

UNPUBLISHED

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION**

J.A.D. COAL COMPANY, INC.,)

Plaintiff,)

v.)

TWIN ENERGIES, INC., ET AL.,)

Defendants.)

Case No. 2:03CV00063

OPINION AND ORDER

By: James P. Jones

United States District Judge

Robert T. Copeland, Copeland & Bieger, P.C., Abingdon, Virginia, for Plaintiff; David S. Samford, Law Office of Stan Cave & Associates, P.S.C., Lexington, Kentucky, for Defendants.

The plaintiff J.A.D. Coal Company, Inc. (“JAD”), a Virginia corporation, filed this action on April 28, 2003, alleging that the defendant William Detherage (“Detherage”), on behalf of the other defendant, Twin Energies, Inc. (“Twin”), had committed the tort of fraud in Virginia on May 11, 2001, by making certain material misrepresentations that caused JAD to enter into a letter of intent to sell its assets. Jurisdiction of this court is based on diversity of citizenship, it being alleged that Detherage and Twin are citizens of Kentucky, and the amount in controversy. *See* 28 U.S.C.A. § 1332(a) (West 1993 & Supp. 2002).

In response to the Complaint, the defendants filed a Motion to Dismiss, contending, among other things, that this court should abstain from jurisdiction under

the “first-to-file rule” due to a prior action pending in a federal district court in Kentucky. Copies of the answer and memorandum opinion in that case, as well as a copy of the letter of intent that is at issue, were submitted with the defendants’ motion. The Motion to Dismiss has been briefed and argued and is ripe for decision.

The facts necessary to decide the Motion to Dismiss are not contested. On May 23, 2001, JAD and Twin signed a letter of intent regarding Twin’s purchase of JAD’s assets. Detherage, a principal of Twin, negotiated the terms of the letter of intent on Twin’s behalf. The rights granted by the letter of intent were later assigned by Twin to Detherage Enterprises, Inc., a Kentucky corporation owned by William Detherage.

The purchase and sale contemplated by the letter of intent did not close, and on September 26, 2001, Detherage Enterprises filed suit against JAD in the United States District Court for the Eastern District of Kentucky for breach of contract. In an opinion and order entered June 26, 2002, that court held, on cross motions for summary judgment, that the letter of intent contained all of the material and essential terms necessary to be a binding and enforceable contract. *Detherage Enterprises, Inc. v. J.A.D. Coal Co.*, Civil Action No. 01-390-DCR, slip op. at 1 (E.D. Ky. June 26, 2002). The issue of whether that contract was breached by JAD is scheduled for trial in that court in the near future.

In its Complaint in this court, JAD requests that I rescind the letter of intent on account of the alleged fraud. JAD also asks that I award compensatory damages “for any potential losses that [JAD] may suffer as a result of the letter of intent,” as well as punitive damages. Fraud has not been raised as a defense by JAD in the Kentucky breach-of-contract action and is thus not an issue in that case.

The “first-to-file” rule proposes that when an action involving the same parties and issues has already been filed in a different federal district, the court may either transfer, stay, or dismiss the second suit. *See Alltrade, Inc. v. Uniweld Prods., Inc.*, 946 F.2d 622, 625, 628-29 (9th Cir. 1991). This rule is based on principles of “comity and the orderly administration of justice.” *See Ulmet v. United States*, 888 F.2d 1028, 1031 (4th Cir. 1989).

The enforceability of the letter of intent is a central issue before the Kentucky court and will presumably be resolved there shortly; I will therefore dismiss that portion of JAD’s claim without prejudice.¹ It is possible, however, that the result of the Kentucky litigation will leave JAD with a cause of action for damages for fraud

¹ Although Twin is not a party to the Kentucky action, it assigned its rights under the letter of intent to Detherage Enterprises. Therefore, for the purpose of determining the enforceability of the letter, the identity of the parties in the two actions is the same. Another party to the letter of intent, Sandlick Coal Company, Inc., is a party to the Kentucky action, although it is not apparent on this record why Sandlick is involved, since only the assets of JAD were to be sold. However, Sandlick is not an essential party to any damage claim for fraud.

against Detherage and Twin, who are not parties to the Kentucky action. For example, if that court ultimately finds that the letter of intent is not enforceable, then JAD may be able to recover compensatory damages against Detherage and Twin, assuming Detherage made any material misrepresentations relating to the letter. I make no determination now of whether any such claim is viable or might be barred by other defenses. However, particularly because JAD's claim for damages for fraud might otherwise be extinguished by the running of the two-year Virginia statute of limitations, *see* Va. Code Ann. § 8.01-248 (Michie 2000), I will stay the present action for damages until the resolution of the Kentucky case.

For the foregoing reasons, it is **ORDERED** as follows:

1. The Motion to Dismiss [Doc. No. 8] is granted in part and denied in part;
2. The part of the Complaint seeking rescission of the letter of intent is dismissed without prejudice;
3. Otherwise, this action is stayed pending resolution of the case of *Detherage Enterprises, Inc. v. J.A.D. Coal Co.*, Civil Action No. 01-390-DCR, pending in the United States District Court for the Eastern District of Kentucky. Such stay means, among other things, that it will

not be necessary for the defendants to file responsive pleadings to the Complaint unless and until the stay is lifted; and

4. The parties must promptly advise this court once a final judgment has been entered in the Kentucky action, or that action is otherwise dismissed or removed from the active docket of that court.

ENTER: October 23, 2003

United States District Judge