UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 19-CV-23593-KING/Becerra

JAVIER GARCIA-BENGOCHEA,

Plaintiff,

v.

NORWEGIAN CRUISE LINE HOLDINGS LTD.

Defendant.
_____/

NORWEGIAN'S MOTION FOR LIMITED STAY OF ACTION

Defendant Norwegian Cruise Line Holdings Ltd. ("Norwegian"), through undersigned counsel, files this Motion for Limited Stay of this Action pending the resolution of the recently-filed Motion for Judgment on the Pleadings in the case of *Garcia-Bengochea v. Carnival Corporation*, No 19-CV-21725-KING/Becerra (the "Garcia-Bengochea Carnival Case").

"[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. North American Co.*, 299 U.S. 248, 254-55 (1936). Here, exercising this Court's inherent authority and implementing a limited stay of this case pending the resolution of the Motion for Judgment on the Pleadings filed on November 15, 2019, in the Garcia-Bengochea Carnival Case – the disposition of which has the potential to resolve critical, threshold legal questions in this case – is eminently justified. Such limited stay will not prejudice the Court or either party, will conserve judicial resources by avoiding duplicative

labor, and will allow the various cases pending against various cruise lines to proceed in the most logical and efficient fashion possible.[1] *See id*. at 254-55 ("How this [*i.e.*, achieving the identified goals of a proposed stay] can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.").

BACKGROUND

On May 2, 2019, Plaintiff Javier Garcia-Bengochea ("Plaintiff") and a company named Havana Docks Corporation ("Havana Docks"), through the same counsel, filed two actions in the Southern District of Florida against a single defendant, Carnival Corporation d/b/a Carnival Cruise Lines ("Carnival"): *Javier Garcia-Bengochea v. Carnival Corporation*, Case No. 19-CV-21725, and *Havana Docks Corporation v. Carnival Corporation*, Case No. 19-CV-21724. Each case alleges a single claim pursuant to Title III of the Cuban Liberty and Democratic Solidarity Act (a/k/a the Helms-Burton Act) based on Carnival's alleged "trafficking" in property confiscated by the Castro regime.

Carnival filed Motions to Dismiss. Following full briefing and oral argument in the *Garcia-Bengochea* case, this Court entered an Order denying Carnival's Motion to Dismiss.

Carnival has since recently obtained judicially-noticeable documents from the Costa Rican court system regarding the probate of the will of Desiderio Parreño ("Desiderio"), Plaintiff's late cousin, in which Desiderio attempted to bequeath Plaintiff the claim to the 82.5%

[1] Indeed, given the various potentially dispositive issues in the Garcia-Bengochea Carnival Case, a stay even absent the Motion for Judgment on the Pleadings would be warranted. *See Miccosukee Tribe of Indians of Fla. v. S. Fla. Water Mgmt. Dist.*, 559 F.3d 1191, 1198 (11th Cir. 2009) (noting that a "good one, if not an excellent" reason to grant a stay is to await a pending decision in another court "that is likely to have a substantial or controlling effect on the claims and issues in the stayed case"); *see also Morrissey v. Subaru of Am., Inc.*, No. 1:15-CV-21106, 2015 WL 4512641, at *2 (S.D. Fla. July 24, 2015) (staying action pending ruling on potential material issue from peer district court); *Suite 225, Inc. v. Lantana Ins., Ltd.*, No. 12-CV-80409, 2013 WL 12171122, at *1 (S.D. Fla. Jan. 29, 2013) (staying action pending the resolution of a motion pending in a separate case also filed in the Southern District of Florida).

interest in La Maritima, S.A. on which Plaintiff bases his Helms-Burton Act suit against Carnival – as well as Norwegian. These documents, which are central to the allegations in the Complaint, evidence two facts that are fatal to Plaintiff's suits: (1) the bequest from Desiderio to Plaintiff was ineffective under Costa Rican law, and (2) even if it was effective, the bequest cannot provide a basis for a suit under the Helms-Burton Act because it was made after 1996. Either of these facts, let alone both taken together, render Plaintiff's claims deficient. Carnival has filed a Motion for Judgment on the Pleadings in the Carnival Garcia-Bengochea Case bringing these judicially noticeable documents to the Court's attention.

Months after his case against Carnival was filed, Plaintiff filed five separate cases against three different cruise lines, including the instant case against Norwegian. One of Plaintiff's first acts in this case was to file a Motion to Transfer this action from Judge Scola, who was initially assigned to this case, to this Court, which is handling the prior-filed Garcia-Bengochea Carnival Case. Plaintiff did so on the basis that because the two cases "involve the same Plaintiff, the same Subject Property, the same Certification, the same statutory property claim, the same statutory cause of action, the same method of calculation of damages, and materially similar allegations, the disposition of this action would 'entail the unnecessary duplication of judicial labor' if heard separately from the Carnival Action." Pl.'s Mot. Transfer, ECF No. 9. Judge Scola granted that motion and transferred this case to this Court. Therefore, for some of the same reasons that Plaintiff himself argued in his opposition to the motion to transfer, these similarities justify the instant request for a stay of this action to conserve judicial and party resources, as well as avoid to inconsistent rulings.

ARGUMENT

I. The Court Should Exercise Its Inherent Authority to Stay This Action Pending the Resolution of the Motion for Judgment on the Pleadings

As the Supreme Court stated long ago, "the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." *Landis*, 299 U.S. at 254-55; *see also Clinton v. Jones*, 520 U.S. 681, 706 (1997) ("The district court has broad discretion to stay proceedings as an incident to its power to control its own docket."); *Chrysler Int'l Corp. v. Chemaly*, 280 F.3d 1358, 1360 (11th Cir. 2002) (observing that district courts have "broad discretion . . . in managing their cases"). Therefore, it is axiomatic in this Circuit that "[a] federal district court has the inherent power to stay proceedings in one suit until the decision of another." *Cooper v. United States*, No. 11-CV-14429, 2013 WL 4098087, at *1 (S.D. Fla. Aug. 13, 2013) (staying action pending the resolution of a case before the U.S. Supreme Court because it found that the U.S. Supreme Court's opinion would "illuminate what the law requires"); *see Morrissey*, 2015 WL 4512641, at *2 (citing *Landis*, 299 U.S. at 254) (staying action pending resolution of a related case pending before a different district court noting that "[t]he parties need not be the same or the issues identical to empower a court to stay a proceeding"). The Eleventh Circuit has made clear that a stay is justified where a pending decision in another court "is likely to have a substantial or controlling effect on the claims and issues in the stayed case." *Miccosukee Tribe of Indians of Fla.*, 559 F.3d at 1198; *see Suite 225, Inc.*, 2013 WL 12171122, at *1 (quoting *MEI, Inc. v. JCM Am. Corp.*, No. 09-351 (RBK/JS), 2009 WL 3335866, at *4 (D.N.J. Oct. 15, 2009)) (noting that a "[a] stay is particularly

appropriate, and within the court's sound discretion, where the outcome of another case may substantially affect or be dispositive of the issues in a case pending before a district court").

Accordingly, courts in the Eleventh Circuit routinely stay actions pending decisions in other fora, including courts and agencies possessing no precedential authority over them, in order to conserve judicial resources and avoid inconsistent judicial determinations. *See, e.g.*, *Morrissey*, 2015 WL 4512641, at *2 (granting motion to stay pending decision by the U.S. District Court of the Virgin Islands in spite of the fact that the cases were not identical because "[that] court's decision to exercise jurisdiction over [defendant], or transfer the action . . . to the Middle District of Florida, could nullify many, if not all, of this Court's actions"); *Barr v. Futuredontics, Inc.*, No. 13-CV-61982, 2014 WL 12770094, at *4 (S.D. Fla. Feb. 14, 2014) (granting motion to stay action pending the Federal Communications Commission's ruling on defendant's petition because "[a] decision that the TCPA's opt-out-notice requirements do not apply to fax advertisements sent with the recipient's prior express consent would likely require dismissal of Plaintiff's claim, if not this entire action"); *see also Coatney v. Synchrony Bank*, No. 6:16-CV-389, 2016 WL 4506315, at *2 (M.D. Fla. Aug. 2, 2016) (granting stay on the basis that the issue pending before D.C. Circuit was "a threshold issue for liability under [the subject statute] and for the scope of discovery"); *Shahin v. Synchrony Fin.*, No: 8:15-CV-2941, 2016 WL 4502461, at *2 (M.D. Fla. Apr. 12, 2016) (granting stay pending the decisions in cases between the Supreme Court and the D.C. Circuit reasoning that "[a] stay will conserve both the Parties' and judicial resources and will help clarify any issues that remain for resolution"); *Montgomery v. Rent-A-Ctr. E., Inc.*, No. 8:15-CV-2145-T-33AEP, 2015 WL 12856101, at *1 (M.D. Fla. Oct. 26, 2015) (granting a motion to stay during the pendency of arbitration proceedings on the basis of that "significant judicial economy concerns are implicated when two

independent adjudicative bodies are poised to simultaneously address the parties' claims" such that a stay is warranted "in an effort to conserve scare judicial resources and to avoid inconsistent rulings").

In *Morrissey*, a Court in this District considered a motion to stay a products liability action stemming from an automobile accident in the Virgin Islands pending resolution of a related, but not identical, action in the District Court of the Virgin Islands. *See Morrissey*, 2015 WL 4512641, at *1-*3. The Court ultimately granted the stay because the pending related case had the potential to resolve issues of personal jurisdiction and venue, which would likely have substantial or controlling effects on the claims and issues in the stayed case. *See id.* at *3. As a result, the Court concluded, judicial economy justified this stay. *Id.* Notably, the Court also reasoned that the material differences in the cases did not justify avoiding a stay because "it is well-settled that a complete identity of neither parties nor issues is required for a stay." *Id.*

Similarly, in *Innovative Patented Technology, LLC*, the defendants sought a stay of a case before a Court in this District until the resolution of ongoing litigation in the Northern District of Illinois regarding Plaintiff's ownership of the patents at issue in the action. *See Innovative Patented Tech., LLC. v. Samsung Elecs. Co.*, No. 07-81148-CIV, 2008 WL 2726914, at *1 (S.D. Fla. July 10, 2008). In that action, the defendants were not even parties to the Illinois action. *Id.* Nonetheless, the court granted the stay "seek[ing] to avoid inconsistent judicial findings on the issue of patent ownership, unnecessary litigation costs and to conserve judicial resources." *Id.* (citing *Leviton Mfg. Co., Inc. v. Interline Brands, Inc.*, No. 3:05-cv-123-J-22MCR, 2006 WL 2523137, * 2 (M.D. Fla. Aug. 30, 2006)). The Court reasoned that "[g]ranting a motion to stay when pending litigation will address the ownership of the patent in suit is well within a court's discretionary power." *Id.*

Additionally, in *Coatney*, the Court granted a motion to stay proceedings pending a ruling by the D.C. Circuit Court of Appeals which was set to decide for its own jurisdiction a threshold issue of statutory interpretation under the TCPA. See *Coatney*, 2016 WL 4506315, at *2. In that case, the Court found it material that the case was in its early stages in determining that no prejudice would result to the plaintiff as a result of the stay. *Id.*

In this case, as in *Morrissey*, staying this case pending the resolution of the Motion for Judgment on the Pleadings in the Garcia-Bengochea Carnival Case will not prejudice the Court or either party, and will conserve judicial and party resources, by avoiding duplicative labor and potential inconsistent judicial determinations on the outcome-determinative, threshold issue of this action – whether Garcia-Bengochea owns any "claim" to the subject property. *See* Morrissey, 2015 WL 4512641, at *1-*3. A decision in the Garcia-Bengochea Carnival Case as to whether Plaintiff is the "rightful owner" of the subject property would as a core, threshold matter preclude Plaintiff from even being entitled to bring the instant action.

In addition, the requested limited stay will not prejudice the Court or any party and will conserve both judicial as well as party resources. Here, as in *Coatney*, the case is only in its infancy with the parties having recently filed their disclosures and an answer having not even yet been filed. More importantly, as this District already did in *Innovative Patented Technology, LLC*, this Court should grant the limited stay to avoid the potential for inconsistent judicial findings on the issue of Plaintiff's ownership of the subject property, which would also involve unnecessary litigation costs and superfluous use of judicial resources. Granting a motion to stay on this basis in fact is well within this Court's discretionary power. *See Innovative Patented Technology, LLC*, 2008 WL 2726914, at *1.

And, finally, Norwegian expects the parties will be imminently engaged in significant discovery. Having received discovery requests in a peer action, *Havana Docks*, where Plaintiff served no fewer than forty-one requests for production and twenty requests for interrogatories – not including subparts – Norwegian expects substantively similar requests in this action implicating review and production of voluminous records. In turn, Norwegian will be propounding its own comprehensive discovery requests soon. The significant fees and costs required by review and production by both parties would be incurred needlessly should the Carnival motion prevail. Saving these fees and costs where they are potentially not necessary is reason enough to grant this motion.

In sum, courts in this Circuit implement stays in order to avoid precisely this kind of expenditure of significant judicial and party time and resources that could result in inconsistent rulings. *See id.* at *1 (citing *Leviton Mfg. Co., Inc.*, 2006 WL 2523137, at * 2) (granting a motion to stay pending another district court's determination of the ownership of the patent at issue in the case over plaintiff's request that the Court determine the ownership issue on the basis that the "Court [sought] to avoid inconsistent judicial findings on the issue of patent ownership, unnecessary litigation costs and to conserve judicial resources"). This Court should do the same and exercise its inherent authority to stay this action pending the resolution of the Motion for Judgment on the Pleadings.

CONCLUSION

For the foregoing reasons, the Court should grant this Motion and stay this action pending resolution of the Motion for Judgment on the Pleadings in the Garcia-Bengochea Carnival Case.

CERTIFICATE OF GOOD FAITH CONFERENCE

Pursuant to Southern District of Florida Local Rule 7.1, undersigned counsel certifies that they have conferred with counsel for Plaintiff on November 22, 2019 regarding the relief requested in this motion and is authorized to report that Plaintiff opposes the relief sought in this motion.

Respectfully submitted,

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Counsel for Norwegian Cruise Line Holdings Ltd.

CERTIFICATE OF SERIVCE

I hereby certify that on November 26, 2019, the foregoing was filed with the Clerk of Court using CM/ECF, which will serve a Notice of Electronic Filing on all counsel of record.

By: */s/ Allen P. Pegg*
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