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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

WELBILT CORPORATION, a Delaware Corporation, WELBILT HOLDING COMPANY, a Delaware holding company, MARION H. ANTONINI, DANIEL YIH, RICHARD L. HIRSCH, DAVID L. HIRSCH, and LAWRENCE R. GROSS,	)	
Plaintiffs,	)	
v.	)	C.A. No. 17876
THE TRANE COMPANY, a Delaware Corporation, and AMERICAN STANDARD, INC., d/b/a THE TRANE COMPANY, a Delaware Corporation,	)	
Defendants"	)	

MEMORANDUM OPINION

Date Submitted: Septernber 29, 2000
Date Decided: November 17, 2000

Elizabeth M. McGeever, Esquire, Elizabeth A. Wilburn, Esquire, PRICKETT, JONES & ELLIOTT, Wilmington, Delaware, J. Joseph Bainton, Esquire (argued), BAINTON MCCARTHY & SIEGEL, LLC, New York, New York, Attorneys for Plaintiffs.

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LAMB, Vice Chancellor

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I.

The motions before me raise the familiar question of whether an action pending in this court should be stayed or dismissed in favor of a prior-filed action in a sister state court. The defendants move, in addition, to dismiss the complaint (or parts of it) for misjoinder of a party defendant and for lack of subject matter jurisdiction in equity over Count II. Because the application of the standards set forth in *McWane Cast* Iron *Pipe Corp.* clearly requires that the case should be stayed in favor of the action filed in Smith County, Texas, I do not reach the grounds urged for dismissal.

II.

On February 29, 2000, American Standard, Inc. ("'American Standard"), a Delaware corporation, acting through one of its divisions, The Trane Company ("Trane"), filed a complaint in the District Court of Smith County, Texas, Cause No. OO-0558A (the "Texas Action"), against Defendants Welbilt Corporation ("Welbilt Corp."), a Delaware corporation, Welbilt Holding Company ("Welbilt Holding"), a Delaware corporation, Marion H. Antonini, Daniel Yih, Richard L. Hirsch, David L. Hirsch, and Lawrence R. Gross.[1] American Standard is

[1] The individuals named as defendants in the Texas Action ("Individuals"), together with Welbilt Corp. and Welbilt Holding, are hereinafter collectively referred to as the "Welbilt Parties."

seeking to require the Welbilt Parties to honor certain contractual obligations undertaken by Consolidated Industries Corporation ("Consolidated"), an Indiana corporation, to indemnify American Standard and hold it harmless in ongoing products liability litigation.[2] The Texas complaint alleges that the Welbilt Parties misused the corporate status of the now-bankrupt Consolidated, causing it to default on obligations it owed to American Standard. American Standard requests relief in the Texas action against Welbilt Corp. and Welbilt Holding, as well as from the individual defendants.

Among the obligations American Standard seeks to enforce against the Welbilt Parties in the Texas Action are agreements entered into by Consolidated to indemnify American Standard in a series of ongoing products liability lawsuits concerning furnaces manufactured by Consolidated and distributed by American Standard through Trane. Consolidated executed these agreements while it was owned by and (it is claimed) was the mere alter ego of Welbilt Corp. and Welbilt Holding. These agreements were negotiated principally in Texas, where Trane is located.

On March 9, 2000, nine days after American Standard filed the Texas Action, and three days after American Standard served Welbilt Corp. and Welbilt Holding, Welbilt filed this action against "The Trane Company, a

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[2] Trane is an operating division of American Standard.

Delaware corporation" ("Trane-DE") seeking declaratory relief on issues identical to some of those involved in the Texas Action. It is conceded that the Delaware Action was filed with knowledge of and in response to the Texas Action. On April 4, 2000, thirty-five (35) days after American Standard filed the Texas Action and after Trane-DE moved to dismiss this action, Welbilt filed an amended complaint adding American Standard as a defendant in this action.

The Consolidated Bankruptcy

The complaint alleges that, in or around January 1998, Welbilt Corp. and Welbilt Holding sold or otherwise transferred Consolidated to an individual named William Hall. Four months later, Consolidated sought the protection of the United States Bankruptcy Court for the Northern District of Indiana. Soon thereafter, Consolidated told American Standard that it would no longer honor its contractual commitments to it.

In the Consolidated bankruptcy case, an issue has arisen whether or not the "alter ego" claim that American Standard has now asserted in the Texas Action (and on which Welbilt now seeks declaratory relief in this court) is an asset of the Consolidated bankruptcy estate. If so, as is argued by the Trustee, the automatic stay provision of the federal bankruptcy code prevents its litigation in either the Texas Action or the Delaware Action without the Trustee's approval. To avoid a situation in which these claims might become time-barred, the Trustee agreed to permit American Standard to file the Texas Action, on the

condition that it also file and prosecute an adversary proceeding in the Bankruptcy Court seeking a resolution of the issue. In the meanwhile, American Standard agreed that it would not take steps to prosecute the "alter ego" claims in Texas until the Bankruptcy Court ruled on the adversary proceeding. The Welbilt Parties have no such agreement with the Trustee and did not otherwise seek or obtain relief from the provisions of the automatic stay before they began the Delaware Action.[3]

Status of the Texas Action

The defendants in the Texas Action upon whom service of process has been made or attempted have all challenged the personal jurisdiction of that court over them and/or the sufficiency of service of process. Several other named defendants either have not yet been served or were only recently served. The record on this motion does not reveal whether the Texas court has yet had the opportunity to resolve the issue of personal jurisdiction over any of the defendants. After oral argument, American Standard submitted to the court a copy of a "civil case joint questionnaire" filed in the Texas Action in which the plaintiffs in that action suggest a schedule to bring that case to trial on May 1,

[3] The record does reflect that counsel for the Welbilt Parties did inform the Bankruptcy Court of the decision to file the Delaware Action, although no request for relief from the automatic stay provision was made.

2001. It does not appear that the defendants participated in the preparation of this form or that the court has acted on it to set a schedule.

III.

The Delaware Supreme Court held in the seminal case of *McWane Cast Iron Pipe Corp. v. McDowell-Wellman Engineering Co.*,[4] that the trial courts of this State may, in their discretion, stay or dismiss an action in favor of a similar action pending in another jurisdiction. Moreover, *McWane* teaches 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."[5] Similarly, "as a general rule, litigation should be confined to the forum in which it is first commenced, and . . a defendant should not be permitted to defeat the plaintiff's choice of forum in a pending suit by commencing litigation involving the same cause of action in another jurisdiction of its own choosing. " *Id.* These principles are irnpelled by considerations of comity and the necessities of an orderly and efficient administration of justice. " *Id.* As the Supreme Court said:

> [Thus], there is avoided the wasteful duplication of time, effort, and expense that occurs when judges, lawyers, parties, and witnesses are simultaneously engaged in the adjudication of' the same cause of action in two courts. Also

[4] Del. Supr., 263 A.2d 281, 282 (1970).

[5] *Id.* at 283.

> to be avoided is the possibility of inconsistent and conflicting rulings and judgrnents and an unseemly race by each party to trial and judgment in the forum of its choice.

Id. For the reasons next addressed, I conclude that *McWane* requires that I enter a stay of this action.

There is no little dispute about most of the factors usually weighed in deciding motions of this sort. These may be summarized as follows: (1) the Texas Action is the first-filed action, and the Welbilt Parties concede that this action was filed in reaction to it; (2) the two actions involve substantially the same parties and issues and arise out of the same acts and transactions; (3) neither case raises novel or important issues of Delaware law, and there is no nexus between the parties, the cause of action, and Delaware other than the fact that several of the corporate parties are incorporated in Delaware. In these circumstances, a stay is normally granted.[6]

What is at issue here is whether or not, given the jurisdictional objections that have been raised and the delays that have attended the perfection of service of process, the Texas court is in a position to do prompt and complete justice between the parties. Fundamentally, the Welbilt Parties argue that because there are substantial, unresolved issues about the power of the Texas court to exercise jurisdiction over them and there are no such issues here, I should not defer to the

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[6] *See, e.g., Dura v. Scandipharm, Inc.,* Del. Ch., 713 A.2d 925 (1998).

first-filed Texas action because it is likely to be slow-moving and may, in the end, prove to be incapable of deciding the substance of the dispute.

In advancing this argument, the Welbilt Parties rely on *Pulver v. Stafford Holding Co.,*[7] an action brought pursuant to 8 *Del.* C. § 225. Admittedly, there are some pertinent similarities between the two cases. For example, in both cases the foreign action was first-filed and objections to the exercise of personal jurisdiction had been raised in the foreign court but not in the Delaware action. I also note that *Pulver* cites and relies on another decision of this court that similarly refused to stay a later-filed Delaware statutory action under § 225.[8] There are, however, critical differences between this action and these cases. Most importantly, *Pulver* and *Kirkland* were statutory summary proceedings brought under the Delaware General Corporation Law and involving issues of significant importance to the State of Delaware. As the *Pulver* court said, "[T]his summary Delaware proceeding to determine who are the duly elected directors [of a Delaware corporation] should not be stayed in favor of the slow rnoving Texas litigation. "[9] Similarly, in *Kirkland,* the court denied the stay because the advantages of proceeding in a summary fashion under Section 225

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[7] Del. Ch., C.A. No. 8567, Hartnett, V.C. (Apr. 2, 1987) (Letter Op.).

[8] *Kirkland v. International Community Corp.,* Del. Ch., C.A. No. 7577, Berger, V.C. (May 29, 1984) (Letter Op.).

[9] *Pulver,* at 1.

outweighed the other factors militating in favor of deferring to the prior-filed foreign. action.

I am not persuaded that these cases provide the necessary authority to deny a stay at this time. This is not a summary proceeding and does not implicate the important policy considerations involved in an action under § 225 of the DGCL, *i.e.*, the imperative need to determine the identity of persons elected to serve as directors of a Delaware corporation. Plainly, it was this consideration that caused the court in both *Pulver* and *Kirkland* to deny the stay requested. Instead, this is an ordinary commercial dispute that does necessarily involve issues of Delaware law, and certainly none that are novel or complex. The only real parallel between this action and those cited as authority is that the Welbilt Parties have objected. to the exercise of personal jurisdiction by the Texas court and those objections have not, at this time, been resolved. This fact is not enough to establish that the Texas court is incapable of rendering prompt and complete justice between the parties. Of course, I might reach a different conclusion if the Texas court should ultimately conclude that it is unable to exercise personal jurisdiction over the Welbilt Parties or if the decision on that matter is so delayed as to cause substantial prejudice to the Welbilt Parties.

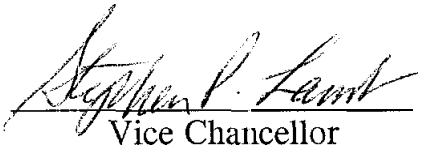
The Welbilt Parties also argue that the ability of the Texas court to do prompt justice is compromised by the existence of the stipulation between American Standard and the Trustee limiting American Standard's ability to

prosecute its "alter ego" claim in the Texas Action until the bankruptcy court resolves the adversary proceeding. I am unable to agree because, at this time, there is no reason to assume on the record before me that the adversary proceeding will not be resolved before the Texas Action is in a posture to proceed to the merits. Moreover, it bears noting that the -issue in that adversary proceeding – the scope of the automatic stay provision of the federal bankruptcy law – equally affects the conduct of this action. The Welbilt Parties chose to sue without regard to the automatic stay. But their right to prosecute their claim is co-extensive with the right of American Standard to sue them in Texas. In any event, if the progress of the Texas Action is unduly delayed by the resolution of this issue, the Welbilt Parties are free to move to lift the stay if, as a result, they are prejudiced.

The parties have raised a number of other arguments that need not be addressed in this opinion. I have given them due consideration but conclude that they do not significantly influence the exercise of my discretion in this matter.

IV.

For all the foregoing reasons the motion to stay will be granted, subject to further order of the court. The motion to dismiss will be denied without prejudice to its later assertion.



Vice Chancellor

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ORDER STAYING ACTION

For the reasons set forth in the Memorandum Opinion dated November 17, 2000, IT IS HEREBY ORDERED this 17th day of November, 2000, THAT THIS ACTION BE AND THE SAME IS HEREBY STAYED pending the resolution of related litigation in the District Court of Smith County, Texas, Cause No. 00-0558A, or further order of this court.

Stephen P. Lamb
Vice Chancellor