

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

ROBERT K. STAPLES, JR.,)	
)	
Plaintiff,)	
)	
v.)	No. 1:12-cv-00477(JCC/IDD)
)	
)	
GUARDIAN AUTO GLASS, LLC,)	
)	
Defendant.)	

**GUARDIAN AUTO GLASS, LLC’S MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO DISMISS PLAINTIFF’S COMPLAINT FOR DECLARATORY RELIEF**

Defendant Guardian Auto Glass, LLC (“Guardian” or Defendant”), by counsel and pursuant to the Federal Rules of Civil Procedure and section 2201 of Title 28 of the U.S. Code, hereby submits this Memorandum of Law in Support of its Motion to Dismiss Plaintiff’s Complaint for Declaratory Relief. In support of this Motion, Defendant states as follows:

INTRODUCTION

The Court should exercise its discretion under the federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, to dismiss, or, in the alternative, stay this action for declaratory relief in favor of a parallel suit removed by Mr. Staples from Michigan state court that will fully address all legal and factual issues raised in his Virginia suit pending before this Court. *See Guardian Auto Glass, LLC, v. Ken Staples, Jr.*, Case No. 2012-cv-1813 (DPH/MKM) (E.D. Mich.). Michigan is a proper forum to adjudicate the merits, and Mr. Staples concededly filed the instant suit for declaratory relief in Virginia after he went to work for Guardian’s direct competitor. Moreover, Mr. Staples filed in Virginia in anticipation of Defendant’s substantive suit now

proceeding in Michigan. Mr. Staples is subject to a preliminary injunction issued by the Oakland County Circuit Court in Michigan in April, which remains in place and subject to enforcement, following removal, by the United States District Court for the Eastern District of Michigan. Additionally, Mr. Staples recently filed an Answer to Guardian's Michigan Complaint interposing six affirmative defenses in the Michigan action.

Alternatively, the Court should, in the interest of justice, enter an order staying Plaintiff's Complaint for Declaratory Relief pending the resolution in the parallel litigation before the Michigan federal district court of Mr. Staples' pending motion for a section 1404(a) discretionary transfer.

FACTUAL BACKGROUND

Mr. Staples signed an employee agreement with Guardian in 2010 that forms the basis for the parallel proceedings brought in Michigan and Virginia.¹ See Invention, Disclosure, Confidentiality and Non-Competition Agreement ("hereinafter "Agreement") attached to Guardian's April 2, 2012 Cease and Desist Letter (hereinafter "Cease and Desist Letter") (attached hereto as Exhibit A). The Agreement reflects the parties' contractual choice of Michigan law and contains a forum selection clause specifying Michigan courts as the only court to entertain suits to enforce a breach of the Agreement. Exhibit A, Agreement ¶ 11. Mr. Staples voluntarily resigned from Guardian on Tuesday, March 27, 2012. Exhibit A at 2. Mr. Staples accepted employment with Guardian's direct competitor and began working for Guardian's direct competitor the following Monday, April 2, 2012. *Id.*

¹ Exhibits referenced herein (besides Mr. Staples' Complaint for Declaratory Relief which accompanied Guardian's April 27, 2012 Notice of Removal) are available through PACER and presently docketed in the parallel proceeding, *Guardian Auto Glass, LLC, v. Ken Staples, Jr.*, Case No. 2012-cv-1813 (DPH/MKM) (E.D. Mich.), and Guardian requests that the Court take judicial notice of such public filings.

Guardian's Michigan counsel wrote Mr. Staples a Cease and Desist Letter on April 2, 2012, and arranged to have it personally delivered to Mr. Staples that same evening. *See* Exhibit A (Cease and Desist Letter). The Cease and Desist Letter warned Mr. Staples that he was about to be sued in Michigan state court over alleged violations of the post-employment provisions of the Agreement. Page two of the Cease and Desist Letter provided: "It is our intention to immediately file an action in the courts of Michigan to enforce [Guardian's] rights under the Agreement you signed." *Id.* at 2. "[U]nless this office receives your signed acknowledgement, . . . by the close of business Tuesday, April 3, 2012, we will have no choice but" to continue the appropriate legal action." *Id.* at 3.

Guardian's Cease and Desist Letter reiterated as follows: "[A]ny action to enforce the provisions of the Agreement may only be brought in the courts of Michigan. While Guardian is desirous of avoiding the costs of protracted litigation in the Michigan courts, please be advised those steps will be pursued." *Id.* Guardian's April 2, 2012 Cease and Desist Letter ended by cautioning Mr. Staples that "[i]n the absence of agreeing to the terms in this letter [by Tuesday, April 3, 2012], you may want to seriously consider the retention of counsel in Michigan." *Id.* at 4.

PROCEDURAL BACKGROUND

Mr. Staples filed the instant single count action for declaratory relief in Virginia Circuit Court on Wednesday, April 4, 2012 and served same on April 6, 2012. *See* Petition for Declaratory Judgment (attached hereto as Exhibit B).

That same afternoon, on April 4, 2012, Guardian filed a substantive complaint for injunctive relief and breach of contract against Mr. Staples in Michigan. *See* Guardian's Verified

Complaint (attached hereto as Exhibit C). Guardian filed the Verified Complaint in Oakland County Circuit Court and served same on April 6, 2012.

Guardian's Michigan Complaint sought immediate *ex parte* relief in the form of a temporary restraining order on April 4, 2012. The Michigan Circuit Court declined to proceed *ex parte*, and cautiously opted instead to afford Mr. Staples the opportunity to be heard in person on Guardian's prayer for a preliminary injunction.

The Oakland County Circuit Court in Michigan issued a show cause order scheduling the parties' hearing for Wednesday, April 11, 2012. See Proposed Order To Show Cause Why a Preliminary Injunction Should Not Be Issued (hereinafter "Show Cause Order") (attached hereto as Exhibit D). Mr. Staples was personally served with a copy of the Complaint and the Show Cause Order on the evening of Friday, April 6, 2012. The Michigan Circuit Court's Order directed as follows: "**IT IS ORDERED** that Defendant shall show cause before this Court on Wednesday April 11, 2012 at 8:30 a.m. why a Preliminary Injunction should not be issued." *Id.* at 2.

Mr. Staples opted not to show up for the Michigan Circuit Court's preliminary injunction hearing. Neither he, the three Virginia attorneys who are representing him in the instant case, nor the two Michigan attorneys who are representing him in Michigan and who removed Guardian's Michigan Complaint entered an appearance before the Michigan Circuit Court or otherwise opposed the entry of the April 11, 2012 injunctive decree.

The Michigan Circuit Court conducted the hearing and entered an injunctive decree on April 11, 2012. The Order, in pertinent part, commands Mr. Staples to "comply with the post termination obligations imposed upon Defendant Staples . . . in the . . . Agreement executed by Defendant Staples on November 11, 2010." See Order for Preliminary Injunction (attached

hereto as Exhibit E) at 2, ¶ A. It further mandates that Mr. Staples, with three business days of service of the preliminary injunction “will return all documents and confidential information of Plaintiff . . . and certify in writing that all such documents and confidential information has been returned to Plaintiff.” *Id.* at 3, ¶ B.

Mr. Staples has not since opposed or otherwise contested the interlocutory injunctive decree issued in Guardian’s Michigan lawsuit.

Rather, after removing the matter on April 23, 2012, Mr. Staples’ Michigan counsel entered an appearance, and filed an Answer on April 30, 2012, together with affirmative defenses to Guardian’s Michigan lawsuit. Mr. Staples has not claimed, however, that personal jurisdiction or venue is improper in Michigan, presumably given the parties’ contractual choice of Michigan law in the November 2010 Agreement.

ARGUMENT

I. THE COURT SHOULD DISMISS STAPLES’ COMPLAINT FOR DECLARATORY RELIEF BECAUSE THE MICHIGAN COURT HAS JURISDICTION OVER THE ISSUE AND THE INTERIM INJUNCTIVE DECREE, AND IS POSITIONED TO DECIDE THE PARTIES’ DISPUTE ON THE MERITS

The Declaratory Judgment Act confers substantial discretion on this Court to decide whether or not to accord a declaratory remedy by declaring the rights of a petitioning plaintiff. *See generally Aetna Casualty & Surety v. Quarles*, 92 F.2d 321, 323-25 (4th Cir. 1937) (quoting Professor Brochard’s declaratory judgment treatise). Courts, in turn, have long recognized that a federal district court may decline to entertain a declaratory judgment action, in a number of instances, including when a pending parallel proceeding before a court of coordinate jurisdiction will fully resolve the controversy.

One such equitable factor that strongly militates in favor of dismissal of a declaratory action is, where, as here, a petitioner preemptively files for declaratory relief in response to a specific threat of a later-filed state-court action on the merits. Mr. Staples clearly filed the initial action that is now before this Court in Virginia Circuit Court on April 4, 2012, in an attempt to avoid the application of Michigan law, to which he contractually agreed in November 2010, after receiving notice that he was about to be sued in Michigan through Guardian's April 2, 2012 Cease and Desist Letter.

As briefly developed above, Guardian's Michigan counsel wrote Mr. Staples a Cease and Desist Letter on April 2, 2012. The Cease and Desist Letter warned Mr. Staples that he was about to be sued in Michigan state court over alleged violations of the post-employment provisions of the Agreement. Page two of the Cease and Desist Letter provided: "It is our intention to immediately file an action in Michigan to enforce [Guardian's] rights under the [Agreement] you signed." *See* Exhibit A (Cease and Desist Letter) at 2. "[U]nless this office receives your signed acknowledgement by close of business Tuesday April 3, 2012, Guardian will have no choice but to continue the appropriate legal action." *Id.* at 3. Mr. Staples brought his Virginia declaratory action to test the validity of the Agreement the next day, April 4, 2012, after he went to work for a direct competitor, not before. *See Quarles*, 92 F.2d at 323 (recognizing that purpose of Declaratory Judgment Act is to "settle legal rights and remove uncertainty and insecurity from legal relationships without awaiting a violation of the rights") (emphasis added).

These facts are strikingly similar to *Ven-Fuel, Inc. v. Department of Treasury*, 673 F.2d 1194 (11th Cir. 1982), where the IRS "advised Ven-Fuel that if Ven-Fuel did not pay a certain assessed penalty 'forthwith' then the Government would institute judicial proceedings to collect

the penalty.” 673 F.2d at 1195. “On the next day” the company sued the Government seeking a declaratory judgment. The IRS filed its substantive suit in another forum and the district court presiding over the declaratory judgment action declined to exercise jurisdiction and entertain the declaratory action. Upon review, the appeals court affirmed the discretionary dismissal placing significance on the fact that the taxpayer’s declaratory judgment action was merely filed “in apparent anticipation of imminent judicial proceedings by the Government.” *Id.* Mr. Staples’ anticipatory filing was improperly made; he raced to the courthouse on the heels of an unequivocal and direct threat that his adversary, his former employer, would be filing suit against him on April 4, 2012 in Michigan court.²

In deciding whether to entertain or dismiss a declaratory action brought under section 2201 in favor of parallel litigation pending in another jurisdiction, the Court also properly considers whether the declaratory remedy is being used inequitably merely for the purpose of procedural fencing. Mr. Staples posits in his Complaint for Declaratory Relief brought in Virginia that allowing Guardian’s substantive lawsuit to proceed in Michigan, the forum he agreed to in November 2010, amounts to an “unconscionable and blatant affront” to Virginia Circuit Court. Exhibit B (Petition for Declaratory Judgment) ¶ 12. Such assertion has no merit, particularly in light of Mr. Staples’ conduct while the case was pending in Michigan state court, which amounts to the blatant affront to a tribunal.

In this regard, Guardian specifically urged Mr. Staples on April 2, 2012 in writing that “[i]n the absence of agreeing to the terms of this letter [by April 3, 2012] you may want to

² See, e.g., Exhibit B (April 4, 2012 Petition for Declaratory Judgment) ¶ 9 (“In the [April 2, 2012 Cease and Desist] Letter, [Guardian’s Michigan counsel] threatened to file a lawsuit against Petitioner seeking enforcement of the provisions of the [Agreement]”) & ¶ 12 (referencing “the Cease and Desist Letter and the Respondent’s threatened lawsuit in the courts of Michigan”).

seriously consider retention of counsel in Michigan.” Exhibit A (Cease and Desist Letter) at 4. This notwithstanding, Mr. Staples, purposefully opted not to avail himself of any of the process, procedures or protections afforded an injunctive defendant in Michigan Circuit Court. Following service on April 6, 2012 and through to removal on April 23, 2012 Mr. Staples ignored the entire Michigan Circuit Court proceeding. He opted not to show up for the Michigan Circuit Court’s April 11, 2012 preliminary injunction hearing, despite the Michigan’s Circuit Court’s Show Cause Order which provided him with time to attend the hearing personally or through retaining Michigan counsel.

His conduct after the preliminary injunctive hearing on April 11, 2012, which he chose not to attend, is no less an affront to the Michigan Courts. Rather than giving full force and effect to the April 11, 2012 injunctive order by returning confidential commercial information in his possession to *Guardian*, as the Michigan Circuit Court decreed, Mr. Staples charted his own course. Having been personally served with the Michigan Order compelling his immediate return to Guardian of records and confidential commercial information, Mr. Staples deliberately filed records that he compiled while servicing Guardian’s customers under seal with the Virginia Circuit Court, on April 18, 2012. See Exhibit F (Notice of Filing Documents Under Seal). These are records he was commanded to disgorge and return to Guardian through a duly executed Order of the Michigan Circuit Court, which was issued following the preliminary injunctive hearing he chose not to attend. See Exhibit E. Yet, at no time while Guardian’s Michigan lawsuit remained pending in Michigan Circuit Court --between April 12 and April 23, 2012-- did Mr. Staples opt to move the Michigan Circuit Court for reconsideration or clarification of the terms of the coercive injunctive decree it entered against him on April 11, 2012.

Mr. Staples' race to the courthouse in the first week in April and latest procedural fencing on April 18, 2012 is precisely the type of forum shopping that supports the Court's declining to exercise its discretionary jurisdiction and ordering dismissal under the Declaratory Judgment Act. Mr. Staples should not be rewarded in equity given the undisputed factual record before this Court.

As the Fourth Circuit has long noted:

[S]tatute and practice have established the rule that the [declaratory] judgment may be refused when it is 'not necessary or proper at the time under all the circumstances.' . . . The court will refuse a declaration where another court has jurisdiction of the issue, where a proceeding involving identical issues is already pending in another tribunal . . . or where another remedy will be more effective or appropriate under the circumstances.

Quarles, 92 F.2d at 325 (quoting Professor Borchard's *Declaratory Judgments* 107-109). As the Fourth Circuit separately cautioned in *Quarles*:

[The discretionary exercise of jurisdiction under section 2201] should not be exercised for the purpose of trying issues involved in cases already pending, especially when they can be tried with equal facility in such cases, or for the purpose of anticipating the trial of an issue in a court of co-ordinate jurisdiction. The object of the [Declaratory Judgment Act] is to afford a new remedy where needed, not to furnish a new choice of tribunals.

Quarles, 92 F.2d at 324.

From the standpoint of comity and judicial economy, proceeding to trial on the breach of contract and injunctive counts contained in Guardian's Verified Complaint which is pending before the Michigan federal district court will render Staples' declaratory action unnecessarily duplicative. The April 11, 2012 interim injunctive decree enters the federal system in the same condition in which it left the state system. 28 U.S.C. § 1450 ("All injunctions . . . had in such action prior to its removal shall remain in full force and effect until dissolved or modified by the district court.").

Notwithstanding that the temporal duration of the noncompetition covenant in the Agreement is for six (6) months, Mr. Staples has not since moved to vacate, dissolve, or modify the April 11, 2012 injunctive order, or otherwise sought *de novo* review of same from the Sixth Circuit Court of Appeals, as is his right. *See* 28 U.S.C. § 1292(a). Rather, the Michigan Circuit Court injunction, through the operation of 28 U.S.C. § 1450, remains in force and effect. Moreover, Mr. Staples has since entered an appearance through counsel and filed an Answer in which he is not heard to challenge the Michigan Court's assertion of jurisdiction over him, and has further recognized that venue is not improperly laid in Michigan. The Court has set down Mr. Staples' motion for a discretionary transfer for a hearing and a Scheduling Report is expected to issue governing further case proceedings.

II. IN THE ALTERNATIVE, THE COURT SHOULD EXERCISE ITS EQUITABLE POWERS TO STAY THE VIRGINIA ACTION FOR DECLARATORY RELIEF PENDING A RULING IN THE PARALLEL AND SUBSTANTIVE MICHIGAN PROCEEDING

Consistent with the Supreme Court's guidance in *Landis v. North American Co.*, 299 U.S. 248 (1936), and the inherent equitable power of the Court to control and administer its docket, the Court should, in the alternative, and in the interest of federal comity and the orderly and efficient administration of justice, stay the Mr. Staples' Virginia action. This Court should exercise its discretionary power to stay Mr. Staples' suit for declaratory relief pending a ruling on the merits in the more advanced, parallel proceeding in Michigan, or at least until Mr. Staples' pending motion for a discretionary transfer to this Court is resolved in the Michigan proceeding. .

CONCLUSION

For the foregoing reason, Guardian respectfully requests that the Court dismiss, or, in the alternative, stay this action.

Respectfully submitted,

/s/ John B. Flood

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 4th day of May, 2012, electronically filed the foregoing Defendant's Memorandum of Law in Support of Motion to Dismiss Plaintiff's Complaint for Declaratory Judgment with the Clerk of the Court using the CM/ECF system, which will automatically send email notification of such filing to the following counsel of record:

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