Arch Insurance Company v. Centerplan Construction Co., LLC et al Doc. 75

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ARCH INSURANCE COMPANY,	:	**CIVIL CASE NUMBER:**
***Plaintiff*,**	:	
	:	**3:16-cv-01891-VLB**
	:	
	:	**November 8, 2017**
CENTERPLAN CONSTRUCTION	:	
COMPANY, LLC, *et al.*	:	
***Defendants*.**	:	

RULING ON MOTION TO DISMISS [DKT. 57]

Defendants move to dismiss the case in its entirety on the basis of the first-to-file rule. Plaintiff has not yet filed its response.

In August 2016, Greenskies Renewable Energy, LLC ("Greenskies"); Michael Silvestrini; Andrew Chester; Arthur S. Linares; and Luis A. Linares filed a complaint against Arch in the District of New Jersey regarding an indemnity agreement between the parties through which Arch demands $18,807,737.47. *See Greenskies Renewable Ener., LLC v. Arch Ins. Co.*, Case No. 2:16-cv-05243-SDW-LDW (D. N.J.). This action commenced in November 2016. *See* [Dkt. 1 (Compl.)].[1]

[1] Defendants reference Connecticut state court cases as well. In July 2016, Centerplan and DoNo initiated (1) an action against the City in *Centerplan Constr. Co. LLC v. City of Hartford*, Case No. X04 HHD-CV16-6069748-S; and (2) an action against Connecticut Double Play, LLC d/b/a Hartford Yard Goats and Josh Soloman, *Centerplan Constr. Co. LLC v. Conn. Double Play, LLC*, Case No. X07 HHD-CV-16-6070117-S. These cases involve disputes over the contracts associated with the construction of the Yard Goats stadium. Defendant does not, however, move to dismiss on these grounds and does not provide a legal or factual basis warranting dismissal. "Generally, as between state and federal courts, the rule is that 'the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction . . . .'" *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). Accordingly, the Court will not address the state court cases.

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The Second Circuit, as a general matter, follows the first-to-file rule. *See Employers Ins. of Wausau v. Fox Entm't Grp., Inc.*, 522 F.3d 271, 274-75 (2d Cir. 2008). This means that "where there are two competing lawsuits, the first suit should have priority, absent the showing of balance of convenience . . . or . . . special circumstances giving priority to the second." *Adam v. Jacobs*, 950 F.2d 89, 92 (2d Cir. 1991). To determine whether the first-to-file rule applies, a court "must ask the threshold question of 'are the actions duplicative.'" *Tucker v. Am. Int'l Grp., Inc.*, 728 F. Supp. 2d 114, 121 (D. Conn. 2010). Claims are duplicative when they "arise from the same nucleus of fact." *Id.* "A district court may stay or dismiss a suit that is duplicative of another federal court suit as part of its general power to administer its docket." *Henderson v. Williams*, No. 3:12-cv-489 (VLB), 2013 WL 995624, at *3 (D. Conn. Mar. 13, 2013).

This action is not duplicative of the earlier filed District of New Jersey case. The District of New Jersey action involves a dispute over the General Indemnity Agreement ("GIA") between Greenskies and Arch, upon which in 2012 Arch as Surety issued bonds to Greenskies as Principal for $50,000.00. *See* [Dkt. 57-5 (Mot. Dismiss Ex. C, *Greenskies* Am. Compl.) ¶ 1]. Centerplan is listed as an Indemnitor, but not Principal, under the GIA. *Id.* ¶ 2. Arch now demands cash collateral in the amount of $18,807,737.47 for "Centerplan's own multi-million dollar construction projects." *Id.* ¶ 26. Centerplan is "an entity owned by one of Greenskies' members, but other [is] unrelated to Greenskies." *Id.* ¶ 2. Although the basis for Arch's demand undoubtedly overlaps because the amount sought is identical to the amount sought in this case, the contracts at issue are entirely different. As such,

the analysis of both cases' underlying facts and the corresponding contracts will be different for both courts.

Therefore, the Court DENIES Defendants' Motion to Dismiss.

IT IS SO ORDERED.

________/s/______________

Hon. Vanessa L. Bryant
United States District Judge

Dated at Hartford, Connecticut: November 8, 2017