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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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<p>SONOMA SPRINGS LIMITED PARTNERSHIP, a Nevada limited partnership; and SONOMA SPRINGS ASSOCIATES, LLC, a Nevada limited liability company,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Maryland corporation; and ZURICH AMERICAN INSURANCE COMPANY OF ILLINOIS, a Maryland corporation; and DOES 1-20, inclusive,</p> <p style="text-align: right;">Defendants.</p>	<p>Case No. 3:18-cv-00021-LRH-VPC</p> <p>ORDER</p>
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Defendants Fidelity and Deposit Company of Maryland (“Fidelity”) and Zurich American Insurance Company of Illinois (“Zurich”) move to stay this case in favor of a state court matter filed in the Sixth District Court of the State of Nevada in Humboldt County. ECF No. 30. Plaintiffs Sonoma Springs Limited Partnership (“Sonoma Springs”) and Sonoma Springs Associates, LLC (“Sonoma Associates”) filed a response, to which defendants replied. ECF Nos. 47, 51. The court now denies the motion.

I. BACKGROUND

Sonoma Springs owns real property in Humboldt County, Nevada. ECF No. 1 at ¶ 10. In June 2015, Sonoma Springs contracted with Ascent Construction, Inc. (“Ascent”) to build an apartment complex on the property. Id. at ¶ 11. Ascent, as the contractor, was required to obtain

1 a payment and a performance bond. Id. at ¶ 12. Ascent obtained two bonds from Fidelity and
2 Zurich. Id. at ¶ 13–16. As the surety for the bonds, Fidelity and Zurich were jointly and severally
3 liable and bound to the terms of the contract between Sonoma Springs and Ascent. Id. at ¶ 17.
4 The bonds also required Fidelity and Zurich to assume Ascent’s obligations under the contract if
5 Ascent were to breach the terms. Id. at ¶ 18. Sonoma Springs alleges that Ascent breached the
6 terms of the contract. Id. at ¶ 19. Contrarily, Ascent claims that Sonoma Springs breached the
7 contract. See ECF No. 30-1. After the contractual dispute arose between Sonoma Springs and
8 Ascent, Sonoma Springs demanded multiple times that Fidelity and Zurich assume the
9 contractual obligations as required by the bonds. Id. at ¶ 20–27. The demands were unsuccessful.
10 Id. at ¶¶ 20–27.

11 Ascent sued Sonoma Springs and Sonoma Associates in the Sixth Judicial District Court
12 of the State of Nevada for the County of Humboldt in May 2017. ECF No. 30-1. In the action
13 (“state court action”), Ascent asserted six claims: breach of contract, foreclosure of mechanic’s
14 lien, declaratory judgment for priority of encumbrances, violation of the implied covenant of
15 good faith and fair dealing, unjust enrichment, and account stated. Id. Ascent also recorded a lien
16 against the property. ECF No. 30 at 7; ECF No. 47 at 4. The lien has since been substituted for
17 by a surety bond obtained from Hartford Fire Insurance Company. ECF No. 47 at 6.

18 Seven months later, in December 2017, Sonoma Springs and Sonoma Associates sued
19 Fidelity and Zurich also in the Sixth Judicial District Court of the State of Nevada for the County
20 of Humboldt. ECF No. 2, Ex. A. The suit includes seven claims: breach of contract, breach of
21 implied covenant of good faith and fair dealing, breach of fiduciary duty, bad faith, violation of
22 Nevada’s Unfair Claims and Settlement Practices Act, misrepresentation, and unjust enrichment.
23 Id. Fidelity and Zurich removed the action to this court in January 2018. Id. They now move to
24 stay this action pending the outcome of the state court action. ECF No. 30.

25 **II. DISCUSSION**

26 Fidelity and Zurich move to stay this matter under the Colorado River doctrine and under
27 surety principles. The court addresses each in turn.

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1 **A. Colorado River Doctrine**

2 The court first turns to the parties’ arguments under the Colorado River doctrine.

3 “Generally ‘the pendency of an action in state court is no bar to proceedings concerning the same
4 matter in the [f]ederal court having jurisdiction....’” *Seneca Ins. Co., Inc. v. Strange Land, Inc.*,
5 862 F.3d 835, 841 (9th Cir. 2017) (quoting *Colo. River Water Conservation Dist. v. United*
6 *States*, 424 U.S. 800, 817 (1976)). “Abstention from the exercise of federal jurisdiction is the
7 exception, not the rule.” *Colo. River*, 424 U.S. at 813. Accordingly, a strong presumption against
8 abstention generally governs. *Seneca*, 862 F.3d at 842. But still, “[i]n exceptional circumstances,
9 a federal court may decline to exercise its ‘virtually unflagging obligation’ to exercise federal
10 jurisdiction, in deference to pending, parallel state proceedings.” *Montanore Minerals Corp. v.*
11 *Bakie*, 867 F.3d 1160, 1165 (9th Cir. 2017), as amended on denial of reh’g and reh’g en
12 banc (Oct. 18, 2017) (quoting *Colo. River*, 424 U.S. at 817). If exceptional circumstances exist,
13 the Ninth Circuit “generally require[s] a stay rather than a dismissal[,]” which “ensures the
14 federal forum will remain open if for some unexpected reason the state forum turns out to be
15 inadequate.” *Id.* (quoting *Attwood v. Mendocino Coast Dist. Hosp.*, 886 F.2d 241, 243 (9th Cir.
16 1989)) (internal quotation marks and punctuation marks omitted).

17 Federal courts balance the following eight factors when determining whether to stay or
18 dismiss a matter under the Colorado River doctrine:

19 (1) which court first assumed jurisdiction over any property at stake; (2) the
20 inconvenience of the federal forum; (3) the desire to avoid piecemeal litigation;
21 (4) the order in which the forums obtained jurisdiction; (5) whether federal law or
22 state law provides the rule of decision on the merits; (6) whether the state court
proceedings can adequately protect the rights of the federal litigants; (7) the desire
to avoid forum shopping; and (8) whether the state court proceedings will resolve
all issues before the federal court.

23 *Id.* at 1166 (citing *R.R. St. & Co. Inc. v. Transp. Ins. Co.*, 656 F.3d 966, 978–79 (9th Cir. 2011)).

24 But a court must not apply the factors as a “mechanical checklist;” the court must instead apply
25 the factors in “a pragmatic, flexible manner with a view to the realities of the case at hand.”

26 *Seneca*, 862 F.3d 835, 842 (quoting *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460
27 U.S. 1, 16, 21 (1983)). The balancing of the factors begins “with the balance heavily weighted in
28 favor of the exercise of jurisdiction.” *Id.*

1 To decide if this matter should be stayed in deference to the state court action, the court
2 considers the eight Colorado River factors. The court begins by disposing of the second and the
3 seventh factor. The second factor is inconsequential to the court's decision because the state
4 court forum and the federal court are equally convenient. Both are located in Northern Nevada, a
5 short distance from one another. Likewise, the seventh factor is inapplicable because forum
6 shopping is not an issue here. The remaining six factors merit further discussion. The court
7 therefore discusses each in turn below.

8 1. Jurisdiction of Property

9 The first Colorado River factor considers which court, if any, first assumed jurisdiction
10 over a property. *Montanore*, 867 F.3d at 1166. The factor is dispositive. *Id.* The court must stay
11 an in rem or quasi in rem action in federal court if a state court assumed jurisdiction over the at-
12 issue property first. *Id.* The court must also stay an action if "it involve[s] the same question as
13 the in rem [state court] claim, and could be resolved in state court." *Id.* at 1167 (internal
14 quotations omitted). But the first Colorado River factor does not demand a stay when there is no
15 threat of inconsistent dispositions of a single property. *Seneca*, 862 F.3d at 842.

16 The first factor does not require the court to stay this action because there is no possibility
17 of inconsistent dispositions of the property implicated in the state court action. While the state
18 court action includes a claim for foreclosure of a mechanic's lien and a claim for declaratory
19 judgment for priority of encumbrances, the state court action does not involve an actual dispute
20 of ownership over the property. Further, this action focuses on Fidelity and Zurich's obligations
21 under the bonds. It is true the bonds relate to the property implicated in the state court action. But
22 interpreting the terms of the bonds in this matter to determine the parties' responsibilities poses
23 no threat of inconsistent disposition of the property. Thus, the first Colorado River factor does
24 favor staying this matter.

25 2. Piecemeal Litigation

26 Turning to the third Colorado River factor, the court considers the possibility of
27 piecemeal litigation. "Piecemeal litigation occurs when different tribunals consider the same
28 issue, thereby duplicating efforts and possibly reaching different results." *Am. Int'l Underwriters*

1 (*Philippines*), *Inc. v. Cont'l Ins. Co.*, 843 F.2d 1253, 1258 (9th Cir. 1988). Concerns over
2 piecemeal litigation support a stay if exceptional circumstances exist. *Travelers Indem. Co. v.*
3 *Madonna*, 914 F.2d 1364, 1368–69 (9th Cir. 1990). The exceptional circumstances must “justify
4 special concern[s] about piecemeal litigation.” *Id.* at 1369. This factor does not support a stay in
5 the absence of exceptional circumstances because “conflicting results, piecemeal litigation, and
6 some duplication of judicial effort is the unavoidable price of preserving access to ... federal
7 relief.” *Neuchatel Swiss Gen. Ins. v. Lufthansa Airlines*, 925 F.2d 1193, 1195 (9th Cir. 1991)
8 (quotations omitted). Exceptional circumstances include “federal legislation evincing a federal
9 policy to avoid piecemeal litigation” or the existence of a “vastly more comprehensive state
10 action[.]” *Travelers*, 914 F.2d at 1369.

11 The third Colorado River factor does not favor staying this matter because there are no
12 exceptional circumstances to justify withholding federal jurisdiction. It is not enough that the two
13 actions involve similar facts and issues; exceptional circumstances must exist. Here, *Fidelity and*
14 *Zurich* do not identify exceptional circumstances that would make the state court action “vastly
15 more comprehensive” than this action. Thus, the factor does not favor a stay.

16 3. Order of Jurisdiction

17 The fourth Colorado River factor questions the order in which the courts obtained
18 jurisdiction. But “priority should not be measured exclusively by which complaint was filed
19 first.” *Cone*, 460 U.S. at 21. It instead should be measured “in terms of how much progress has
20 been made in the two actions.” *Id.*

21 Here, the state court action was initiated several months before this action. It is also in the
22 discovery process and has seen motion practice. See ECF No. 30 at 17. Because the state court
23 action was filed first and has progressed further than this action, the fourth Colorado River factor
24 favors a stay.

25 4. Source of Law

26 The court now turns to the fifth Colorado River factor: the source of law that will provide
27 the rule of decision on the merits. When an action involves claims governed by state law, a stay
28 may be favored “only ‘in some rare circumstances.’” *Seneca*, 862 F.3d at 844 (quoting *Cone*,

1 460 U.S. at 26). The state law must present “complex and difficult issues [that would be] better
2 resolved by a state court” in order for this factor to favor a stay of federal jurisdiction; “it is not
3 enough that a state law case is complex because it involves numerous parties or claims.” Id.

4 The fifth Colorado River factor does not favor a stay. While this action involves only
5 state law claims, the claims are frequently heard in federal court. See Montanore, 867 F.3d at
6 1168 (identifying breach of contract, misrepresentation, and breach of fiduciary duty as routine
7 claims). The claims do not present any complex or difficult issues that should be reserved for
8 decision by a state court. Thus, the fifth factor does not favor a stay.

9 5. Adequacy of State Court

10 The sixth Colorado River factor questions the adequacy of the state court in protecting
11 federal rights. *Travelers*, 914 F.2d at 1370. “When it is clear that the state court has authority to
12 address the rights and remedies at issue[,] this factor may weigh in favor of a stay. However, this
13 factor is more important when it weighs against a stay.” Montanore, 867 F.3d at 1160 (internal
14 citations omitted).

15 This factor does not affect the court’s decision because no federal rights are at issue. Both
16 actions instead involve only state law claims. As a result, this factor does not disfavor a stay.
17 Because it does not weigh against a stay, it does not substantially affect the court’s decision.

18 6. Parallelism

19 The final Colorado River factor considers the parallelism between the two actions.
20 “Though exact parallelism is not required, substantial similarity of claims is necessary before
21 abstention is available.” *Seneca*, 862 F.3d at 845. “[T]he existence of a substantial doubt as to
22 whether the state proceedings will resolve the federal action precludes a Colorado River stay or
23 dismissal.” Id. (internal quotations omitted). The factor is most relevant “when it counsels
24 against abstention, because while ... insufficient parallelism may preclude abstention, the
25 alternative[] never compel[s] abstention.” Id. In fact, “sufficiently similar claims are a necessary
26 precondition to Colorado River abstention and should not, absent more, add weight to the
27 balance in favor of abstention.” Id. The state court action must “ensure comprehensive
28 disposition of litigation.” *R.R. St.*, 656 F.3d at 982.

1 Here, the two actions do not involve the same parties. While Sonoma Springs and
2 Sonoma Associates are parties in both actions, Ascent is not a party in the federal action, and
3 Fidelity and Zurich are not parties in the state action. While the two actions both stem from an
4 alleged breach of the contractual relationship between Sonoma Springs and Ascent, the focus of
5 the state court action is on the contractual obligations between Sonoma Springs and Ascent,
6 while the federal action focuses upon the obligations between Fidelity and Zurich to Sonoma.
7 While both actions focus upon the contractual relationship between Sonoma Springs and Ascent,
8 the inquiry does not end there and does not counsel in favor of abstention.

9 But even taking the similarity of the contractual relationship between Sonoma Springs
10 and Ascent into account, there are numerous factors that weigh against abstention by this court.
11 The parties are not the same in the two actions and there are potential outcomes which may have
12 no significant relevance to the action before this court: dismissal, settlement, affirmative
13 defenses and other potential results unrelated to the issues before this court. Moreover, primarily
14 because of the differences in parties, a judgment in the state court may well not be controlling or
15 persuasive in the federal court. As a result, the state court action simply does not ensure
16 comprehensive disposition of the litigation in this court. Thus, the final Colorado River factor
17 weighs strongly against a stay.

18 Based on the above analysis of the Colorado River factors and the subsequent balancing
19 of the factors, the court holds that a stay is not warranted in this matter under the Colorado River
20 doctrine.

21 **B. Surety Principles**

22 The court now turns to the parties' arguments regarding surety principles. Fidelity and
23 Zurich cite to *Brinderson-Newberg Joint Venture v. Pacific Erectors, Inc.*, 971 F.2d 272, 283
24 (9th Cir. 1992) to argue that a surety "has every right to await the outcome of the liability dispute
25 before paying on the performance bond." ECF No. 30 at 20. Thus, they argue that this matter
26 must be stayed. *Id.*

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1 But Brinderson does not stand for the proposition that a federal court must stay its
2 jurisdiction in favor of a parallel state court action. See 971 F.2d 272. It instead stands for the
3 proposition that a bad faith claim against a surety fails as a matter of law if a surety failed to
4 investigate claims under a bond when a genuine dispute over liability existed. Id. at 283. Thus,
5 Brinderson does not mandate a stay in this matter. Its principles instead relate only to the bad
6 faith claims brought against Fidelity and Zurich. Under Brinderson, if a genuine dispute of
7 liability exists, the bad faith claims against Fidelity and Zurich would fail as a matter of law. The
8 court declines to extend the holding in Brinderson any further.

9 **III. CONCLUSION**

10 IT IS THEREFORE ORDERED that defendants' motion to stay this matter (ECF No. 30)
11 is **DENIED**.

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13 IT IS SO ORDERED.

14 DATED this 23rd day of August, 2018.

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17 _____
18 LARRY R. HICKS
19 UNITED STATES DISTRICT JUDGE
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