

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

EDUARDO ALVARADO CHAVERRI, et. al.,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No.: N12C-06-017 (ALR)
)	
DOLE FOOD COMPANY, INC., et. al.,)	
)	
Defendants.)	

Submitted: October 18, 2013
Decided: November 8, 2013

**Upon Defendants' Motion to Dismiss
GRANTED**

Michael L. Sensor, Esquire, Perry & Sensor, Wilmington, Delaware; Of Counsel: Jonathan S. Massey, Esquire, Massey & Gail LLP, Washington, D.C., Scott M. Hendler, Esquire, HendlerLaw, P.C., Austin, Texas, Attorneys for Plaintiff

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Rocanelli, J.

I. Facts and Procedural Posture

This matter arises from alleged injuries from exposure to 1, 2, dibromo 3, chloropropane (“DBCP”) sustained by the thirty (30) Plaintiffs to this action. Plaintiffs worked on banana growing plantations in Costa Rica, Ecuador, and Panama. Plaintiffs bring claims against the Defendants for negligence, strict liability, breach of implied warranty, conspiracy, participation and assistance among the Defendants, medical monitoring, and enhanced risk of injury from exposure to DBCP.

On May 31, 2011, Plaintiffs filed suit against Dole Food Company, Inc., Dole Fresh Fruit Company, Standard Fruit Company, Standard Fruit and Steamship Company, the Dow Chemical Company, Occidental Chemical Corporation, Amvac Chemical Corporation, Shell Oil Company, Chiquita Brands International, Inc., Chiquita Brands, LLC, Chiquita Fresh North America, LLC, Del Monte Fresh Produce, N.A. Inc. (“Defendants”) in the United States District Court for the Eastern District of Louisiana (“the Louisiana Action”).

On June 1, 2012, Plaintiffs filed the instant action in this Court asserting identical claims against the identical Defendants (“the Delaware Action”).

On August 2, 2012, in lieu of an answer, Defendants Dole Food Company, Inc., Dole Fresh Fruit Company, Standard Fruit Company, Standard Fruit and Steamship Company filed a Rule 12(b)¹ Motion to Dismiss the Delaware Action. The remaining defendants joined in the

¹ Del. Super. Ct. R. 12(b).

motion. Defendants argue that the Delaware Action matter should be dismissed on the basis of *forum non conveniens*, as the instant complaint is identical to the Louisiana Action, which was filed first, vigorously pursued, and litigated to conclusion by Plaintiffs. Plaintiffs oppose the Motion to Dismiss on the basis that the Louisiana Action may be time barred, and on the basis that the Eastern District of Louisiana may not have personal jurisdiction over some Defendants.

Before the Motion to Dismiss was heard by this Court, the Delaware Action was stayed while an interlocutory appeal was presented to the Delaware Supreme Court in a companion case.

While the companion case pending before the Delaware Supreme Court, the Louisiana Action was dismissed with prejudice by the Louisiana District Court under the Louisiana prescription statute² and the dismissal was affirmed by the United States Court of Appeals for the Fifth Circuit.³ As such, the question of the Louisiana District Court's personal jurisdiction over one of the defendants became moot.

After the Delaware Supreme Court answered the certified question in *Dow Chemical Corp. v. Blanco*,⁴ the stay was lifted by the Superior Court in the Delaware Action and a hearing was scheduled on the pending Motion to Dismiss.

II. Legal Standard for the Doctrine of *Forum Non Conveniens*

The standard for the doctrine of *forum non conveniens* is set forth *McWane v. McDowell*.⁵ In *McWane*, the plaintiff first filed its case in the state of Alabama.⁶ Before responding to that case, the defendant filed an action in Delaware which was identical to the

² *Chaverri v. Dole Food Co.*, 896 F.Supp.2d 556 (E.D. La. 2012).

³ *Chaverri v. Dole Food Co.*, 2013 WL 5274446 (5th Cir. Sept. 19, 2013).

⁴ *Dow Chemical Corp. v. Blanco*, 67 A.3d 392 (Del. 2013).

⁵ *McWane v. McDowell*, 263 A.2d 281 (Del. 1970).

⁶ *Id.*

defendant's counterclaim in the Alabama action.⁷ The Delaware action demanded the identical amount of damages and basis of relief as the defendant's counterclaim in Alabama.⁸ The Delaware lawsuit was stayed on the basis of *forum non conveniens* pending resolution of the Alabama matter.⁹ The Delaware Supreme Court stated that discretion should be exercised freely in favor of a stay when the following standard is met (1) there is a prior action pending elsewhere (2) in a court capable of doing prompt and complete justice, and (3) involving the same parties and the same issues.¹⁰ The Delaware Supreme Court declared that "as a general rule, litigation should be confined to the forum in which it is first commenced."¹¹ By the application of these concepts the Delaware Supreme Court sought to avoid wasteful duplication of time, effort and expense, and the "possibility of inconsistent and conflicting rulings and judgments."¹²

The Delaware Supreme Court reaffirmed and expanded the *McWane* doctrine when it decided *Lisa v. Mayorga*.¹³ In *Lisa*, the plaintiffs filed several cases against the defendants in Florida.¹⁴ Several years later, the plaintiffs also filed a lawsuit in the Delaware Court of Chancery which was functionally identical to the Florida Action.¹⁵ The Chancery court stayed the Delaware action in favor of the pending and first-filed Florida actions. After the Florida actions were dismissed, the Chancery Court dismissed the Delaware action, in part on the basis of *forum non conveniens*.¹⁶ *Lisa* met the standards of the *McWane* doctrine because the *Lisa* case was first filed in Florida, a jurisdictionally competent court, the case was functionally

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 283.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Lisa v. Mayorga*, 993 A.2d 1042 (Del. 2010).

¹⁴ *Id.* at 1044.

¹⁵ *Id.* at 1045.

¹⁶ *Id.* at 1046.

identical to the case filed in Delaware, and both cases arose out of a common nucleus of facts.¹⁷ The Delaware Supreme Court affirmed the Chancery Court's decision.¹⁸

The Supreme Court clarified that, in cases where the Delaware action is not filed first, the policy that favors strong deference to a plaintiff's initial choice of forum requires the court to freely exercise its discretion in favor of staying or dismissing the Delaware action.¹⁹ This policy is meant to discourage forum shopping and promote the orderly administration of justice "by recognizing the value of confining litigation to one jurisdiction, whenever that is both possible and practical."²⁰ In *Lisa*, the Delaware Supreme Court found that the Delaware action could not proceed after a dismissal with prejudice of the Florida action because it would risk the possibility of inconsistent and conflicting rulings,²¹ which is exactly the outcome that the *McWane* doctrine seeks to avoid.

III. The *McWane* Doctrine Requires that the Delaware Action be Dismissed

Plaintiffs' Delaware Action meets the three prongs of the *McWane* test and must be dismissed. Plaintiffs' Louisiana Action was filed prior to the Delaware Action. The Louisiana Action was filed in Louisiana District Court, which is a court capable of prompt and complete justice. The two cases not only arise from the same nucleus of facts, but they have identical parties and allegations.

Plaintiffs argue that the *McWane* doctrine does not apply in the Delaware Action as there is no current pending action in another jurisdiction. However, the *McWane* doctrine was relied upon in *Lisa* where the Delaware Supreme Court affirmed the dismissal of the case in part on the

¹⁷ *Id.* at 1048.

¹⁸ *Id.* at 1049.

¹⁹ *Id.* at 1047.

²⁰ *Id.*

²¹ *Id.* at 1048.

basis of *forum non conveniens* after the first filed Florida action was dismissed. Therefore, there is precedent in the State of Delaware for a case to be dismissed under the *McWane* doctrine after a first filed action is adjudicated to conclusion in a court of competent jurisdiction.

IV. The Interlocutory Appeal to the Delaware Supreme Court

Plaintiffs argue that the Delaware Supreme Court spoke on the issues of the instant case, and in favor of allowing this case to proceed, at the time that it answered the certified question in *Dow Chemical Corp. v. Blanco*.²² The court rejects this argument. The Delaware Supreme Court was very explicit in its ruling that the only question it was addressing was whether Delaware recognizes cross jurisdictional tolling.²³

V. Conclusion

Plaintiffs' allegations were vigorously pursued and litigated to conclusion in the Louisiana District Court, even Plaintiffs filed the Delaware Action. Should the matter be allowed to proceed in Delaware, there is the "possibility of inconsistent and conflicting rulings and judgments."²⁴ Moreover, allowing the Delaware Action to proceed under the circumstances presented here would result in wasteful duplication of time, effort and expense.

NOW, THEREFORE, IT IS SO ORDERED this 8th day of November, 2013, Defendants' Motion to Dismiss is hereby GRANTED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli

²² *Dow Chemical Corp.* at 392.

²³ *Id.* at 399.

²⁴ *McWane* at 283.