

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Argued November 9, 2021

Decided June 16, 2022

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL S. KANNE, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

Nos. 21-1773 & 21-1765

NATIONAL ASSET CONSULTANTS, LLC,
Plaintiff-Appellant,

v.

MIDWEST HOLDINGS-INDIANAPOLIS, LLC,
Defendant-Appellee, Cross-Appellant,
and

F.C. TUCKER COMPANY, LLC, *et al.*,
Defendants-Appellees.

Appeals from the United States
District Court for the Southern
District of Indiana, Indianapolis
Division.

No. 1:18-cv-01616-JRS-DML

James R. Sweeney II, *Judge.*

ORDER

David Hennessy and Vickie Yaser filed a suit in state court in Indiana. They asked the court to require Midwest Holdings to perform what they described as a contract for the sale of a parcel of land. The suit names some additional parties, and other transactions have led to a realignment of who is suing whom, but those details do not matter.

What does matter is that one exhibit to the state-court complaint has an altered page. Hennessy and Yaser, through their broker Sari Mandresh, made a bid on the property, which had been listed for sale by Midwest Holdings (through its broker Jim Bleier) at a price of \$80,000. Hennessy and Yaser's form offer asked Midwest to indicate whether it accepted, rejected, or countered the offer—and, if it made a counteroffer, to specify how much. The page that Midwest sent to Mandresh had the “counter” box checked, but no price. Mandresh, who had offered the full asking price, assumed that Midwest had made a mistake. Mandresh altered the form on the assumption that the check should have been in the “accepted” box, and she initialed the changes. Bleier and Mandresh communicated for several days in apparent agreement that a deal had been made. Before the closing, however, Midwest received a higher offer and sold the parcel to National Asset, refusing to honor any deal with Hennessy and Yaser. They sued in state court and attached to their complaint the form as Mandresh had altered it.

The state suit remains pending, stalled while everyone awaits the outcome of this federal suit. The federal claim, pursued under the diversity jurisdiction, is that, by filing the altered page in state court, Hennessy and Yaser—and others said to be vicariously liable for their acts—violated the Indiana Crime Victims Relief Act (the Act), Ind. Code §34-24-3-1, by committing fraud and counterfeiting. The turnabout plaintiffs, led by National Asset, sought damages for this asserted fraud.

One might think that damages would be available only if Hennessy and Yaser were to win the state suit because the judge failed to detect the change. Otherwise no harm, no foul. And that poses the question why a potential issue in a state case can be extracted for separate litigation in federal court. Perhaps abstention or some other doctrine requires the federal suit to be dismissed or held in abeyance while the state suit continues. At oral argument we directed all parties to file supplemental memoranda addressing those issues, which their briefs had not mentioned.

Everyone replied by asking us to resolve the appeal on the merits, if only because the parties to the state and federal suits do not completely overlap. It is not clear that this is a sufficient reason for parallel litigation. Federal courts regularly abstain or stay proceedings in favor of state litigation on the same subject that was underway before the federal suit began. See, e.g., *Driftless Land Area Conservancy v. Valcq*, 16 F.4th 508 (7th Cir. 2021). But abstention and stays are discretionary, and we conclude that the best way to get the state case moving is to resolve the federal suit on the merits.

This does *not* entail a decision whether the Act is an appropriate device for litigating in federal court the authenticity of an exhibit filed in state court. The district judge resolved the claim on a different ground: that the Act permits relief only if the fraud or counterfeiting has caused injury, and that Hennessy and Yaser had established

the absence of injury, entitling them to summary judgment. 2021 U.S. Dist. LEXIS 60938 (S.D. Ind. Mar. 30, 2021).

That the state case is still pending, and that the state judge has not even arguably been deceived, might be a path to this conclusion, but National Asset maintains otherwise. It says that the very existence of the litigation made the parcel unmarketable (or greatly diminished its potential selling price), so that injury did not depend on the state suit's outcome. The problem with that understanding, the federal district judge replied, 2021 U.S. Dist. LEXIS 60938 at *23–31, is that what reduced the parcel's liquidity is not one page of one exhibit to a complaint. It is the complaint itself, accompanied—as Indiana law requires—by a *lis pendens* in the real-estate property records. The *lis pendens* notifies potential buyers that the interests a seller can convey may be subject to the suit's outcome. The district judge observed that a *lis pendens* would have been filed whether or not the page had been altered, so any injury would have been the same. National Asset could have asked the state judge to order the *lis pendens* to be withdrawn, but it did not. This led the federal judge to conclude that the altered page did not injure anyone, which knocks out any claim for damages under the Act.

We agree with this disposition, for the reasons the district judge gave. The right way to contest the alteration would be to ask the state judge to lift the *lis pendens* and dismiss the state suit as a sanction, or perhaps to resolve the state suit in National Asset's favor on the ground that the response to the \$80,000 offer really was a “counter” and that no contract was formed. Or the state judge might decide that the page matches an oral agreement and is valid.

The appellate briefs address some other issues, but given the conclusion we have reached about the absence of injury caused by the altered page, none of them need be addressed.

AFFIRMED