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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11	ASHARF HAROUN and SAAD)	CV-11-8132 RSWL (CWx)
12	HAROUN,)	
13	Plaintiffs,)	ORDER Re: Defendants'
14	v.)	Motion to Dismiss
15)	Complaint [5]
16	HANY HAROUN; CHRISTINE)	
17	HAROUN; JJ CORPORATION OF)	
18	THE FLORIDA KEYS; SOUTHEAST)	
19	QUALITY FOODS, INC.; and)	
20	DOES 1-100,)	
21	Defendants.)	

Before the Court is Defendants Hany Haroun, Christine Haroun, JJ Corporation of the Florida Keys, Southeast Quality Foods, Inc.'s ("Defendants") Motion to Dismiss Complaint [5]. This Motion was set for hearing on December 13, 2011 and taken under submission on December 5, 2011. Having reviewed all the papers and arguments submitted pertaining to this Motion, **THE COURT NOW FINDS AND RULES AS FOLLOWS:**

The Court hereby **GRANTS** Defendants' Motion to Dismiss and **DISMISSES** the Complaint without leave to

1 amend due to lack of subject matter jurisdiction.

2 **I. BACKGROUND**

3 At the heart of this action is a family dispute
4 regarding the proper use of family trust fund money.
5 Including the current Action, there are three different
6 cases that arise out of the same set of facts. The
7 following cases have been filed in three separate
8 jurisdictions: (1) an initial action in Florida state
9 court filed by Defendants, (2) a California Superior
10 Court action filed by Plaintiffs, and (3) the current
11 federal court Action in which Plaintiffs assert the
12 same claims as in the California Superior Court action.

13 First, regarding the Florida state court action, on
14 September 16, 2010, Defendant Hany Haroun (hereafter
15 "Defendant Hany") filed a complaint ("Florida
16 complaint") in Florida State Court against Plaintiff
17 Ashraf Haroun (hereafter "Plaintiff Ashraf"). In the
18 Florida complaint, Defendant Hany alleges that he and
19 Plaintiff Ashraf entered into a partnership agreement
20 to purchase real property in Florida for the
21 construction of a Denny's restaurant ("the Florida
22 property"). Defendant Hany alleges that he was the
23 only financier of the Florida property and that
24 Plaintiff Ashraf stole \$400,000, earmarked for the
25 Florida property, for his own personal use. In the
26 Florida complaint, Defendant Hany asserts claims for
27 (1) Breach of Florida Revised Uniform Partnership Act
28 and (2) civil theft. The Florida action is currently

1 set for trial in Florida state court on March 20, 2012.

2 Second, regarding the California Superior Court
3 action, on November 3, 2010, Plaintiffs filed a lawsuit
4 in California Superior Court making allegations that
5 arise from the same factual circumstances as the
6 Florida Complaint. However, in the California Superior
7 Court Complaint ("California complaint"), Plaintiffs
8 allege that Defendants conspired to own the Florida
9 property for themselves by misappropriating family
10 trust fund money. Plaintiffs allege that Defendants
11 withdrew more that \$513,000 from family trust funds and
12 are now claiming that the money is their own.

13 Plaintiffs allege that Defendant have used the family
14 trust fund money without permission to purchase the
15 Florida property. As such, Plaintiffs asked the
16 California Superior Court to order Defendants to hold
17 the Florida property in constructive trust for the
18 benefit of Plaintiffs. Plaintiffs have also asked for
19 partition of the Florida property. On February 7,
20 2011, Defendants moved for a stay of the California
21 Superior Court Action. On April 5, 2011, the
22 California Superior Court granted Defendants' Motion to
23 Stay "due to the pending Florida action."

24 On September 30, 2011, Plaintiffs filed a Complaint
25 in this Court against Defendants, which upon review, is
26 essentially the same as the California complaint [1].
27 On November 14, 2011, Defendants filed a Motion to
28 Dismiss, alleging that this Court lacks subject matter

1 jurisdiction because the Florida State Court is
2 currently exercising jurisdiction over the Florida
3 property [5].

4 **II. DISCUSSION**

5 A. Judicial Notice

6 Defendants request that the Court take judicial
7 notice of ten documents associated with the California
8 and Florida state court proceedings. Generally, a
9 court may not consider material beyond the complaint in
10 ruling on a Rule 12(b)(6) motion. See Fed. R. Civ. P.
11 12(b). However, “[a] court may take judicial notice of
12 ‘matters of public record’ without converting a motion
13 to dismiss into a motion for summary judgment,” as long
14 as the facts noticed are not “subject to reasonable
15 dispute.” Lee v. City of Los Angeles, 250 F.3d 668,
16 689 (9th Cir. 2001) (citations omitted).

17 Pursuant to this standard, the Court hereby **GRANTS**
18 Defendants’ Request for Judicial Notice of the ten
19 court documents from both the California and Florida
20 state proceedings. The Court finds that these
21 documents are a matter of public record and are not
22 subject to reasonable dispute.

23 B. Motion to Dismiss

24 The Court **GRANTS** Defendants’ Motion to Dismiss and
25 hereby **DISMISSES** this matter for lack of subject matter
26 jurisdiction.

27 The “prior exclusive jurisdiction” doctrine holds
28 that “when one court is exercising in rem jurisdiction

1 over a res, a second court will not assume in rem
2 jurisdiction over the same res." Marshall v. Marshall,
3 547 U.S. at 311. Both actions, however, may proceed if
4 they are "strictly in personam" but the court in which
5 the second action was brought is without jurisdiction
6 if the actions are "in rem or quasi in rem." Princess
7 Lida of Thurn & Taxis v. Thompson, 305 U.S. 456, 466
8 (1939).

9 The rationale underlying this rule is that in "in
10 rem or quasi in rem" actions, the court "must have
11 control of the property which is the subject of the
12 litigation in order to proceed with the case and grant
13 the relief sought." Id. "Although the doctrine is
14 based at least in part on considerations of comity and
15 prudential policies of avoiding piecemeal litigation,
16 it is no mere discretionary abstention rule. Rather,
17 it is a mandatory jurisdictional limitation." State
18 Eng'r v. S. Fork Band of Te-Moak Tribe of W. Shoshone
19 Indians, 339 F.3d 804, 810 (9th Cir. 2003) (citations
20 and internal quotation marks omitted)

21 Thus, under Princess Lida, the prior exclusive
22 jurisdiction prevents a second court from having
23 jurisdiction over an action when (1) the litigation in
24 both the first and second fora are in rem or quasi in
25 rem in nature, and (2) the relief sought requires that
26 the second court exercise control over the property in
27 dispute and such property is already under the control
28 of the first court. 305 U.S. at 466; Dailey v.

1 National Hockey League, 987 F.2d 172 (3rd Cir. 1993)
2 (applying the two-part test in Princess Lida to
3 preclude a federal court from asserting jurisdiction
4 over a matter in which the state court also involved
5 the administration of trust funds).

6 As to the first requirement under Princess Lida,
7 the Court finds that both actions involve the
8 administration and restoration of money from a family
9 trust and should thus be categorized as "quasi in rem."
10 More specifically, the Florida complaint alleges that
11 Plaintiffs misappropriated \$400,000 from Defendants.
12 In their answer, Plaintiffs allege that they did not
13 misappropriate the \$400,000, but rather, that those
14 funds came from a family trust, in which the funds
15 allegedly should have remained. Similarly, in the
16 present Action, Plaintiffs essentially file a
17 counterclaim in this Court denying that they ever took
18 money from Defendants and alleging that Defendants are
19 actually the complicit party in misappropriating family
20 trust money.

21 In analyzing the two concurrent actions, the Court
22 finds that the "gravamen" of both the Florida complaint
23 and the Complaint in this Action are, at their core,
24 disputes about the use of family trust fund money and a
25 disagreement about whether funds should be restored to
26 the family trust. State Eng'r, 339 F.3d at 810
27 (holding that when classifying a case as either quasi
28 in rem, in rem, or in personam courts should not "exalt

1 form over necessity," but instead should "look behind
2 the form of the action to the gravamen of a complaint
3 and the nature of the right sued on").

4 Accordingly, as both the Florida state case and the
5 current Action involve the restoration of funds to a
6 trust and not "merely an adjudication of a [party's]
7 right or . . . interest," the Court should conclude
8 that both actions are "quasi in rem" within the meaning
9 of the Supreme Court's decision in Princess Lida. 305
10 U.S. at 466. In Princess Lida, trust beneficiaries
11 brought suit alleging that trustees mismanaged trust
12 funds and asked for a restoration of funds back into
13 the trust. Id. at 458-60. Similarly, here, both cases
14 are matters that directly relate to the management of
15 trust funds and involve the question of whether it is
16 proper to restore funds to that trust. Though all
17 parties brought their respective suits in their
18 individual rather than in their trust capacities, this
19 mere fact does not convert the suit into an "in
20 personam action." In examining the core issues and
21 choosing not to "exalt form over necessity," this Court
22 concludes that both the Florida state court case and
23 the current Action are accurately classified as "quasi
24 in rem" actions. State Eng'r, 339 F.3d at 810.

25 As to the second Princess Lida requirement, the
26 Court finds that it cannot take jurisdiction over this
27 Action given that relief in this Action would require
28 this Court to exercise control over trust funds that

1 are already under the control of the Florida state
2 court. More specifically, at the heart of the two
3 actions is a dispute about who owns the money that was
4 earmarked for use to purchase the Florida property.
5 Thus, in order to effectively provide relief in the
6 current Action, the Court would have to exercise
7 control over the same trust fund that is at the center
8 of the Florida state action.

9 This, however, cannot be done because it would
10 create a "substantial risk of conflicting orders that
11 could undermine the ability of either court to provide
12 an effective remedy." Brayton v. Boston Safe Deposit &
13 Trust Co., 937 F. Supp. 150, 152 (D.R.I. 1996); see
14 also Feller v. Brock, 802 F.2d 722, 727-28 (4th Cir.
15 1986). Accordingly, this Court finds that exercising
16 jurisdiction in this case is precisely the type of
17 legal disharmony that the Princess Lida court sought to
18 avoid by mandating the application of the prior
19 exclusive jurisdiction doctrine.

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