

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

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12 Plaintiffs,
13 vs.
14 US-REPORTS, INC., et al.,
15 Defendant

CASE NO. CV F 11-2009 LJO MJS

**ORDER ON PLAINTIFFS' MOTION FOR
ANTI-SUIT INJUNCTION
(Doc. 50.)**

15 US-REPORTS, INC., et al.,

Defendants.

18 || AND RELATED COUNTER ACTION.

INTRODUCTION

22 Plaintiffs/counter-defendants Thor Ronlake and Paula Ronlake (collectively the “Ronlakes”) seek
23 an anti-suit injunction to enjoin a New York state court action brought against them by Member
24 Management LLC (“Member Management”), which the Ronlakes characterize as an agent of
25 defendant/counterclaimant Group Management 0002, LLC (“GM2”). The Ronlakes contend that the
26 New York action is identical to GM2’s counterclaims against the Ronlakes in this action. GM2 responds
27 that the Ronlakes fail to meet the test for an anti-suit injunction and denies the identity of their
28 counterclaims and the New York action. This Court considered the Ronlakes’ motion for an anti-suit

1 injunction on the record and VACATES the October 2, 2012 hearing, pursuant to Local Rule 230(g).
2 For the reasons discussed below, this Court DENIES the Ronlakes an anti-suit injunction to enjoin
3 Member Management's New York action.

4 **BACKGROUND**

5 **Summary**

6 The Ronlakes pursue overtime compensation and related claims against GM2 and defendant US-
7 Reports, Inc. ("US Reports"). GM2 pursues counterclaims that the Ronlakes are not entitled to overtime
8 compensation and are obligated to indemnify GM2's legal expenses to defend the Ronlakes' claims. In
9 a New York state court action, Member Management pursues claims against the Ronlakes that the
10 Ronlakes are liable for legal expenses to defend against the Ronlakes' claims. The Ronlakes seek
11 cessation of the New York action as identical to GM2's counterclaims against the Ronlakes. GM2 denies
12 identity of their counterclaims and the New York action in that the actions involve different parties and
13 issues.

14 **The Ronlakes' Inspection Services**

15 US Reports provides insurance audits and inspection services. As of the early 2000s, US Reports
16 employed the Ronlakes as property insurance inspectors. The Ronlakes were paid per job and received
17 W-2 forms from US Reports.

18 In July 2007, the Ronlakes were advised that they would perform their inspection services for
19 US Reports as partners of GM2 through which they would be paid. The Ronlakes paid no consideration
20 for their GM2 partnership interest.

21 After July 2007, the nature of the Ronlakes' work and relationship with US Reports did not
22 change substantially. The Ronlakes' compensation was placed in a deposit account, and the Ronlakes
23 received K-1 forms from GM2 to show their compensation as a GM2 partner. GM2 did not pay the
24 Ronlakes GM2 profit shares or account to the Ronlakes for GM2 business activity.

25 **The Ronlakes' Claims**

26 The Ronlakes proceed on their Complaint ("complaint") in this action to allege that despite the
27 arrangement with GM2, the Ronlakes remained employees of GM2 or US Reports to entitle them to
28 statutory overtime compensation. The complaint alleges that GM2 and US Reports violated federal and

1 California labor statutes by failing to pay overtime compensation, to make proper wage deductions, to
2 reimburse employee expenses and to provide wage statements and by requiring the Ronlakes to purchase
3 services.

4 **GM2's Counterclaims**

5 GM2 proceeds on a Cross Complaint for Indemnity (“counterclaim”)¹ to allege that on June 27,
6 2008, the Ronlakes became members of GM2 and subject to GM2's Operating Agreement (“operating
7 agreement”), which includes the following indemnity provision (“indemnity provision”):

8 **3.8 Personal Financial Liability**

9 Each Member agrees that he or she will not initiate, file or pursue any of the
10 following, and agrees to be personally and financially liable for any party's expenses and
damages if that same Member initiates, files or pursues any of the following:

11 3.8.1 A Member will be personally and financially liable if they [sic] initiate,
12 file or pursue a wage per hour claim, overtime claim or any other
13 employee based labor related claim against the Company,² Member
14 Management LLC, any other company or any firms/brokers based upon
activities or services as a Member of the Company.
15 . . .
16 3.8.4 A Member will indemnify and hold harmless the Company, Member
17 Management LLC, any other Member or Manager of the Company from
and against any and all actions, losses, liabilities, damages, costs and
expenses, including reasonable attorney's fees, arising from or in
connection with any violation by such Member of the agreements set
forth in Section 3.8.1 . . .

19 The operating agreement was amended and restated on December 29, 2011, and on January 4,
20 2012, the Ronlakes signed summaries to acknowledge changes to the operating agreement and to
21 confirm their receipt of the operating agreement and its amendments.

22 The counterclaim seeks declaratory relief that the indemnity provision obligates the Ronlakes
23 to indemnify GM2 for all damages arising from the Ronlakes' claims and seeks to recover from the

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27 ¹ The counterclaim against the Ronlakes is incorrectly styled as a cross complaint. *See* F.R.Civ.P. 13(a).

28 ² The operating agreement identifies GM2 as “Company.”

1 Ronlakes legal expenses to defend the Ronlakes' claims.³

2 **Denial Of Dismissal Based On Forum Selection Provision**

3 The operating agreement includes a forum selection provision ("forum provision"), which
4 provides:

5 11.5 Governing Law and Consent to Jurisdiction

6 This Agreement and all issues regarding the rights and obligations of the
7 Members, the construction, enforcement and interpretation hereof, and the formation,
8 administration and termination of the Company shall be governed by the provisions of
9 the law of New York, without reference to conflict of law principles. The Company and
each Member irrevocably submit to the exclusive jurisdiction of the Federal and state
courts located in Erie County, New York, for the purposes of any suit, action or other
proceeding arising out of this Agreement or any transaction contemplated hereby.

10 This Court's February 6, 2012 order ("February 6 order") denied dismissal of this action based on the
11 forum provision in that the Ronlakes demonstrated "unfairness because they were not given notice of
12 the forum provision," "financial hardship," and that enforcement of the forum provision may deprive
13 the Ronlakes of their "unwaivable statutory entitlement under the Cal. Labor Code in violation of
14 California public policy."

15 **The New York Action**

16 On June 1, 2012, Member Management filed in a New York state court action ("NY action") its
17 Complaint for Declaratory Judgment and Breach of Contract ("Member Management complaint"). The
18 Member Management complaint alleges that pursuant to its service agreement with GM2 ("GM2 service
19 agreement"), Member Management provides "for all of GM2's insurance coverage, banking services,
20 tax preparation services, legal services, management services, and more based upon a fixed cost for each
21 member of GM2." The service agreement obligates Member Management to "coordinate and pay for
22 all of GM2's attorney's fees expenses that have to do with GM2 honoring, defending and or enforcing
23 the terms of GM2's Operating Agreement. MM's financial liability will not go beyond the actual cost
24 charged by the attorneys representing GM2 and excludes any costs from a Member, Manager or Agent

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27 ³ The Ronlakes sought to dismiss the counterclaim in that the operating agreement is unenforceable, and this
28 Court's May 7, 2012 order denied counterclaim dismissal.

1 of GM2 who initiates or takes action pursuant to Section 3.8 . . . of GM2's Operating Agreement.”⁴

2 The Member Management complaint alleges that the Ronlakes “have violated” the indemnity
3 provision along with operating agreement section 10.3.4 (“liability provision”), which provides:

4 A Member, Manager, or Agent of the Company shall be personally liable to
5 Company, notwithstanding the provisions of the New York Limited Liability Company
6 Law, for any of the following actions . . . Such person attempts to have any labor related
7 board, agency, or court pursue a wage per hour claim, overtime claim, or any other labor
related claim on their behalf against the Company, Member Management LLC, any other
company or any firms/brokers based upon what they performed, invoiced for or were
paid for while performing any activities or services as a Member of the Company . . .

8 The Member Management complaint seeks declaratory relief that the Ronlakes are liable for all
9 legal expenses associated with Member Management’s “defense of any action” taken by the Ronlakes
10 to violate the indemnity or liability provisions and in turn reimbursement from the Ronlakes of such
11 legal expenses.

12 The Member Management complaint further alleges that pursuant to a service agreement with
13 US Reports (“US Reports service agreement”), Member Management committed to provide US Reports
14 with payment and invoicing consolidation services for GM2 members. The US Reports service
15 agreement obligates Member Management to indemnify US Reports from claims by a partner of a
16 company within Member Management’s business network and “arising from non-compliance with local,
17 state, or federal law pertaining to employee payroll taxes, employee withholding/contributions,
18 unemployment insurance/claims, employee wage/hr, and disability insurance/claims.” The Member
19 Management complaint seeks declaratory relief that the Ronlakes are liable for legal expenses associated
20 with the Ronlakes’ violation of the US Reports Service agreement and in turn reimbursement from the
21 Ronlakes of such legal expenses.

22 **DISCUSSION**

23 **Foreign Anti-Suit Injunction**

24 The Ronlakes contend that the NY action is identical to GM2's counterclaims in this action to
25 warrant cessation of the NY action which seeks to undermine this Court's jurisdiction over “the issues
26 in this case.” The Ronlakes characterize the NY action as a “premeditated plan” to disregard the

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28 ⁴ In her declaration, GM2 Managing Member Jennifer Entner (“Ms. Entner”) states: “GM2 outsources certain
administrative functions to Member Management LLC.”

1 February 6 order “to drive up the Ronlakes’ expenses so as to impose a burden on the Ronlakes . . . to
2 surrender their claims.” As such, the Ronlakes seek a foreign anti-suit injunction.

3 The Ronlakes rely on 28 U.S.C. § 1651(a), which provides: “The Supreme Court and all courts
4 established by Act of Congress may issue all writs necessary or appropriate in aid of their respective
5 jurisdictions and agreeable to the usages and principles of law.” In addition, the Ronlakes rely on 28
6 U.S.C. § 2283, which empowers a stay of state court proceedings: “A court of the United States may not
7 grant an injunction to stay proceedings in a State court except as expressly authorized by Act of
8 Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.”

9 “Courts derive the ability to enter an anti-suit injunction from their equitable powers. Such
10 injunctions allow the court to restrain a party subject to its jurisdiction from proceeding in a foreign court
11 in circumstances that are unjust.” *E. & J. Gallo Winery v. Andina Licores S.A.*, 446 F.3d 984, 989 (9th
12 Cir. 2006).

13 A district court has discretion to grant an anti-suit injunction when the adjudication of an issue
14 “is likely to result in unnecessary delay and substantial inconvenience and expense to the parties and
15 witnesses . . . [as well as] inconsistent rulings or even a race to judgment.” *Seattle Totems Hockey Club,
16 Inc. v. The National Hockey League*, 652 F.2d 852, 855-856 (9th Cir. 1981). A “district court does not
17 abuse its discretion by issuing an antisuit injunction when it has determined that allowing simultaneous
18 prosecution of the same action in a foreign forum thousands of miles away would result in ‘inequitable
19 hardship’ and tend to frustrate and delay the speedy and efficient determination of the cause.” *Kaepa,
20 Inc. v. Achilles Corp.*, 76 F.3d 624, 627 (5th Cir. 1996) (internal quotations and citations omitted).

21 In *E & J Gallo Winery v. Andina Licores S.A.*, 446 F.3d 984, 991, 994 (9th Cir. 2006), the Ninth
22 Circuit Court of Appeals enumerated factors to determine issuance of an anti-suit injunction:

- 23 1. Whether “the parties and issues are the same” and whether “the first action is dispositive
24 of the action to be enjoined”;
- 25 2. Whether the foreign litigation would “frustrate a policy of the forum issuing the
26 injunction”; and
- 27 3. Whether the impact on comity from issuance of an anti-suit injunction “would be
28 tolerable.”

Same Parties

2 The Ronlakes characterize Member Management as GM2's agent in privity with GM2 "such that
3 an judgment against one either [in] the New York or the California actions would be entitled to a res
4 judicata effect against the other party." The Ronlakes contend that GM2 delegated management duties
5 to Member Management so that GM2 acts through Member Management and that insofar as GM2
6 operates through Member Management, Member Management is GM2's agent.

7 The Ronlakes contend that Member Management is estopped to deny that Member Management
8 and GM2 are the same entity and if not, Member Management lacks standing “to enforce GM2’s
9 purported contractual rights vis a vis the Ronlakes.” The Ronlakes conclude that since Member
10 Management seeks to enforce GM2’s contract, GM2 is the real party in interest in the NY action. “The
11 substantive basis for the real party in interest rule is to prevent just this kind of multiplication of lawsuits
12 arising from the same facts, in order to protect potential defendants from the harassment, vexation, and
13 expense of having to meet several lawsuits from different claimants involving the same claim or
14 demand; and to insure that such defendants will be protected from further annoyance or loss in the future
15 once a judgment is entered in a lawsuit on such a claim.” *Saks v. Damon Raike & Co.*, 7 Cal.App.4th
16 419, 431-432, 8 Cal.Rptr.2d 869 (1992).

17 GM2 responds that Member Management and GM2 are distinct and lack a principal-agent
18 relationship. Ms. Entner declares: “GM2 and Member Management are entirely separate entities, with
19 different ownership, different management, different members, different bank accounts, different
20 insurance, different operating agreements, and different tax returns.” GM2 continues that its business
21 relationship to outsource administrative functions to Member Management does render them as the same
22 parties.

23 The Ninth Circuit in *Gallo* referred to the “same” parties, not parties in privity or subject to a
24 contractual or principal-agent relationship. The Ronlakes fail to demonstrate that GM2 and Member
25 Management are the “same.” The record reveals that they are distinct entities which have entered into
26 a business relationship. The Ronlakes fail to demonstrate application of res judicata to the “same
27 parties” analysis at issue here and in turn that GM2 and Member Management are same parties for anti-
28 suit injunction purposes.

1 In addition, GM2 raises a valid jurisdictional concern that this Court lacks personal jurisdiction
2 over Member Management. Anti-suit injunctions empower a court “to restrain a party subject to its
3 jurisdiction from proceeding in a foreign court in circumstances that are unjust.” *Gallo*, 446 F.3d at 989.
4 “A federal district court with jurisdiction over the parties has the power to enjoin them from proceeding
5 with an action in the courts of a foreign country, although the power should be used sparingly.” *Seattle*
6 *Totems Hockey Club, Inc. v. Nat'l Hockey League*, 652 F.2d 852, 855 (9th Cir. 1981). The absence of
7 personal jurisdiction over Member Management further warrants unavailability of an anti-suit
8 injunction.⁵

Same Issues

10 The Ronlakes argue that the issues subject to GM2's counterclaims and the NY action are the
11 same in that Member Management pursues "the same claim on the same contract for the same damages
12 in New York that GM2 is making in the present case." The Ronlakes continue that GM2 and Member
13 Management seek to recover the same defense costs initially borne by GM2 but reimbursed by Member
14 Management.

15 GM2 disagrees in that in the NY action, Member Management as a contract third-party
16 beneficiary attempts “to secure certain benefits” whereas in this action, GM2 as a contract party seeks
17 “to enforce its rights under a contract.” GM2 characterizes Member Management as a “third party
18 beneficiary of the contract between the Ronlakes and GM2 and therefor has a legal right – separate from
19 GM2's legal right – to secure its benefits under the contract.”

20 The Ronlakes fault that absence of their intent to benefit Member Management and to permit
21 Member Management to sue the Ronlakes for suing GM2.

22 "A person who is not a party to a contract may nonetheless have certain rights thereunder, and
23 may sue to enforce those rights, where the contract is made expressly for her benefit." *Mercury Cas. Co.*

5 GM2 raises a further meaningful concern whether an anti-suit injunction may issue to enjoin an action
26 pending in another state as compared to an action in another nation. “A parallel action in a different state presents sovereignty
27 concerns that compel California courts to use judicial restraint when determining whether they may properly issue a TRO
against parties pursuing an action in a foreign jurisdiction.” *Advanced Bionics Corp. v. Medtronic, Inc.*, 29 Cal.4th 697, 707,
128 Cal.Rptr.2d 172 (2002).

1 *v. Maloney*, 113 Cal.App.4th 799, 802, 6 Cal.Rptr.3d 647 (2003). “Where one person for a valuable
2 consideration engages with another to do some act for the benefit of a third person, and the agreement
3 thus made has not been rescinded, the party for whose benefit the contract or promise was made, or who
4 would enjoy the benefit of the act, may maintain an action against the promisor for the breach of his
5 engagement.” *Johnson v. Holmes Tuttle Lincoln–Merc.*, 160 Cal.App.2d 290, 296, 325 P.2d 193 (1958).

6 GM2 fails to demonstrate that a contract between it and the Ronlakes was made to benefit
7 Member Management, especially since GM2 contends that it outsourced administrative tasks to Member
8 Management. That said, the Ronlakes fail to demonstrate that the exact same issues appear in this action
9 and the NY action although there is overlap. The parties fail to mention that the NY action involves the
10 US Reports service agreement, which is not at issue in this action. As such, the NY action includes
11 issues not present in this action, and the Ronlakes fail to demonstrate that this action is dispositive of
12 the NY action.

13 **Frustration Of California Policy**

14 The Ronlakes argue that enforcement of the forum provision would frustrate California policy
15 to promote California wage and hour regulations for its residents to deny the Ronlakes their day in court.
16 The Ronlakes point to the February 6 order’s findings of the Ronlakes’ “financial hardship” and potential
17 deprivation of their “unwaivable statutory entitlement under the Cal. Labor Code in violation of
18 California public policy.”

19 GM2 responds that the NY action seeks breach of contract damages and declaratory relief and
20 does not seek “to make any determination whatsoever regarding California’s wage and hour laws.” GM2
21 further notes its counterclaims’s survival from dismissal as this Court’s recognition of the absence of
22 frustration of California policy.

23 The NY action does not preclude the Ronlakes to pursue their claims in this action and as such,
24 no frustration of California policy is present. The Ronlakes offer no authority that financial status
25 applies to the policy frustration factor. Since the Ronlakes claims remain alive in this action, there is
26 no showing of frustration of California policy.

27 **Impact On Comity**

28 The Ronlakes point to an anti-suit injunction’s “negligible” effect on New York given the

1 Ronlakes' absence of minimum contacts with New York and Member Management's failure to qualify
2 as a real party in interest. The Ronlakes note that a NY action finding that the forum provision is
3 enforceable would imply that this Court lacks jurisdiction.

4 GM2 responds that Member Management is a New York company with "a right and an interest"
5 to pursue its claims against the Ronlakes in a New York court and that New York has an interest to
6 protect its citizens' ability "to litigate in its own courts."

7 Comity is "the recognition which one nation allows within its territory to the legislative,
8 executive or judicial acts of another nation, having due regard both to international duty and
9 convenience, and to the rights of its own citizens, or of other persons who are under the protection of
10 its laws." *Hilton v. Guyot*, 159 U.S. 113, 164, 16 S.Ct. 139 (1895). It "is neither a matter of absolute
11 obligation, on the one hand, nor of mere courtesy and good will, upon the other." *Hilton*, 159 U.S. at
12 163–64, 16 S.Ct. 139.

13 The Ronlakes fail to address meaningfully the NY action's impact on comity or how the NY
14 action could disrupt this Court's rulings, to which GM2 is bound. Nothing suggests an adverse impact
15 on comity arising from the NY action. The NY action does not preclude the Ronlakes to pursue their
16 California-based claims in this Court.

17 **CONCLUSION AND ORDER**

18 For the reasons discussed above, this Court DENIES the Ronlakes an anti-suit injunction to
19 enjoin the NY action.

20 IT IS SO ORDERED.

21 **Dated: September 25, 2012**

22 /s/ Lawrence J. O'Neill
23 UNITED STATES DISTRICT JUDGE

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