UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case 04-60803-CIV-GOLD

OFFICE OF PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION,

Plaintiff,

vs.

CANADIAN OFFICE AND PROFESSIONAL
EMPLOYEES UNION,

Defendant.

MIAMI, FLORIDA

DECEMBER 10, 2004

(Pages 1 - 34)

TRANSCRIPT OF COURT'S RULING
BEFORE THE HONORABLE ALAN S. GOLD,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

MELVIN S. SCHWARZWALD, ESQ.
616 Penton Media Building
1300 East Ninth Street
Cleveland, OH 44144 216/566-1600
(Fax) 216/566-1814
email: mschwarzwald@srmcnlaw.com

JAMES C. CASEY, ESQ.
Slesnick & Casey, LLP
2701 Ponce De Leon Blvd., Ste. 200
Coral Gables, FL 33134 305/448-5672
(Fax) 305/448-5685
email: jimcasey@sclip.com

1 FOR THE DEFENDANT: BRYAN R. CLEVELAND, ESQ.
JOSEPH BEELER, ESQ.
2 Ferrell Schultz Carter & Fertel
201 South Biscayne Blvd., 34th Floor
3 Miami, FL 33131 305/371-8585
(Fax) 305/371-5732
4 email: brc@ferrellschultz.com
jb@ferrellschultz.com
5
REPORTED BY: JOSEPH A. MILLIKAN, RPR-CM-NSC-FCRSC
6 Official United States Court Reporter
Federally Certified Realtime Reporter
7 Federal Courthouse Square, Ste. 1004
301 North Miami Avenue
8 Miami, FL 33128-7792 305/523-5588
(Fax) 305/523-5589
9 email: jamillikan@aol.com
10
11
12 TABLE OF CONTENTS
13 Page
14 Reporter's Certificate 30
15
16 INDEX TO EXHIBITS
17 Exhibits Marked for Identification Received in Evidence
18
Description Page Line Page Line
19
20
21 CITATION INDEX
22 Page
Posner v. Exxex Insurance Co., 178 F.3d 1209 17
23
Posner, 178 F.3d 1214 23
24
Seguros Del Estado, S.a. v. Scientific Games, Inc.,
25 262 F.3d 1164 17

1 Shaps v. Provident Life, 244 F.3d 881 26
2 Turner Entertainment v. Degeto, 25 F.3d 1512 23
3
4 SIDE-BAR CONFERENCE INDEX
5 Descriptions Page
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 THE COURT: Please be seated. This is Case 04-60803.
2 May I have appearances for today, please?
3 MR. SCHWARZWALD: For the plaintiff, Your Honor,
4 Melvin Schwarzwald, and with me is Donald Slesnick.
5 THE COURT: Thank you. And on behalf of the
6 defendants?
7 MR. CLEVELAND: Bryan Cleveland and Joe Beeler from
8 the law firm of Ferrel Schultz. Your Honor, also calling in,
9 with the Court's permission, is Bruce Louten who is a lawyer
10 for the Canadian union representatives in British Columbia.
11 THE COURT: Yes. Thank you. And I appreciate your
12 appearances today, although I did say that anyone could appear
13 by telephone if that's what you wished. But, in any event,
14 welcome.
15 This matter is before the Court on defendant's motion
16 to dismiss or stay based on a similarly filed case which is
17 Docket Entry 197.
18 The parties have filed briefs and affidavits and
19 exhibits in support or in opposition to the motion. Oral
20 argument was held on November 30th, 2004. Because of the
21 importance and time constraints surrounding the matters
22 addressed, I have elected to enter this oral order from the
23 bench and then execute a brief written order adopting my oral
24 findings and conclusions.
25 For reasons that I will state, I grant the defendant's

1 motions to stay subject to certain conditions which I shall
2 address.
3 The following facts are not disputed. On June 1st,
4 2004, the plaintiff, Office and Professional Employees
5 International Union, which I will refer to as "International,"
6 filed a civil complaint in the Supreme Court of British
7 Columbia against Local 15 and 378 of the Office and
8 Professional Employees International Union, the Canadian
9 National Committee of the Office and Professional Employees
10 International Union, and against three individuals: Jerri New,
11 Elaine Jackson and Sheila Morrison. All of these defendants
12 are also named defendants in this case.
13 The complaint there sought a declaration that the
14 actions of the defendants in collectively engaging in a
15 campaign to establish an autonomous Canadian national union by
16 purporting to obtain the authorization of members of the
17 plaintiff in Canada constituted a breach of the International's
18 constitution, particularly Article XIV.
19 In Paragraph 24 of the amended complaint in this case,
20 Docket Entry Number 192, the plaintiffs allege that the
21 defendants, through the impugned campaign material, including
22 the members of the plaintiff, breached their contract with the
23 plaintiff. The claimed reason why such action was a breach is
24 significantly the same as that pled in this case.
25 The core reason is that the plaintiffs' president

TOTAL ACCESS COURTROOM REALTIME TRANSCRIPTION

6d642041-4afd-11d9-9f03-0010b549d904

Page 6

1 interpreted the International constitution regarding the proper
2 procedure for establishing an autonomous Canadian union under
3 Article XIV and sent a letter on May 14th, 2004, stating his
4 written decision and interpretation of Article XIV, clarifying,
5 in his opinion, the procedure for holding a vote for the
6 purpose of establishing an autonomous national union.
7 The Complaint filed in the Canadian case, as here,
8 alleges that according to the president, the procedure must be
9 followed as follows:
10 Whether or not the issue of establishing an autonomous
11 national union should be submitted to the International members
12 in Canada is an issue that must be decided by the Canadian
13 convention; only if a convention called for such an expression
14 of desire may the matter be further pursued; that if a Canadian
15 convention makes such a request, such desire must be measured
16 by a procedure to be established by the International Union;
17 that such a procedure would be a secret ballot of all the
18 International members in Canada; and it would be best if that
19 vote was conducted by some independent body which the
20 International Union would engage; and, finally, that Article
21 XIV § 1 required that the desire for such action must be
22 established by a majority vote of the International members
23 within Canada as opposed to a majority who chose to vote.
24 The Canadian complaint also alleged that if the
25 majority of Canadian members decide to have a national

Page 7

1 autonomous union, the International would expect that the union
2 would pay more than $10,400,000 in deficits to both the
3 International's General Fund and the International Strike
4 Benefit and Defense Fund. In other words, the Canadian
5 Complaint, as here, significantly turned on whether the
6 president's interpretation of the constitution was correct and
7 binding on the defendants.
8 Admittedly in this case in its amended complaint, the
9 plaintiffs allude to an amendment to Article XIV which occurred
10 on June 21st, 2004 at the International's convention here in
11 Florida which established a revised procedure for the Canadian
12 local unions to exercise their right to form an autonomous
13 union.
14 It appears, although a declaration is not specifically
15 requested in the amended Complaint, that, nonetheless, that
16 plaintiff requests this amendment to be applied retroactively
17 to the succession at issue.
18 In the Canadian suit, the plaintiff requested a
19 declaration that the impugned conduct of the defendants was a
20 breach of the contract between the plaintiff and the defendants
21 and was tortious and unlawful, and in that suit sought damages
22 for breach of contract and tort, and sought an interlocutory
23 and permanent injunction, restraining and enjoining the
24 defendants from purporting to establish an autonomous national
25 union under the International's constitution through the means

Page 8

1 of their unlawful campaign.
2 The difference between the allegations and relief
3 sought in the Canadian suit and this action is, in effect, that
4 more defendants have been added, namely, more Canadian locals
5 and their representatives, and that there are further
6 allegations that, in effect, an illegal vote had been taken and
7 a new union illegally formed.
8 There are other Florida state-based claims relating to
9 ancillary tort and other claims pertaining to the formation of
10 the union and regarding the International's convention here in
11 Florida.
12 These matters arose based on events that occurred
13 after the Canadian judge's denial of injunctive relief. With
14 regard to these matters, essentially on June 19th, 2004, the
15 executive committee of the International, meeting in Florida,
16 endorsed amendments to the constitution that on their face
17 appear to constrain the right to succession and autonomy.
18 On June 20th, 2004, a letter signed by all the members
19 of the Canadian National Committee was delivered to the
20 president of the International at the Westin Diplomate Resort
21 and Spa in Hollywood, Florida, where the International
22 convention was to take place from June 21st through June 24th,
23 2004.
24 The letter advised the International that the local
25 unions within Canada were invoking the Article XIV § 1 right to

Page 9

1 establish an autonomous national union; that 74 percent of
2 Canadian members had confirmed their desire to do so; and that
3 from and after June 20th, 2004, the Canadian locals would not
4 be governed by the International's constitution.
5 On June 21st, 2004, the amendments proposed by the
6 International's executive committee were adopted by the
7 convention in Hollywood, Florida.
8 On that same date, namely June 21st, 2004, the
9 International, attributing to itself an address in New York,
10 filed a complaint in this Court against the Canadian
11 Organization of Professional Employees, the Canadian National
12 Committee, the 17 members of the Canadian National Committee
13 who signed the letter dated June 20th, 2004, the SEPB Québec,
14 that being the French language acronym of the union in Canada,
15 and 50 or so locals of the union organized in Canada.
16 In its defensive pleadings filed in Canada on June
17 23rd, 2004, the defendants claim that if the constitution was a
18 contract which it, being the defendants, denied, it is a
19 contract of adhesion and is to be interpreted and applied in
20 accordance with the law of the Province of British Columbia.
21 Specifically, the defendants deny that the president was
22 entitled to amend, rewrite or nullify the provisions of the
23 constitution and the exercise of any duty given to him to
24 interpret that constitution.
25 The defendants claim that the International breached

Page 10

1 an implied term of the constitution by manufacturing an
2 interpretation of Article XIV § 1 for the sole purpose of
3 depriving the locals of the International in Canada of their
4 right to obtain Canadian autonomy. The defendants claimed that
5 any rights they were exercising were in accordance with their
6 rights under Article XIV of the constitution.
7 In conjunction with their defense, the defendants
8 counterclaim for declaratory relief. The counterclaim alleged
9 that since May 2004, the defendants and the local Canadian
10 unions have sought authorization from their membership to
11 establish their own autonomous national union, in that on June
12 20th, 2004, notice was given of such right as a result of 74
13 percent of the Canadian members having confirmed their desire
14 to establish such an autonomous national union.
15 The defendant sought a declaration of rights that
16 Local 378 and the Canadian locals have lawfully exercised their
17 rights given to them pursuant to Article XIV § 1 to establish
18 an autonomous national union; that the plaintiff was in breach
19 of the constitution for failing to recognize the rights of
20 defendant Local 378 and that the Canadian locals were free to
21 establish their own autonomous national union, and they
22 requested an order that International Local 378 is entitled to
23 a proportionate share of the assets of the plaintiff as of June
24 20th, 2004.
25 On June 24th, 2004, the International filed a notice

Page 11

1 of discontinuance of its Canadian action. It entered an
2 appearance and filed a defense to the counterclaim earlier
3 filed by both Local 378 and Ms. New.
4 Going back to the initial preliminary injunction
5 proceedings, I note that the plaintiffs' claim for injunctive
6 relief came before the Supreme Court of British Columbia on
7 June 3rd, 2004.
8 In Paragraph 3 of the oral reasons for judgment, the
9 Canadian judge summarized the dispute concerning the
10 president's authority to interpret the International
11 constitution. The Canadian judge adroitly summarized the core
12 essence of the dispute by stating that, "It appears that the
13 nature of the problem is that the American locals are of the
14 view that they have been subsidizing the strike benefits and
15 defense funds that are maintained for the benefit of the
16 Canadian locals and their members."
17 The Canadian court carefully considered the relevant
18 provisions of the constitution, including Article X and Article
19 XIV, and considered the history of events as submitted by
20 affidavits and denied preliminary relief primarily because of
21 the failure of the president of the International to provide
22 full, fair and frank disclosure with respect to his intention
23 and those of the International regarding the course the
24 International would follow in the event the Canadian locals
25 pursued autonomy and also because the statement of the claim

Page 12

1 disclosed no prima facie case.
2 In considering the issues, I conclude that the
3 Canadian judge squarely ruled on a key issue in this case. The
4 Canadian judge stated that:
5 "I have cited Article X § 1 of the constitution. It
6 is clear on its terms that Mr. Goodwin, as the
7 International president, is entitled to interpret the
8 constitution. He is not empowered to amend it. He is not
9 empowered to enact process and procedures for which the
10 constitution does not provide and in respect of which no
11 specific power has been given to him."
12 The judge went on to say:
13 "On the face of it, I can see nothing in the
14 constitution or in the form itself that would suggest that
15 there is a prima facie case that the CNC or any of the
16 locals or members is acting in contravention of the
17 constitution by attempting to identify the opinion of
18 members in Canada."
19 The Canadian judge further explained his conclusions
20 as follows:
21 "I would conclude, therefore, that the substance of
22 the claim as framed by the statement of claim does not
23 meet the prima facie arguable case threshold. There may
24 be a case to be built around the question of how it is
25 that the will of the majority is to be determined in

Page 13

1 conformity with Article XIV § 1 of the union's
2 constitution.
3 "Most assuredly, as I have said, it cannot be done by
4 the International president dictating the manner in which
5 it is going to be done. It may be as, Mr. Arsenault, one
6 of the lawyers in the case, suggests on behalf of the
7 International that a process for fair play, full
8 discussion and open discussion must be found in order to
9 ensure that a decision which is obviously of immense
10 consequence to Canadian members, to members in the United
11 States and with whom Canadians are brothers and sisters,
12 and to the International union will be made on a
13 fully-informed basis so that the question of autonomy can
14 be resolved on a peaceful basis.
15 "The issue cannot be resolved by hardball of the kind
16 that has been played by the International in all of the
17 circumstances as I discern them from the affidavit and
18 material before me.
19 "Had the action been framed on the basis that
20 something has to be done or some process has to be worked
21 out under Article XIV § 1 to ascertain the majority view
22 in Canada, I would have been inclined to say that the
23 prima facie case threshold had been made out."
24 Following the Canadian court's ruling, the defendants
25 there sought to enjoin the plaintiff from proceeding with this

6d642041-4afd-11d9-9f03-0010b549d904

1 subject litigation in the Southern District of Florida. The
2 International opposed the application on the basis that the
3 defendants should first seek and be refused a stay in this
4 litigation.
5 I find the analysis of the issue raised by the
6 Canadian court at Exhibit G to the defendants' motion, with
7 regard to the merits of the antiinjunction request, to be
8 instructive here on the merits of the application for stay
9 which I have before me.
10 The Canadian court posed the question as whether it
11 should contemplate an antiinjunction in circumstances:
12 1. Where the International chose to initiate
13 proceedings in relation to secession and the consequences
14 flowing therefrom from the Canadian court by action commenced
15 June 1st, 2004.
16 2. Before discontinuing its action in British
17 Columbia, the International commenced proceedings in Florida
18 which, to a substantial agree, seeks similar relief to that
19 claimed in the British Columbia action.
20 3. Two of the defendants in the British Columbia
21 action had commenced a proceeding against the International by
22 counterclaim as they were permitted to do so by the Rules of
23 Court in the province.
24 4. That the International had filed a defense to the
25 counterclaim but has not applied for a stay of proceedings on

1 the basis of forum non conveniens.
2 5. That the action by the International in Florida,
3 first, claims the relief sought in British Columbia; second,
4 claims entitlement to assets of Canadians locals where such
5 assets are situated in British Columbia and elsewhere in
6 Canada; third, claims compensation as a consequence of
7 financial loss it alleges to have suffered in Florida, namely
8 hotel costs in respect of nonattending delegates and, fourth,
9 the recovery of funds paid to locals in Canada or to the
10 Canadian National Committee to facilitate convention
11 attendance, such claim being advanced on the basis that the
12 locals did not apply the funds for their intended purpose.
13 Citing Canadian law, the Canadian court explained that
14 in the event this Court here in the Southern District of
15 Florida does not stay the action, it must proceed to entertain
16 the application for an injunction but only if it is alleged to
17 be the most appropriate forum and is potentially an appropriate
18 forum.
19 Under Canadian law if a foreign court assumes
20 jurisdiction on the basis that is inconsistent with Canadian
21 rules of private international law and injustice results to a
22 litigant or would be a litigant in the Canadian courts, then
23 the assumption of jurisdiction in Florida is inequitable and
24 the party invoking the foreign jurisdiction can be restrained.
25 According to Canadian law the foreign court, not

1 having itself observed the rules of comity, cannot expect its
2 decision to be respected on the basis of comity.
3 I give significant weight and credence to how my
4 learned colleague, Mr. Justice Pittfield, directly framed the
5 matter in allowing this Court to first determine whether a stay
6 is appropriate.
7 In analyzing the matter, the Canadian judge further
8 stated that it would be appropriate for me to consider whether
9 by reference to the real substance of the dispute between the
10 International and the numerous defendants, which is the right
11 of Canadian locals and members to autonomy, vis-à-vis the
12 International having its office and place of business in New
13 York and Washington, D.C., by reference to the other principal
14 concern, which is the nature of financial rights and
15 obligations associated with autonomy, particularly as they
16 affect assets of the locals in Canada and, in any event, by
17 reference to the principles of international comity that bind
18 the courts in this country, meaning in Canada, the State of
19 Florida is clearly the appropriate forum in which to adjudicate
20 the matters in dispute.
21 For reasons which I shall now explain, I concur with
22 my learned colleague's assessment and shall stay this case with
23 conditions pending further proceedings in Canada on the prior
24 filed litigation.
25 In granting this stay, I shall monitor and further

1 determine whether all pending claims, including Florida-based
2 claims, and those claims involving all parties, can be
3 addressed in Canada, and whether plaintiffs' claims against the
4 original defendants may be refiled and jurisdiction obtained,
5 and at plaintiffs' option, further adding those who are named
6 in this litigation.
7 I base my ruling on the Doctrine of International
8 Abstention and the doctrine known as Lis alibi pendens. As
9 recognized by the Eleventh Circuit Court of Appeals in Seguros
10 Del Estado, S.a. v. Scientific Games, Inc., 262 F.3d 1164,
11 citing the Page 1169, Eleventh Circuit, 2001:
12 "Lis alibi pendens is a doctrine rooted in
13 international comity which permits a court to refuse to
14 exercise jurisdiction in the face of parallel litigation
15 that is ongoing in another country."
16 The threshold question, therefore, is whether this
17 case is parallel to the ongoing case in British Columbia.
18 Applying other Eleventh Circuit precedent, I conclude that
19 "parallel" does not mean "identical." What is important is
20 whether the two cases involve significantly similar common
21 issues and parties, citing to Posner v. Exxex Insurance Co.,
22 178 F.3d 1209, Page 1224, Eleventh Circuit, 1999.
23 In the Seguros case, the Eleventh Circuit did not
24 define the phrase "parallel proceedings" but left to the
25 District Court to consider its application given certain

6d642041-4afd-11d9-9f03-0010b549d904

1 factors.
2 For instance, the District Court in the Seguros case
3 did not conclude that the cases were parallel because they
4 involve materially different issues, documents and parties.
5 Furthermore, the outcome of the United States case did
6 not affect the outcome of the foreign case. This is to be
7 contrasted with other cases cited in that case where the
8 doctrine did apply, such as where the two cases dealt with the
9 same issue and also directly involve the same parties.
10 Here, the plaintiff argues that the doctrine should
11 not apply for several reasons. First, they argue that the
12 parties are different. The British Columbia case only named
13 six defendants. Except for the CNC, which never appeared in
14 the British Columbia case, there were only three parties:
15 Local 378, Ms. New, and the International.
16 In contrast, the subject case names defendants from
17 six Canadian provinces, including British Columbia, including
18 more than 50 Canadian local unions and more than 16 or 17
19 Canadian individuals, as well as the CNC.
20 But what is significant is that the type of parties
21 added are the same as those existing in the British Columbia
22 case; that is, Canadian union entities and individual Canadians
23 who are representatives of Canadian union members that have
24 been sued in both their individual and personal capacities.
25 The only new entity that has been named as a defendant

1 in this case in Florida is the new Canadian union itself which
2 had not been officially formed at the time the International
3 filed its earlier suit in Canada.
4 Accordingly, I do not find that the parties or their
5 interests are substantially different. What is different at
6 this present time is only the number of local unions and their
7 representatives who have been joined here today and are not yet
8 parties in the Canadian litigation.
9 Nonetheless, all the old and new defendant parties,
10 both in the United States and in Canada, share the same common
11 interests. They are engaged in a battle over the right of the
12 Canadian locals to sever their relationship with the plaintiff,
13 the manner in which severance, secession or disassociation
14 shall be affected, and the division of assets as between the
15 locals and the plaintiff.
16 What is significant is that a decision by the British
17 Columbian court on the International succession claim with the
18 parties currently before it may well have been res judicata on
19 all the locals and Canadian members, whether they were joined
20 as parties or not, by virtue of the doctrine of virtual
21 representation.
22 Plaintiff offers no convincing reason why additional
23 Canadian locals and individuals could not be joined as parties
24 in Canada for relief to be rendered on the claimed money
25 damages resulting from their succession.

1 Plaintiffs do not contend that it is prohibited from
2 reasserting its claims in British Columbia, which it apparently
3 has the ability to do, and to which the defendants do not
4 contest.
5 Although plaintiff has tactically dropped its first
6 suit in Canada, there is no showing that plaintiff could not
7 refile it again, merge it with the current counterclaim and
8 otherwise respond to the countersuit currently pending in
9 British Columbia which will address the merits of all
10 Canadian-based claims that are now pending in this Court.
11 Any procedural impediment to accomplishing these
12 actions in Canada appear to be of plaintiffs' creation. This
13 results from an effort, in my view, to avoid the legal effect
14 of Justice Pittfield's ruling that the president had no right
15 or authority to interpret the constitution in such manner as to
16 preclude succession.
17 Once that ruling was rendered, plaintiff purposefully
18 withdrew their claim and sought a purportedly more friendly
19 forum in the United States to relitigate the matter, including
20 by adding additional matters which are inextricably intertwined
21 with its main claim, notwithstanding that all defendants are
22 Canadian individuals or entities and that any relief to
23 implement a favorable judgment or damage award rendered in the
24 United States would have to be refiled, as plaintiff admits, in
25 Canada and enforced or collected through the auspices of the

1 Canadian courts under Canadian law and procedures.
2 I further conclude that plaintiffs' act in
3 discontinuing its Canadian action does not excuse forum
4 shopping or provide a justification for not granting
5 defendants' motion for stay.
6 The plaintiff next seeks to distinguish the Seguros
7 case on the basis that the claims at issue in the two cases are
8 materially different. I disagree. The principal claims and
9 issues in the Florida case are essentially the same as the
10 claims and issues brought in the earlier filed British Columbia
11 case.
12 The main issue is the same: Should the Court prevent
13 the Canadians from seceding from the International Union? The
14 Canadian counterclaim in essence seeks the mirror image of what
15 plaintiff seeks here, a declaration as to the validity of the
16 Canadian secession and a determination as to the distribution
17 of assets.
18 Plaintiffs' new theory that the actions taken to amend
19 its constitution retroactively to invalidate succession can be
20 readily added to and decided in the pending Canadian action.
21 I will stay the main claim until such time as I
22 conclude that such claim has not or cannot proceed in Canada in
23 its entirety between the plaintiff and the defendants who are
24 named in this cause.
25 I do so because I conclude that the outcome of this

1 case, by way of declaration of rights, would directly affect
2 the outcome of the foreign case both in terms of the rights and
3 the manner of succession and the issue of damages involving the
4 division of Canadian local assets.
5 I acknowledge that plaintiff did not file exactly the
6 same lawsuit here as in British Columbia. The Florida lawsuit
7 adds claims relating to hotel cancellation and travel expenses
8 in connection with the plaintiffs' June 2004 convention in
9 Florida that was not part of the British Columbia case.
10 These incidental claims do not distract from the main
11 claim common to both cases; that is, the right of Canadian
12 autonomy, the manner of the exercise of that right, and the
13 division of assets between the Canadian local unions and the
14 International.
15 First, plaintiff does not contend that it cannot add
16 these claims to the pending British Columbia case by a new
17 filing to be merged with a pending lawsuit.
18 There is no reason why claims that the Canadians
19 allegedly received convention monies in Canada that should be
20 returned or that there was additional hotel expenses incurred
21 could not be litigated in Canada.
22 I will stay these claims as well unless and until I
23 conclude that such additional claims are not cognizable in
24 Canada once all necessary pleadings are complete in the
25 province.

1 If they are not, I will require that plaintiff amend
2 its Florida-based claims in its complaint so that I may
3 determine if I have subject matter jurisdiction as to each
4 claim and then decide whether each claim can properly state a
5 basis for relief under Florida law.
6 Moving on to the next point, once I conclude, as I
7 have, that the two actions are parallel, I must next consider
8 and apply the factors enunciated by the Eleventh Circuit Court
9 of Appeals in Turner Entertainment v. Degeto, 25 F.3d 1512,
10 1518, Eleventh Circuit, 1994, to decide whether to grant the
11 stay. These factors include a proper level of respect for the
12 acts of our fellow sovereign nations, fairness to litigants,
13 and efficient use of scarce judicial resources.
14 Under the first factor, I conclude that the need for
15 international comity is strong in this case even if a final
16 judgment in the foreign court has not been entered.
17 It is not required under Eleventh Circuit case law
18 that prior judgment be a prerequisite to abstention. For
19 example, in Posner, 178 F.3d 1214, the Eleventh Circuit
20 approved abstention even though little progress was made in the
21 foreign action.
22 Here, by contrast, I conclude that Mr. Justice
23 Pittfield did directly decide a key matter in finding a lack of
24 prima facie case.
25 He also concluded that the International's president

1 lacked the authority to interpret the constitution in the
2 manner contemplated to stop succession. This also remains a
3 critical question in this case according to the allegations of
4 the amended complaint.
5 The purpose of international comity is to promote
6 justice between individuals and to produce a friendly
7 intercourse between the sovereignties to which they belong.
8 Without doubt, the Supreme Court in British Columbia is
9 competent to hear the claims raised by the parties, and I
10 conclude that its procedures are just and fair.
11 Obviously, the plaintiff has agreed to this premise by
12 first bringing this lawsuit in British Columbia. I also
13 believe that upon considering all factors, the Canadian court
14 could rightfully invoke an antiinjunction remedy which is
15 presently pending before it.
16 By continuing this action in antagonistic means would
17 be the antithesis of promoting international comity, especially
18 given my learned colleague's observation that what is at issue
19 here is the fate of Canadian locals and their assets which
20 should properly be considered by Canadian courts applying
21 Canadian law, except as necessary to decide the ancillary
22 Florida state claims.
23 If I decline to stay the matter and the court in
24 British Columbia enters an antiinjunction action, the plaintiff
25 would have no choice but to seek a further stay in this Court

1 while appealing the Supreme Court decision in Canada.
2 If I declined to grant a stay but proceeded to
3 judgment, the plaintiff faces possible contempt charges in
4 Canada or inconsistent judgments in the United States and
5 Canada, a result neither party desires since it is unclear at
6 this juncture how such matters would be reconciled under any
7 treaty relations between the two countries.
8 This is particularly true in the event I order money
9 damages which could only be collectable in Canada, or order
10 injunctive relief which, pursuant to a declaration, could only
11 be enforceable in Canada.
12 At oral argument neither party was aware of how such
13 relief could be effectuated through the Canadian courts,
14 following judgment in this Court, and if Canadian law would
15 allow for ancillary attacks on foreign judgments, particularly
16 if such judgment is subject to an antiinjunction order.
17 Rather, in my view, comity favors deferring to
18 Canadian courts in the first place without inviting future
19 litigation over the legitimacy of a judgment of this Court for
20 enforcement purposes in Canada.
21 Next, I conclude that the second factor, fairness to
22 the parties, favors abstention. While plaintiff concedes that
23 "generally speaking" Canada would, in fact, provide an adequate
24 forum in which to litigate -- this is at their opposition brief
25 at Page 10, Note 15 -- it does contend it would be prejudiced

6d642041-4afd-11d9-9f03-0010b549d904

1 because the Canadian court would not be sufficiently
2 differential to the plaintiffs' interpretation of its own
3 constitution.
4 The record does not support this conclusion.
5 Mr. Justice Pittfield did acknowledge that plaintiffs'
6 president was entitled to interpret its constitution but not to
7 amend it and to enact processes and procedures which the
8 constitution does not provide.
9 In its materials presented, plaintiffs' argument is
10 not persuasive that some other American doctrine would better
11 serve its interpretation. In point of fact, the parties at
12 oral argument were unable meaningfully to address the issue of
13 which law would govern such an interpretation.
14 Under Florida's conflict of law rules, the doctrine of
15 lex loci contractus directs that an absence of a contractual
16 provision specifically governing the applicable law, a contract
17 other than one for performance, is governed by the law of the
18 state in which the contract was made.
19 This is Shaps v. Provident Life, 244 F.3d 881,
20 Eleventh Circuit, 2001.
21 Here, even assuming, as plaintiff alleges, the
22 constitution is a contract, it remains unclear at this juncture
23 if acceptance occurred in Canada by a vote of Canadian unions
24 or by other related action in Canada such that Canadian law may
25 well apply to any interpretation in any event.

1 Finally, as to the last factor I mentioned, the goal
2 of avoiding piecemeal litigation and inconsistent verdicts
3 applies equally, favorably in favor of abstention.
4 I do not agree with plaintiffs' assessment that what
5 we have here are two cases which are substantially different.
6 Unlike the cases cited by the plaintiff, there is only one
7 single document which governs the core issues litigated by the
8 parties which already has been interpreted by the Supreme Court
9 of British Columbia.
10 The laudable goal of avoiding piecemeal litigation is
11 best accomplished by allowing the case in British Columbia to
12 move forward in lieu of this case. While no doubt American
13 interests are involved as plaintiff suggests, I conclude that
14 the cause of justice will best served by having a Canadian
15 court decide the effect of voting in Canada by Canadian
16 employees to determine the union they will work in.
17 Fundamentally, plaintiff is seeking a United States
18 Court to invalidate a union election conducted in Canada by
19 union workers under Canadian labor law and to oversee a new
20 union election in Canada by Canadian workers under Canadian
21 law. I abstain to allow the Canadian court the comity of doing
22 so first.
23 Wherefore it is ordered as follows:
24 1. The defendants' motion to stay is granted and the
25 case is stayed subject to the conditions further set forth in

1 the order that I will enter.
2 This cause will be administratively closed and held in
3 abeyance pending further proceedings before the Supreme Court
4 of British Columbia. I shall continue to monitor by status
5 report from the parties the status of the ongoing litigation in
6 British Columbia to ascertain whether all claims against all
7 parties to this lawsuit here in the Southern District of
8 Florida, including those allegedly arising out of Florida and
9 involving Florida law, may be heard and resolved by judgment
10 before the Supreme Court of British Columbia.
11 In the event certain claims which are now pending here
12 may not be heard and resolved by the Supreme Court of British
13 Columbia for any reason, I shall permit the plaintiff to
14 further amend its pleadings as to those claims only and further
15 permit additional or renewed motions to dismiss so that I may
16 determine if I have subject matter jurisdiction over the
17 claims, personal jurisdiction over the parties affected by
18 those claims, and whether such claims state a cause of action.
19 2. The parties shall file a status report within 60
20 days concerning the litigation in British Columbia. The status
21 report shall advise whether plaintiff and defendants have been
22 allowed to file and present all of their claims and defenses by
23 separate action or otherwise in British Columbia, and whether
24 service of process has been accomplished by stipulation or
25 otherwise of the defendants in this cause, so as to permit a

1 full and complete resolution of all claims and defenses in
2 Canada.
3 I specifically retain jurisdiction to reopen the cause
4 upon motion in the event Canadian law would not permit a full
5 and complete resolution of the cause and all claims and
6 defenses against all parties.
7 3. The following motions are denied without prejudice
8 based on my ruling on defendants' motion to stay:
9 The defendants' Rule 12 motion to dismiss for lack of
10 subject matter jurisdiction, personal jurisdiction and venue,
11 which is Docket Entry 196;
12 2. Defendants' motion to clarify issues, re:
13 Identification appearance and representation of defendants,
14 which is Docket Entry 199;
15 3. The motion by Colleen Malley to dismiss this
16 action for lack of service of process, which is Docket Entry
17 200, and plaintiffs' motion to take deposition of persons in
18 Canada, which is Docket Entry 204.
19 4. This case is ADMINISTRATIVELY CLOSED pending
20 further order of Court.
21 Thank you for your appearances. Good evening.
22 [The proceedings conclude at 4:53 p.m., 12/10/04.]
23
24
25

6d642041-4afd-11d9-9f03-0010b549d904

1 CERTIFICATE

2 I hereby certify that the foregoing is an accurate

3 transcription of proceedings in the above-entitled matter.

4

5 ______________ ______________________________

DATE JOSEPH A. MILLIKAN, RPR-CM-NSC-FCRSC

6 Official United States Court Reporter
Federally Certified Realtime Reporter
7 301 North Miami Avenue, Suite 1004
Miami, FL 33128-7792 305/523-5588
8 (Fax) 305/523-5589
email: jamillikan@aol.com

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Quality Assurance by Proximity Linguibase Technologies

6d642041-4afd-11d9-9f03-0010b549d904