Third District Court of Appeal

State of Florida

Opinion filed October 7, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D20-983
Lower Tribunal No. 20-9042

Ocwen Loan Servicing, LLC, Ocwen Financial Corporation, and PHH Mortgage Corporation,
Petitioners,

vs.

21 Asset Management Holding, LLC,
Respondent.

A Writ of Certiorari to the Circuit Court for Miami-Dade County, Reemberto Diaz, Judge.

Orrick, Herrington & Sutcliffe LLP, and Diana Marie Fassbender (Washington, DC), and Ryan Coel Wooten (Houston, TX), for petitioners Ocwen Financial Corporation, Ocwen Loan Servicing LLC, and PHH Mortgage Corporation.

Dorta Law, and Gonzalo R. Dorta and Matias R. Dorta, for respondent.

Before EMAS C.J., and FERNANDEZ, and HENDON, JJ.

HENDON, J.

Ocwen Loan Servicing, Inc., Ocwen Financial Corporation, and PHH Mortgage Co. ("Petitioners"), seek to quash the denial of their motion to stay state court proceedings while a parallel action proceeds in the United States District Court for the Southern District of New York ("SDNY").[1] "We have certiorari jurisdiction to review orders determining motions to stay a cause pending the disposition of another case." REWJB Gas Inves. v. Land O'Sun Realty, Ltd., 645 So. 2d 1055, 1056 (Fla. 4th DCA 1994). We grant the petition for certiorari, quash the order denying the motion to stay, and direct the circuit court to enter a stay pending disposition of the federal New York action.

Facts

On March 25, 2020, PHH Mortgage Company ("PHH") filed a multi-count complaint in the SDNY against Respondent Management Holding ("21 Asset" or "Respondent") based on 21 Asset's alleged failure to pay certain servicing fees due to PHH, and alleged failure to fulfill certain requirements of a servicing agreement. On April 3, 2020, PHH served the SDNY action on the Respondent. The SDNY issued an order giving PHH forty-five days to file an amended complaint more

[1] PHH Mortgage Corporation v. Respondent Management Holding, LLC, SDNY, Case No. 1:20-cv- 02561 (PKC).

clearly setting forth the basis for that court's diversity jurisdiction over the suit. The Respondent filed an Answer and asserted counterclaims, in which it admitted to federal jurisdiction and venue. However, before PHH filed its first amended complaint in the SDNY, on April 24, 2020, the Respondent filed an action against the Petitioners in Miami-Dade circuit court asserting related claims based on the same underlying facts as the SDNY action, and on May 4, 2020, the Respondent served its Miami-Dade complaint on the Petitioners. Soon thereafter, PHH timely filed its first amended complaint in the SDNY action clarifying the basis for subject matter jurisdiction.

The Petitioners filed a motion to stay the Miami-Dade action based on the first-filed New York action. The Miami-Dade circuit court held a non-evidentiary hearing, denied the Petitioners' motion to stay, and ordered the Petitioners to file a response to Respondent's complaint. The Petitioners immediately filed this petition for writ of certiorari seeking to quash the order denying the stay of the state court proceedings.

Standard of Review

A trial court's decision to order or deny a stay based on the principle of priority is reviewed for an abuse of judicial discretion. Abitbol v. Benarroch, 273

So. 3d 147, 153 (Fla. 3d DCA 2019); Pilevsky v. Morgans Hotel Grp. Mgmt., LLC, 961 So. 2d 1032 (Fla. 3d DCA 2007).

Discussion

Certiorari review is warranted where there is "(1) a material injury in the proceedings that cannot be corrected on appeal (sometimes referred to as irreparable harm); and (2) a departure from the essential requirements of the law." Nader v. Fla. Dep't of Highway Safety & Motor Vehicles, 87 So. 3d 712, 721 (Fla. 2012) (quotation omitted).

Our court, in OPKO Health, Inc. v. Lipsius, 279 So. 3d 787, 791 (Fla. 3d DCA 2019), provided:

> Although a trial court has broad discretion to order or refuse a stay of an action pending before it, **it is nonetheless an abuse of discretion to refuse to stay a subsequently filed state court action in favor of a previously filed federal action which involves the same parties and the same or substantially similar issues.** This rule is based on principles of comity." Fla. Crushed Stone Co. v. Travelers Indem. Co., 632 So. 2d 217, 220 (Fla. 5th DCA 1994) (citations omitted). Comity principles dictate that "[w]here a state and federal court have concurrent jurisdiction over the same parties or privies and the same subject matter, the tribunal where jurisdiction first attaches retains jurisdiction." Shooster v. BT Orlando Ltd. P'ship, 766 So. 2d 1114, 1115 (Fla. 5th DCA 2000) (citing Wade v. Clower, 94 Fla. 817, 114 So. 548, 551 (Fla. 1927)). "It is well-settled that when a previously filed federal action is pending between substantially the same parties on substantially the same issues, a subsequently filed state action should be stayed pending the disposition of the federal action." Beckford v. Gen. Motors Corp., 919 So. 2d 612, 613 (Fla. 3d DCA 2006) (citing Wade, 94 Fla. 817, 114

So. 548; Oviedo v. Ventura Music Grp., 797 So. 2d 634 (Fla. 3d DCA 2001)).

(emphasis added). The Respondent argues that until PHH filed its amended complaint in the SDNY action, the federal district court's jurisdiction was pending[2] and thus the Respondent was the first to file its complaint and perfect service in Miami-Dade county, and the Florida state court was the first to exercise jurisdiction. We disagree.

The record indicates that the Petitioners filed their initial federal complaint in the SDNY before the Respondent filed its state action in Florida. The SDNY has not yet dismissed the action for lack of subject matter jurisdiction and is, in fact, currently proceeding on the parties' pleadings.[3] The Respondent also does not dispute that the SDNY action has progressed far more than the Florida action, which is now stayed pending this proceeding.[4] See Inphynet Contracting Servs., Inc. v. Matthews, 196 So. 3d 449, 463 (Fla. 4th DCA 2016) (holding "the principle of

[2] "In federal court, there is simply no such thing as "contingent" subject matter jurisdiction." Brewer v. Hatton, No. 17-CV-02900-JSC, 2017 WL 3635824, at *1 (N.D. Cal. Aug. 24, 2017)

[3] We decline to address the Respondent's SDNY service of process arguments as that issue is more properly brought to the New York court.

[4] The record shows that the SDNY has (i) entered a scheduling order; (ii) held a preliminary conference; (iii) resolved PHH's first motion to dismiss Respondent's counterclaims; (iv) ordered initial discovery outside the normal course of the Federal Rules; and (v) assigned a magistrate judge; and (vi) encouraged the parties to mediate their dispute.

priority applies to the analysis of whether a stay of the entire proceeding should have been granted by the trial court below"). "'Absent extraordinary circumstances . . . a trial court abuses its discretion when it fails to respect the principle of priority.'" Parker v. Estate of Bealer, 890 So. 2d 508, 512 (Fla. 4th DCA 2005) (quoting Hirsch v. DiGaetano, 732 So. 2d 1177, 1177–78 (Fla. 5th DCA 1999)).

Further, "Florida law is clear that, 'the causes of action do not have to be identical' to require a stay of the second filed action." Pilevsky, 961 So. 2d at 1035 (Fla. 3d DCA 2007) (quoting Fla. Crushed Stone Co., 632 So. 2d at 220). Rather, '"it is sufficient that the two actions involve a single set of facts and that resolution of the one case will resolve many of the issues involved in the subsequently filed case.'" Id. (quoting Fla. Crushed Stone Co., 632 So. 2d at 220); see also State v. Harbour Island, Inc., 601 So. 2d 1334, 1335 (Fla. 2d DCA 1992) ("While the two cases are not identical, the disposition of the federal case will resolve many of the issues raised in the state action."). Here, the parties and issues in the SDNY action and the state court action are the same or closely related, and both actions arise out of the same operative facts. Allowing both actions to proceed may lead to inconsistent judgments and remedies. See Robeson v. Melton, 52 So. 3d 676, 679 (Fla. 4th DCA 2009) (holding that "until the federal district court rules, the trial court should stay the entire subsequently filed and substantially related state action . . . Otherwise, it is possible that the federal court will retain jurisdiction and the result

will be two duplicative proceedings with the possibility of inconsistent results."). Application of the principle of priority will avoid wasting judicial resources in duplicative and unnecessary proceedings, and, in this case, the risk of inconsistent judgments regarding the application of law to the same factual dispute. The trial court's denial of the Petitioner's motion to stay the state court action is error that cannot be remedied on appeal. See Inphynet, 196 So. 3d at 464.

We conclude that the principle of priority, as a matter of comity, applies to the motion to stay the state action in this case. We grant the petition for certiorari, quash the order below, and remand with instructions to stay the state action pending disposition of the SDNY action.

Petition granted, order quashed, and cause remanded.