, in light of the state-court rulings, Nelson's filing of the instant lawsuit on behalf of the Diocese constitutes "malicious prosecution and abuse of process in violation of [Federal Rule of Civil Procedure 11] and 28 U.S.C. § 1927." (*Id.* at 5, ¶ 45.) Iker claims that, based on Plaintiff's actions, he is entitled to recover attorneys' fees. (*Id.*)

In October 2010, Interveners and Intervener Corporation filed their motions to intervene under the names "The Episcopal Diocese

of Fort Worth" and "the Corporation of the Episcopal Diocese of Fort Worth," respectively. These motions collectively seek intervention on the basis that Interveners and Intervener Corporation are the real parties in interest, that Nelson lacks the authority to bring the lawsuit in the name of the Diocese, and that Interveners and Intervener Corporation are the owners of the marks at issue--not Plaintiff. (Interveners' Mot. to Intervene 2-3 (doc. 10); Corporation's Mot. to Intervene 2-3 (doc. 12).) Furthermore, Interveners and Intervener Corporation seek to add as parties Nelson, the Vinson & Elkins attorneys, the Rt. Rev. C. Wallis Ohl, the Episcopal Church, Naman Howell, and various other individual members of the minority faction. (Interveners' Proposed Compl. in Intervention 1 (doc. 10); Corporation's Proposed Compl. 1.) According to their proposed complaints in intervention, Interveners and Intervener Corporation seek dismissal of Plaintiff's complaint against Iker and allege causes of action for fraudulent procurement of trademark registrations, trademark infringement, false advertising and unfair competition. (Interveners' Proposed Compl. 2; Corporation's Proposed Compl. 9-12.) Moreover, based on their contention that the instant suit was baselessly filed, the parties seek Rule 11 sanctions, as well as attorneys' fees and costs pursuant to 28 U.S.C. § 1927, against Nelson, the Vinson & Elkins attorneys, and Ohl.² (Interveners' Proposed Compl. 3; Corporation's Proposed Compl. 13-15.) Finally, Intervener Corporation contends that this is an "exceptional case" under 15 U.S.C. §

² Intervener Corporation also seeks sanctions against Naman & Howell, but does not indicate the source of law for the requested sanctions. (Corporation's Proposed Compl. 15.)

1117(a), which provides for the awarding of attorneys' fees to the prevailing party. (Corporation's Proposed Compl. 11., at ¶ 45.)

II. Discussion

A. Legal Standards

"Generally, as between state and federal courts, the rule is that 'the pendency of an action in the state court is no bar to proceedings concerning the same matter in the [f]ederal court having jurisdiction.'" *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976) (quoting *McClellan v. Carland*, 217 U.S. 268, 282 (1910)). This rule "stems from the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them." *Id.* (citations omitted). Nevertheless, there are times when a federal court may stay or abstain from hearing a case based upon "principles [that] rest on considerations of 'wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation.'" *Id.* (quoting *Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co.*, 342 U.S. 180, 183 (1952)). These "circumstances, though exceptional, do nevertheless exist." *Id.* at 818.

Under *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976), a federal court is to evaluate six factors to determine whether "exceptional circumstances" exist warranting a stay based on wise administration of judicial resources:

- (1) assumption by either court of jurisdiction over a res;
- (2) the relative inconvenience of the forums;
- (3) the avoidance of piecemeal litigation;
- (4) the order in which jurisdiction was obtained by the concurrent forums;
- (5) whether and to what extent federal law provides the

rules of decision on the merits; and (6) the adequacy of the state proceedings in protecting the rights of the party invoking federal jurisdiction.

Black Sea Inv., Ltd. v. United Heritage Corp., 204 F.3d 647, 650 (5th Cir. 2000). But "the decision whether to dismiss a federal action because of parallel state-court litigation does not rest on a mechanical checklist, but 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. Mercury Constr. Corp.*, 460 U.S. 1, 16 (1983); see also *Conseco Fin. Servicing Corp. v. Shinall*, 51 F. App'x 483, at *6 (5th Cir. 2002) ("A determination of whether exceptional circumstances warranting abstention [or a stay] are present in any given case, however, is not restricted to an examination of these six factors alone."). Moreover, "*Colorado River* discretion to stay is available only where the state and federal proceedings are parallel--i.e., where the two suits involve the same parties and the same issues." *Am. Guar. & Liab. Ins. Co. v. Anco Insulations, Inc.*, 408 F.3d 248, 251 (5th Cir. 2005) (footnote omitted).

B. Analysis

1. Parallel Proceedings

As an initial matter, the Court notes that the state-court proceedings and the instant proceedings are parallel. In one form or another, the parties in the instant lawsuit (when the intervening parties and their proposed parties are included) consist of the same individual faction members who are involved in the state suit. Moreover, both suits name (or seek to name) the factions' bishops and virtually all of their attorneys. While in form the instant lawsuit may appear to be a straightforward trademark-infringement

and dilution action under the Lanham act, it is in substance, the same lawsuit as the one pending in state court. Both actions seek a determination of who constitutes the true Diocese and Corporation and who is entitled to the church property. Even ownership of the specific marks at issue in this case is a point of contention in the state-court case, as both parties appear to assert common-law rights to the marks. (Corporation's Proposed Compl. 3-4, 5, at ¶¶ 9, 16.) Thus, the presence of a federal cause of action notwithstanding, the proceedings in this case can accurately be characterized as parallel to the state-court action because the proceedings involve virtually the same parties and issues. See *LAC Real Estate Holdings, L.L.C. v. Biloxi Marsh Lands Corp.*, 320 F. App'x 267, 270 (5th Cir. 2009) ("The issues in this federal action clearly **overlap** the issues in the [state-court proceedings]. . . . Also, the parties in the [state-court proceedings] are **nearly** identical to the federal suit. . . . This is sufficient for the state and federal court proceedings to be parallel." (emphasis added)).

2. *Colorado River* Factors

Having determined that the instant proceedings are parallel to the state proceedings, the Court's next task is to evaluate whether, in light of the relevant *Colorado River* factors, the instant case should be stayed pending resolution of the state-court proceedings. After review, the Court concludes that such a stay is appropriate. In the Court's view, with the exception of the

"inconvenience" factor,³ all of the *Colorado River* factors weigh in favor of a stay in this case.

In *Colorado River*, the Supreme Court noted that, as between two courts with concurrent jurisdiction, "the court first assuming jurisdiction over property may exercise that jurisdiction to the exclusion of other courts." *Col. River*, 424 U.S. at 818. "While duplicative litigation is permitted, *Colorado River* prevents 'piecemeal litigation, and the concomitant danger of inconsistent rulings with respect to a piece of property.'" *Stewart v. W. Heritage Ins. Co.*, 438 F.3d 488, 492 (5th Cir. 2006) (quoting *Black Sea*, 204 F.3d at 650-51). In the parallel state-court action, the trial court assumed jurisdiction over the Diocese's property. A ruling by this Court regarding the identity of the Diocese and Corporation and the ownership of the marks would inevitably affect the disposition of the property before the state court. Such a ruling would also result in "piecemeal" adjudications concerning the Diocese's property because the Court's ruling would not dispose of the remaining property held by the Corporation for the benefit of the Diocese.

Moreover, federal law does not provide the rule of decision on the identity and ownership issues--Texas law does. See *Jones v. Wolf*, 443 U.S. 595, 601 (1979) ("The State has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively."). Only after

³ The "inconvenience" factor does not weigh in favor of a stay in this case because the federal and state courts are both located in Fort Worth.

these preliminary issues are determined can the Court reach the Lanham Act questions. And given the applicability of state law, it is evident that the state court is more than adequately equipped to protect the rights of Plaintiff, as the party invoking federal jurisdiction. This conclusion is reinforced by the fact that Plaintiff and its affiliates are the ones who selected the state-court forum in the first instance.

Also noteworthy is that the state-court action was filed in April 2009, almost a year and a half earlier than the instant suit, and portions of the state case have already reached the Fort Worth Court of Appeals. See *Stewart*, 438 F.3d 492 ("The inquiry under this factor is 'how much progress has been made in the two actions.'" (quoting *Murphy v. Uncle Ben's, Inc.*, 168 F. App'x 734, 738 (5th Cir. 1999))). Rather than undertake to resolve these issues in the instant lawsuit, it seems to the Court a more efficient use of judicial resources to allow the state court, which is much further along in its confrontation of the identity and ownership issues, to adjudicate the dispute--especially given that the state court has already assumed jurisdiction over the Diocese's property. Therefore, in light of the *Colorado River* factors, the Court concludes that the instant suit should be stayed pending the state-court's determination as to the true identity of the Diocese and Corporation and the proper disposition of the Diocese's property.⁴

⁴ In the Court's view, abstention is not the appropriate mechanism of deferral in this case because, once the state court determines the identity and ownership issues, the Lanham Act causes of action (though intertwined with the identity and ownership issues) will require resolution by this Court.

III. Conclusion

Accordingly, all proceedings in the above-styled and -numbered cause are STAYED pending resolution of the identity and ownership issues in the parallel state-court proceedings. This stay shall supersede the partial stay ordered by this Court on December 20, 2010 (doc. 35). Once the state court conclusively determines the true identity of the Diocese and Corporation and the proper disposition of the Diocese's property, Plaintiff shall notify the Court of that determination within twenty-one (21) days of the relevant order.

SIGNED January 6, 2011.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE