

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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AVENTURA TECHNOLOGIES, INC.,

Plaintiff,

- against -

THE WORLD OF RESIDENSEA II, LTD.,

Defendants.

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MEMORANDUM AND ORDER

13-CV-1097 (DRH) (GRB)

APPEARANCES:

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HURLEY, Senior District Judge:

Aventura Technologies, Inc. (“Aventura” or “plaintiff”) brought this action against defendant The World of Residensea II, Ltd. (“Residensea” or “defendant”) alleging breach of contract and unjust enrichment pursuant to a contract for plaintiff’s installation and repair of

certain surveillance equipment on defendant's luxury passenger ship. Presently before the Court are plaintiff's objections to Magistrate Judge Brown's decision granting defendant's motion to stay the action. For the reasons set forth below, Magistrate Judge Brown's decision is affirmed.

BACKGROUND

“On July 31, 2012, Residensea and the ship's vessel manager, Row Management Ltd. (“ROW”) brought a state-court action in Florida against Aventura for breach of contract (under the Agreement) and breach of implied warranty because Aventura's repair work was allegedly inadequate and not in compliance with the Agreement.” (Order of Magistrate Judge Brown (“Order”) dated January 28, 2014, Docket Entry 41, at 1.) “On or about December 10, 2012, the state court entered [a] default judgment against Aventura, but subsequently vacated the default judgment on or about March 14, 2013.” (*Id.*) “[W]hile the motion to vacate the default judgment was pending, Aventura brought the instant action against Residensea, alleging breach of contract (under the same Agreement) and unjust enrichment.” (*Id.* at 1-2.) “Aventura essentially alleges that Residensea has withheld full payment under the Agreement and that Residensea owes additional payment for the out-of-warranty repairs it performed.” (*Id.* at 2.)

On August 16, 2013, Residensea filed a Motion to Stay the federal court proceedings pending the outcome of the Florida case. On September 16, 2013, the Court referred that motion to Magistrate Judge Brown, and Judge Brown granted defendant's motion on January 28, 2014. Plaintiff filed timely objections to Judge Brown's order on February 10, 2014.

DISCUSSION

A. Standard of Review

The Court reviews Magistrate Judge's decisions regarding non-dispositive pretrial matters under a "clearly erroneous or contrary to law" standard. *See* 28 U.S.C. § 636(b)(1)(A); FED. R. CIV. P. 72(a). An order is "clearly erroneous" only if a reviewing court, considering the entirety of the evidence, "is left with the definite and firm conviction that a mistake has been committed"; an order is "contrary to law" when it "fails to apply or misapplies relevant statutes, case law, or rules of procedure." *Equal Employment Opportunity Comm. v. First Wireless Group, Inc.*, 225 F.R.D. 404, 405 (E.D.N.Y. 2004) (quoting *Weiss v. La Suisse*, 161 F. Supp. 2d 305, 320-21 (S.D.N.Y. 2001)). This standard is "highly deferential," "imposes a heavy burden on the objecting party," and "only permits reversal where the magistrate judge abused his discretion." *Mitchell v. Century 21 Rustic Realty*, 233 F. Supp. 2d 418, 430 (E.D.N.Y. 2002).

B. The Motion to Stay

The Court cannot conclude that Magistrate Judge Brown abused his discretion in granting the motion to stay. "The decision as to whether to stay a federal action on the ground that there is a related action pending in a state court is committed to the sound discretion of the district court." *United States v. Pikna*, 880 F.2d 1578, 1582 (2d Cir. 1989). "In determining whether or not to grant such a stay, the district court should consider such factors as (1) whether the controversy involved a *res* over which one of the courts has assumed jurisdiction, (2) whether one forum is more convenient than the other for the parties, (3) whether staying the federal action will avoid piecemeal litigation, (4) whether one action is significantly more advanced than the other, (5) whether federal or state law provides the rule of decision, and (6) whether the federal plaintiff's rights will be protected in the state proceeding." *Id.* (citing *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.*, 460 U.S. 1, 15-16 (1983); *Colorado River Water*

Conservation Dist. v. United States, 424 U.S. 800, 817-18 (1976)). “In analyzing these factors, the Supreme Court admonishes that no single factor is necessarily decisive, and that the test ‘does not rest on a mechanical checklist, but on a careful balancing of the important factors as they apply in a given case, with the balance heavily weighted in favor of the exercise of jurisdiction.’ ” *De Cisneros v. Younger*, 871 F.2d 305, 307 (2d Cir. 1989) (citing *Moses Cone*, 460 U.S. at 16).

Plaintiff claims, however, that Judge Brown “failed to take into account ‘the heavy presumption favoring the exercise of jurisdiction.’ ” (Pl.’s Mem. in Supp. at 2 (quoting *Bethlehem Contracting Co. v. Lehrer/McGovern, Inc.*, 800 F.2d 325, 327 (2d Cir. 1986))). However, Judge Brown’s conclusion that Residensea “satisfied its burden under *Colorado River* and *Moses H. Cone* because the relevant factors largely favor the granting of a stay” (Order at 3) demonstrates that he did not disregard the presumption, but rather that he found that Residensea had overcome it. Particularly, Judge Brown relied on the third factor, finding that “[t]he piecemeal-litigation factor weighs in favor of granting the stay because there is a real risk that litigation could occur in installments.” (*Id.*) Moreover, although not explicitly mentioned by Judge Brown in his discussion of this factor, a stay of jurisdiction “lends support to the value of judicial economy that animates *Colorado River*.” *De Cisneros*, 871 F.2d at 308. “Thus ‘reasons of wise judicial administration,’ favor abstention in this case in order to avoid duplicative simultaneous litigation.” *Id.* (citing *Colorado River*, 424 U.S. at 818).

Additionally, Judge Brown relied on the fourth and sixth factors finding that the state court action was “further along” and that “Aventura’s rights should be adequately protected in state court” to justify abstention. (Order at 4.) Indeed, there has been a complete “absence of

any proceedings in the District Court, other than the filing of the complaint,” *Colorado River*, 424 U.S. at 820, and it is undisputed that at least limited discovery has begun in the state action. Moreover, Aventura does not dispute that its rights would be adequately protected in the Florida action. Additionally, he found that “[a] stay [was] favored because the sequence of events arguably shows that Aventura’s federal suit was “reactive” - it filed a federal suit after facing a setback (*i.e.*, the default judgment) as a defendant in state court.” (Order at 4.) Although Aventura takes issue with Judge Brown’s application of *Telesco v. Telesco Fuel and Masons’ Material, Inc.*, 765 F.2d 356 (2d Cir. 1985) in reaching this conclusion, application of the principal of that case, *i.e.*, that abstention is favorable when a litigant files a federal action after suffering a setback in state court, was not contrary to law.¹ Furthermore, as for the other *Colorado River* factors not explicitly mentioned by Judge Brown, the Court cannot say that consideration of them would render Judge Brown’s ruling clear error or contrary to law. Therefore, Judge Brown’s ruling is affirmed.

CONCLUSION

For the reasons set forth above, Magistrate Judge Brown’s decision to stay the federal action is affirmed.

Dated: Central Islip, New York
April 6, 2015

SO ORDERED.

/s/
Denis R. Hurley
Unites States District Judge

¹ Plaintiff contends that *Telesco* is inapplicable because there the plaintiff in the state action sued in federal court on the same cause of action after suffering “some failures in the earlier state court action,” 765 F.2d at 363, and here, Aventura is not the plaintiff in the state court action.