

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANASTEPHEN D. COOK, IN HIS CAPACITY AS CO-
TRUSTEE OF THE MARSHALL HERITAGE
FOUNDATION

CIVIL ACTION

VERSUS

NO. 17-5368

PRESTON L. MARSHALL, IN HIS CAPACITY AS
CO-TRUSTEE OF THE PEROXISOME TRUST

SECTION A(3)

ORDER AND REASONS

The following motions are before the Court: **Motion to Dismiss (Rec. Doc. 5)** filed by defendant, Preston L. Marshall; **Motion for Summary Judgment (Rec. Doc. 7)** filed by plaintiff, Stephen D. Cook; **Motion to Continue Hearing (Rec. Doc. 14)** filed by defendant, Preston L. Marshall. All motions are opposed. The motions, scheduled for submission on October 4, 2017, are before the Court on the briefs without oral argument.¹

This is a complaint for declaratory and injunctive relief filed by Stephen D. Cook, in his capacity as co-trustee of The Marshall Heritage Foundation. The Marshall Heritage Foundation is a Louisiana charitable trust. The Marshall Heritage Foundation is a beneficiary of a separate charitable trust, the Peroxisome Trust. Defendant Preston L. Marshall is one of two co-trustees of the Peroxisome Trust.² Cook alleges that since June 6, 2016, Preston L. Marshall has failed and refused to execute documents required to effect the quarterly payments that the Peroxisome Trust must pay to The Marshall Heritage Foundation. (Comp. ¶ 18). On information and belief, E.

¹ Plaintiff has requested oral argument but the Court is not persuaded that oral argument would be helpful.

² There are two co-trustees of the Peroxisome Trust, E. Pierce Marshall, Jr. and Preston L. Marshall. (Comp. ¶ 14).

Pierce Marshall, the other trustee, stands ready to execute the necessary documents. (Comp. ¶ 19). But Louisiana law provides that when a trust has two trustees, the powers exercised by them must be exercised jointly. (Comp. ¶ 17 (citing La. R.S. § 9:2113)). Cook seeks *inter alia* injunctive relief ordering Preston L. Marshall as co-trustee of the Peroxisome Trust to take all steps necessary to effect past unpaid distributions as well as future installment distributions from the Peroxisome Trust to The Marshall Heritage Foundation.

Defendant moves to dismiss the complaint under the abstention authority of *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976), contending that multiple parallel actions are ongoing in Louisiana state court.

The Court will not attempt to recapitulate the numerous proceedings involving the trusts at issue that are pending in state court. While the Court does agree with Defendant's contention that the state court cases involve issues that will directly affect the issues before this Court,³ the Court does not agree that the state court cases are "parallel" for purposes of *Colorado River* abstention. Regardless of the interested parties' motivation in choosing the Louisiana trustee to sue for relief, the case is properly in federal court pursuant to diversity jurisdiction. The motion to dismiss is therefore denied.

The Court does not agree, however, with Plaintiff's suggestion that the case is ripe for summary adjudication for the reasons argued in Defendant's opposition to the motion for summary judgment. In particular, Defendant desires to conduct discovery into certain matters. Plaintiff characterizes those matters as immaterial non-issues but the Court is persuaded that

³ This contention is particularly true with respect to the relief pertaining to future payments. But as Plaintiff points out, the relief pertaining to past-due payments would seem unrelated to any issues being decided in state court.

Defendant has a right to discovery, and that Plaintiff's motion for immediate affirmative relief is therefore premature.⁴


Accordingly, and for the foregoing reasons;

IT IS ORDERED that the **Motion to Dismiss (Rec. Doc. 5)** filed by defendant, Preston L. Marshall is **DENIED**;

IT IS FURTHER ORDERED that the **Motion for Summary Judgment (Rec. Doc. 7)** filed by plaintiff, Stephen D. Cook is **DISMISSED WITHOUT PREJUDICE AS PREMATURE**;

IT IS FURTHER ORDERED that the **Motion to Continue Hearing (Rec. Doc. 14)** filed by defendant, Preston L. Marshall is **DENIED AS MOOT**.

October 25, 2017



JUDGE JAY C. ZAINERY
UNITED STATES DISTRICT JUDGE

⁴ Furthermore, in the interim the pending petition to enforce filed by Defendant in the state court may have been resolved.