

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MINE SAFETY APPLIANCES)
COMPANY,)
)
Plaintiff,)
) C.A. No. N10C-07-241 MMJ
v.)
)
AIU INSURANCE COMPANY, et al.,)
)
Defendants.)

Submitted: February 15, 2011

Decided: February 23, 2011

Mine Safety Appliances Company's Application for
Certification of Interlocutory Appeal
DENIED

MEMORANDUM OPINION

John E. James, Esquire Michael Rush, Esquire, Potter Anderson & Corroon LLP, Wilmington, Delaware, Of Counsel: Mark A. Packman, Esquire, Gabriel J. LeChevallier, Esquire Jenna A. Hudson, Esquire, Gilbert LLP, Washington, DC, Attorneys for Plaintiff

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JOHNSTON, J.

By Opinion dated January 24, 2011, the Court granted defendant North River Insurance Company's Motion to Stay plaintiff Mine Safety Appliances Company's ("MSA") declaratory judgment action ("Delaware Action") pending resolution of two first-filed actions in the Pennsylvania Court of Common Pleas and the United States District Court for the Western District of Pennsylvania ("Pending Actions"). The Court stayed the Delaware Action for these reasons: the parties and the issues in the Delaware Action and the Pending Actions are substantially similar; the United States District Court for the Western District of Pennsylvania has the ability to render prompt and complete justice; principles of comity between Delaware courts and Pennsylvania courts, and the substantial risk of inconsistent and conflicting rulings between the Delaware Action and the Pending Actions, weigh in favor of a stay.

MSA has moved for an order certifying an interlocutory appeal to the Delaware Supreme Court. The determination of whether to certify an interlocutory appeal lies within the discretion of the Court and is analyzed under the criteria set forth in Supreme Court Rule 42(b).¹ An interlocutory appeal will not be certified unless the Court finds that its decision: (1) determines a substantial issue; (2) establishes a legal right; and (3) satisfies

¹ See, e.g., *Tortuga Cas. Co. v. Nat'l Fire Ins. Co of Pittsburgh*, 1991 WL 247813, at *2 (Del.); *State v. Superior Court*, 141 A.2d 468, 471 (Del. 1968).

one of the five criteria set forth in Rule 42(b)(i)-(v). Under Rule 42(b)(i), the Court may look to the criteria established by Rule 41. In this case, there are no issues of first impression (Rule 41(b)(i)), conflicting trial court decisions (Rule 41(b)(ii)), or unsettled questions relating to constitutional or statutory construction (Rule 41(b)(iii)).

MSA argues that its interlocutory appeal should be certified because the Court denied MSA its choice of forum and ability to pursue “comprehensive coverage litigation.” Therefore, MSA contends, the Court’s decision “establishes a legal right” and “determines a substantial issue” pursuant to Rule 42(b). MSA asserts that the Court erred by applying the *McWane* doctrine rather than the overwhelming hardship standard. Assuming, *arguendo*, the *McWane* doctrine does apply, MSA claims that the Court placed the burden of proof on MSA, the non-moving party, thereby misapplying the doctrine. Finally, MSA contends that it was improper for the Court to apply the stay to all parties in the Delaware Action when North River was the sole movant. As a result of these legal errors, MSA asserts, it would “serve considerations of justice” to certify the interlocutory appeal pursuant to Rule 42(b)(v).

The Court agrees that denying MSA its choice of forum establishes a legal right and determines a substantial issue.² However, the Court finds that a review of the interlocutory order will not terminate the litigation, substantially reduce further litigation, or otherwise serve considerations of justice, as required by Rule 42(b)(iii).

Further, MSA has not established that its interlocutory appeal should be certified pursuant to Rule 42(b)(v). MSA argues that, because the Court committed legal errors, it would serve considerations of justice to certify the interlocutory appeal. In support, MSA cites *ANR Pipeline Co. v. Shell Oil Co.*³ This contention lacks merit. The Court finds that it properly applied the *McWane* doctrine pursuant to the Delaware Supreme Court's recent clarification in *Lisa, S.A. v. Mayorga*,⁴ and properly placed the burden of proof on North River, the moving party.

Moreover, MSA's reliance on *ANR Pipeline* is misplaced. That interlocutory appeal considered whether the trial court had applied the appropriate standard when considering a motion to stay on the grounds of *forum non conveniens*, pending the outcome of a *subsequently-filed* suit.

² See, e.g., *States Marine Lines v. Domingo*, 269 A.2d 223, 225 (Del. 1970) (“[P]laintiff shall be protected in the exercise of his ordinary right to choose the forum of his action . . . [and] intertwined with the determination of such legal rights is the determination of issues which are substantial because they relate to such important rights.”).

³ 525 A.2d 991 (Del. 1987).

⁴ 993 A.2d 1042 (Del. 2010).

The Court stated that “[t]he interests of justice require reconsideration of the defendant’s motion by the Court of Chancery . . .” according to the appropriate standard.⁵ In this case, the Court correctly applied the *McWane* doctrine because two actions were pending before this suit was filed.

The burden remained on the moving party at all times. The Court’s comments -- that “MSA has failed to demonstrate that the contested contract language is so disparate, among the excess carriers, as to render a decision on some contracts irrelevant or non-binding as to the contracts with defendants who are not presently joined in the Pending Actions” and that “MSA has not convinced the Court that prompt and complete justice cannot be achieved outside Delaware” -- did not shift the burden. Rather, the Court made those observations, for the sake of completeness, in considering MSA’s arguments in response to North River’s motion. The Court already had determined that North River demonstrated entitlement to relief.

MSA has not otherwise established that its application for certification of interlocutory appeal should be granted pursuant to Rule 42(b)(v). The Court merely stayed the Delaware Action pending resolution of the Pending Actions; it did not foreclose MSA’s ability to litigate in this Court. Further, MSA’s contention that it was improper for the Court to apply the stay to all

⁵ *ANR Pipeline*, 525 A.2d at 992.

parties lacks merit. The Court's discretion to grant a motion to stay is exercised in "light of all the circumstances in order to determine the best and most economical means of determining the controversy."⁶ It would be contrary to this Court's interests in controlling its docket to apply a stay to North River, alone, and otherwise allow the Delaware Action to proceed. There is no authority supporting MSA's contention that a separate and higher standard should be applied to non-parties in determining whether a stay is proper.

THEREFORE, plaintiff MSA, having failed to demonstrate that the Delaware Supreme Court Rule 42(b) criteria necessitate the exercise of this Court's discretion to certify the questions, the Application for Certification of Interlocutory Appeal is hereby **DENIED**.

IT IS SO ORDERED.

/s/ Mary M. Johnston
The Honorable Mary M. Johnston

⁶ *General Foods Corp. v. Cryo-Maid, Inc.*, 198 A.2d 681, 683 (Del. 1964).