

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

JAMES ZHOU LIU, :
 :
 Plaintiff, : C.A. No: K15C-11-009 RBY
 : __In and For Kent County
 :
 v. :
 :
 LIXIN LILLY ZHANG, :
 :
 Defendant. :
 :

Submitted: December 29, 2015

Decided: January 6, 2016

*Upon Consideration of Plaintiff's
Motion for Summary Judgment*
DENIED

*Upon Consideration of Defendant's
Motion to Dismiss*
STAYED

ORDER

James Zhou Liu, *pro se.*

Lixin Lilly Zhang, *pro se.*

Young, J.

SUMMARY

James Zhou Liu (“Plaintiff”) and Lixin Lilly Zhang (“Defendant”) married in Pennsylvania in 2004, where they conducted various business ventures together. In 2013, Plaintiff’s and Defendant’s relationship deteriorated, leading Plaintiff to file for divorce in Pennsylvania. The pair reached a Post-Marital Agreement (“PMA”) in Pennsylvania. In 2015, Plaintiff filed an action in the Superior Court of Delaware alleging that Defendant harmed the shared business ventures which are now to be divided under the PMA. The parties vigorously dispute who has breached, how each breach occurred, and in how many ways each has breached the PMA.

Defendant filed a motion to dismiss the Superior Court action in Delaware based on the pending divorce case in Pennsylvania. Because dismissal is inappropriate at this juncture, Defendant’s motion is converted to a request for a stay, and the case is **STAYED** until resolution of the divorce action in Pennsylvania. For his part, Plaintiff filed a motion for summary judgment. Because nearly every issue of material fact remains in dispute, Plaintiff’s motion is **DENIED**.

STANDARD OF REVIEW

The Court’s standard of review on a motion to dismiss pursuant to Superior Court Civil Rule 12(b)(6) is well-settled. The Court accepts all well-pled allegations as true.¹ Well-pled means that the complaint puts a party on notice of

¹ *Loveman v. Nusmile, Inc.*, 2009 WL 847655, at *2 (Del. Super. Mar. 31, 2009).

the claim being brought.² If the complaint and facts alleged are sufficient to support a claim on which relief may be granted, the motion is not proper and should be denied.³ The test for sufficiency is a broad one.⁴ If any reasonably conceivable basis can be formulated to allow Plaintiff's recovery, the motion to dismiss must be denied.⁵ Dismissal is warranted only when "under no reasonable interpretation of the facts alleged could the complaint state a claim for which relief might be granted."⁶

Delaware law has established a clear test for evaluating a motion to stay. Under *McWane Cast Iron Pipe Corp. v. McDowell-Wellman Eng'g Co.*,⁷ the question of whether to grant or deny a stay "falls squarely within the province of the trial court's discretion and is to be determined in light of all the facts and circumstances and in the interest of expeditious and economic administration of justice."⁸ The *McWane* doctrine dictates that:

a Delaware action will not be stayed as a matter of right by reason of a prior action pending in another jurisdiction involving the same parties and the same issues; that such stay may be warranted,

² *Savor, Inc. v. FMR Corp.*, 2001 WL 541484, at *2 (Del. Super. Apr. 24, 2001).

³ *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

⁴ *Id.*

⁵ *Id.*

⁶ *Thompson v. Medimmune, Inc.*, 2009 WL 1482237, at *4 (Del. Super. May 19, 2009).

⁷ 263 A.2d 281 (Del. 1970).

⁸ *Pestolite, Inc. v. Cordura Corp.*, 456 A.2d 1235, 1237-38 (Del. Super. 1982).

Liu v. Zhang
C.A. No.: K15C-11-009 RBY
January 6, 2016

however, by facts and circumstances sufficient to move the discretion of the Court; that such discretion should be exercised freely in favor of the stay when there is a prior action pending elsewhere, in a court capable of doing prompt and complete justice, involving the same parties and the same issues; that, as a general rule, litigation should be confined to the forum in which it is first commenced...; that these concepts are impelled by considerations of comity and the necessities of an orderly and efficient administration of justice.⁹

As the Delaware Supreme Court recently explained,

Delaware courts considering a motion to stay or dismiss in favor of a previously filed action have applied *McWane* 's three-factor test: (1) is there a prior action pending elsewhere; (2) in a court capable of doing prompt and complete justice; (3) involving the same parties and the same issues? If all three criteria are met, “*McWane* and its progeny establish a strong preference for the litigation of a dispute in the forum in which the first action” was filed.¹⁰

Thus, the *McWane* analysis is appropriate in considering a motion to dismiss as well as a motion to stay, since both raise similar concerns of comity and judicial efficiency.¹¹

Summary judgment is appropriate where the record exhibits no genuine issue of material fact so that the movant is entitled to judgment as a matter of law.¹² “Summary judgment may not be granted if the record indicates that a

⁹ *McWane Cast Iron Pipe Corp. v. McDowell-Wellman Eng’g Co.*, 263 A.2d 281, 283 (Del. 1970).

¹⁰ *LG Electronics, Inc. v. InterDigital Commc'ns, Inc.*, 2015 WL 2124381, at *4 (Del. Apr. 14, 2015).

¹¹ *Id.*

¹² *Tedesco v. Harris*, 2006 WL 1817086 (Del. Super. June 15, 2006).

material fact is in dispute, or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law to the circumstances.”¹³ The court should consider the record in the light most favorable to the non-moving party.¹⁴ The movant bears the initial burden of establishing no genuine issue of material fact exists.¹⁵ Once such a showing has been made, the burden shifts to the non-moving party to show evidence to the contrary.¹⁶

DISCUSSION

In his motion for summary judgment, Plaintiff does not claim that no material facts are in dispute. In her response, Defendant points to numerous factual disputes in the pleadings. In actuality, the litigants heatedly dispute virtually every fact as it pertains to their business and to the personal issues with each other. Thus, Plaintiff’s motion for summary judgment must be **DENIED**.

Here, it is inappropriate to grant Defendant’s motion to dismiss at this juncture. Although wanting in clarity of content and form, Plaintiff’s Complaint notifies Defendant of claims relating to their shared business ventures. Thus, it is premature to dismiss the claims, since relief may be granted to Plaintiff in the future. However, the Court recognizes that the business dispute may well resolve in the course of the divorce action now pending in Pennsylvania. Therefore,

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Ebersole v. Lowengrub*, 54 Del. (4 Storey) 463 (Del. 1962).

¹⁶ *Id.*

judicial efficiency is best served by staying the instant case pending the outcome of the Pennsylvania divorce action.

To assess whether a stay is appropriate in this case, we apply the *McWane* doctrine.¹⁷ The first criterion under *McWane* is “whether there is a prior action pending elsewhere.”¹⁸ This case was filed in 2015, which obviously comes after Plaintiff filed the Pennsylvania divorce action in 2013. Thus, the divorce proceeding constitutes a first-filed action for purposes of the *McWane* analysis.

The remaining *McWane* criteria overlap in this case. The second criterion is whether the previously-filed action is pending “in a court capable of doing prompt and complete justice.”¹⁹ As previously stated, the business disputes in this action need be and should be resolved during the divorce action in Pennsylvania. The parties dispute the control, division, and harm to business ventures which they conducted jointly when married. These issues revolve around the PMA previously entered into by the parties. When the Pennsylvania court addresses the divorce, it will necessarily address the PMA. Thus, the Pennsylvania court should be able to provide a complete resolution to both the general divorce action and the specific business disputes raised here.

The third and final criterion is whether the previously-filed action involves

¹⁷ *Id.*

¹⁸ *LG Electronics, Inc. v. InterDigital Commc'ns, Inc.*, 98 A.3d 135, 138 (Del. Ch. 2014) aff'd, 2015 WL 2124381 (Del. Apr. 14, 2015) (quotations omitted).

¹⁹ *LG Electronics*, 2015 WL 2124381, at *4.

the same parties and issues.²⁰ The prior divorce action is between Plaintiff and Defendant and necessarily involves the division of assets, including the shared business ventures at issue in this case. Thus, the divorce action in Pennsylvania clearly involves the same parties and the same or similar issues. Because the business disputes are intrinsically linked to the divorce, the Pennsylvania court can provide “prompt and complete justice” for purposes of the *McWane* analysis.

That said, in determining whether or not to grant a stay, the *McWane* criteria serve as a guidepost, not a checklist. They establish a preference, not a bright line rule. Even if this Court found one or more criteria absent in this case, the “interest of expeditious and economic administration of justice” favors a stay.²¹ The Pennsylvania divorce action is well underway and a decision in that matter can address the same issues presented here. Even if this case involves business matters additional to or different from those before the Pennsylvania court, there is a significant possibility that the Pennsylvania court’s decision in the divorce action will render this action moot. Therefore, in order to promote judicial economy and prevent conflicting judgments, this action will stay pending the resolution of the Pennsylvania divorce case.

CONCLUSION

____ For the foregoing reasons, Defendant’s motion as converted to stay is **GRANTED** and Plaintiff’s motion for summary judgment is **DENIED**.

²⁰ *Id.*

²¹ *Pestolite.*, 456 A.2d at 1237-38.

Liu v. Zhang
C.A. No.: K15C-11-009 RBY
January 6, 2016

IT IS SO ORDERED.

/s/ Robert B. Young
J.

RBY/lmc
cc: Mr. James Zhou Liu
Ms. Lixin Lilly Zhang
Opinion Distribution