

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

BARBARA ZAARI, f/b/o Dallas National)
Insurance Company, n/k/a Freestone)
Insurance Company,)
)
Plaintiff)
)
-v-) NO: 12-L-4541
) *In Re Freestone Insurance Rehabilitation*
MICHAEL BARD,) *and all consolidated cases*
)
)
Defendant)

MEMORANDUM OPINION AND ORDER ON
MOTION OF DEFENDANT, MICHAEL BARD,
TO STAY PROCEEDINGS AND
TRANSFER TO BANKRUPTCY CALENDAR

I. Factual Background

A Petition for Receivership and Rehabilitation of Freestone Insurance Co., f/k/a Dallas National Insurance Company, was filed and granted in the Chancery Court for the State of Delaware, on April 28, 2014. This Rehabilitation and Injunction Order places the company in receivership and enjoins all persons or entities from instituting or further prosecuting all actions, pre-trial conferences, trials, etc., involving any person or entity insured by Freestone, for a period of one hundred eighty (180) days, to wit: October 28, 2014.

Counsel for Defendant has filed a motion to stay proceedings in the instant matter, as well as all other matters pending in the Circuit Court of Cook County wherein parties are insured by Freestone Insurance Company, f/k/a Dallas National Insurance Company. The

motion to stay requests relief pursuant to the stay provisions of the Rehabilitation and Injunction Order.

On May 12, 2014, Judge James P. Flannery, Jr., Presiding Judge of the Law Division, entered an order, assigning all pending and subsequently filed motions to stay proceedings in all cases involving parties insured by Freestone Insurance Company, to this Court for hearing, and setting the matter for hearing on June 25, 2014 at 9:00 AM.

II. Court's Discussion and Ruling

Under the U.S. Constitution, Article IV, Section 1, a judgment rendered in a state which has the proper jurisdiction over the parties, must be recognized and enforced in a sister jurisdiction. The clause requires each state to give effect to the official acts of other states, and a judgment entered in one state must be respected in another, provided that the first state had jurisdiction over the parties and the subject-matter (Chicago South Shore & South Bend Railroad v. Northern Indiana Commuter Transit District, 299 Ill. App.3d 533 [1st Dist., 1997], citing Nevada v. Hall, 440 U.S. 410, 99 S. Ct. 1182 [1979]). Moreover, a state's recognition of another state's laws or judicial decisions is based on state policy, rather than a constitutional command (Hall, 440 U.S. 410).

There is no question that the Delaware court had *subject matter* jurisdiction over the rehabilitation of Freestone Insurance Company, and likewise, there is no dispute that the Delaware court had *in personam* jurisdiction of the parties to that action: the Delaware Director of Insurance who filed the petition for rehabilitation, and the insurance company,

which is a resident of, organized under, and subject to the Delaware Department of Insurance and relevant laws of that state.

However, there can also be no dispute that the Delaware court had no *subject-matter jurisdiction* over this actions pending in the state of Illinois (emphasis supplied). These claims are between Plaintiffs and Defendants, wherein the Plaintiffs must establish liability on the part of the Defendants for the damages sustained by the Plaintiffs, under a variety of theories of law, mainly in the area of tort and contract.

Likewise, the Delaware court had no *in personam jurisdiction* over any of the parties to the these lawsuits, nor were their interests represented in the Delaware Court in any way. There is nothing in the Illinois cases which was or could have been decided in Delaware.

The Defendants have not established that the Plaintiffs were named in the Delaware proceedings, were served with summons, appeared in the proceedings voluntarily, were given notice of the Delaware proceedings and/or were given an opportunity to be heard. Nor have the Defendants established that the Plaintiffs had any “minimum contacts” with Delaware under International Shoe Co. v. Washington, 326 U.S. 310, 66 S. Ct. 154 (1945) or under any Delaware long-arm statute. Neither have the Defendants established that the Plaintiffs purposely availed themselves of the privilege of conducting activities in Delaware, that their causes of action in Illinois arose from any activities connected in Delaware and that the exercise of any putative jurisdiction by the Delaware court over the Plaintiffs was reasonable.

There are numerous cases in Illinois law which stand for the legal proposition that “full

faith and credit” must be extended to a foreign judgment, when the court’s inquiry discloses that *the issue of jurisdiction has been litigated and decided in the foreign court* (Brownlee v. Western Chain Co., 49 Ill. App.3d 247 [1st Dist., 1977]; People ex rel. Dravo Corp., 10 Ill. App.3d 944 [5th Dist., 1973]; Trust v. Recht, 214 Ill. App.3d 827 [1st Dist., 1991]; Sackett v. Staren, 211 Ill. App.3d 977 [1st Dist., 1991]; Pinnacle Arabians, Inc. v. Schmidt, 274 Ill. App.3d 504 [2d Dist., 1995]; Morey Fish Co. v. Rymer Foods, 158 Ill.2d 179 [1994])(emphasis supplied).

Neither the issue of subject matter jurisdiction nor the issue of *in personam* jurisdiction of tort and contract cases pending in other states against Freestone insureds was ever litigated or decided in the Delaware proceedings, pursuant to the terms of the rehabilitation order. Therefore, under Illinois law, there is no basis for this Court to give “full faith and credit” to order issued by the Delaware court.

This Court has relied on the case of Mahan v. Gunther, 278 Ill. App. 3d 1108 (5th Dist., 1996) as being a case supportive of its position. In Mahan, an Illinois plaintiff had filed a lawsuit for damages against a defendant, whose insurance company was in rehabilitation proceedings in the state of Indiana. The defendant filed a motion to stay the Illinois proceedings, on the basis that the Indiana court had issued an injunction which prohibited the taking of any legal action against the insurance company itself or any of its insureds. The trial court in Mahan granted the motion to stay and was reversed on appeal.

The appellate court in Mahan held that the Indiana court anti-suit injunction could not

be given full faith and credit, based on the lack of personal jurisdiction over the Illinois plaintiff. The Mahan court held that the Indiana court had purported to exercise both subject matter and personal jurisdiction over both the plaintiff and defendant in that case. While the Indiana court was vested with *subject matter* jurisdiction over the issue of the rehabilitation of the its own resident insurance company, it did not even attempt to obtain *personal jurisdiction* over the plaintiff or the defendant, neither of whom were named parties in the rehabilitation proceedings. The Mahan court stated:

We can absolutely say that due to the failure to even attempt to obtain personal jurisdiction, it (the Indiana court) acquired none. Therefore, to the degree that the Indiana court order claims to adjudicate the rights of the plaintiff and the defendants in this case as between themselves or claims power to order this action between the parties stayed, postponed, or abated, or requests that the courts of Illinois abstain, either temporarily or permanently, from adjudicating this dispute, we find that the Indiana court's order is *not just voidable, it is void from its very inception and a nullity to the extent that it attempts to act upon this case* (278 Ill. App. 3d at 1116)(emphasis supplied).

Furthermore, the Mahan court held that even if there was personal jurisdiction in the Indiana court over the parties in that case, there is still no constitutional compulsion on Illinois courts to give either full faith and credit or extend comity to foreign anti-suit injunctions, relying on James v. Grand Trunk R.R. Co., 14 Ill. 2d 356 (1958), cert. denied, 358 U.S. 915, 79 S. Ct. 288 (1958) and Kleinschmidt v. Kleinschmidt, 343 Ill. App. 539 (1951):

In Kleinschmidt, the court reasoned that since a foreign anti-suit injunction acts upon the *parties* rather than the *court*, the forum (*i.e.*, *court*) has the power to proceed with the case, notwithstanding the

sister-state injunction. Thus, in those instances where deference has been extended to a sister-state's anti-suit injunction, it has been based on comity rather than on the constitutional command of full faith and credit. See, e.g., Lowe v. Norfolk & Western Ry. Co., 96 Ill. App. 3d 637 (5th Dist., 1981). While a court of equity has the power to restrain persons within its jurisdiction from instituting or proceeding with foreign actions, the exercise of such power is a matter of great delicacy and is to be invoked with great restraint in order to avoid distressing conflicts and reciprocal interference with jurisdiction (James, 14 Ill. 2d at 368). The key is that *the persons enjoined must be subject to the jurisdiction of the court entering the injunction.*

The Illinois supreme court has said it best:

This court need not, and will not, countenance having its right to try cases, of which it has proper jurisdiction, determined by the court of other states, through their injunctive process. We are not only free to disregard such out-of-state injunctions, and to adjudicate the merits of the pending action, but we can protect our jurisdiction from such usurpation by the issuance of a counter-injunction restraining the enforcement of the out-of-state injunction (James, 14 Ill.2d at 372) (Mahan, *supra*, 278 Ill. App. 3d at 1117).

Finally, the Defendants have requested that these cases be placed on the *Bankruptcy* Calendar, yet there is no indication that Freestone Insurance Company has filed for bankruptcy in any jurisdiction. In the alternative, if the Defendants intended to request that these cases be placed on the *Insurance* Calendar, the Court finds no basis to do so. The fact that Freestone is in rehabilitation does not require the cases to be held in abeyance. Specifically, in Paragraph 9 of the Rehabilitation and Injunction Order, it is stated that the Receiver is authorized to deal with the assets, business and affairs of Freestone, including, without limitation, the right to sue, defend, and continue to prosecute suits or actions already commenced by or for

Freestone, or for the benefit of Freestone's policy holders, cedants, creditors, and stockholders, in the courts' tribunals, agencies, or arbitration panels for Delaware and other states and jurisdictions, in the name of the Receiver, or in the name of Freestone. No stay of proceedings is warranted.

Therefore, based upon the foregoing, the Court orders as follows:

1. The Defendants' Motion to Stay Proceedings proceedings is denied;
2. The Defendants' Motion to Place the cases on the Bankruptcy Calendar is denied;
3. The Defendants' Motion to Place the cases on the Insurance Calendar is denied.

ENTER: **ENTER**
JUN 25 2014
KATHY M. FLANAGAN #267

JUDGE NO.

Caption:	Court #	Room #
Barbara Zaari, f/b/o Dallas National Insurance Company v. Michael Bard	12 L 004541	2210 (E)
Dallas National Insurance Company a/s/o Irshad Ali v. Dana M. Robinson	13 L 001326	2206 (A)
Dallas National Insurance Company, a/s/o Alex Bader v. Shahnaz Jabbari and Shawn Carter	12 M1 011869	1102
Dallas National Insurance Company, a/so Osama Saeed Mohammad	11 M1 016605	1104
Dallas National Insurance Company a/s/o Kashif Bhatti v. Steven Burgquist	11 M1 018137	1106
Dallas National Insurance Company, a/s/o Bernie Cahane v. Jorge R. Loja	12 M1 016963	1106
Salah M. Ali, f/b/o Dallas National Insurance Company v. Margarita Molina	12 M1 012261	1108
Dallas National Insurance Company, a/s/o Adama Khani v. Jose L. Martinez	11 M1 018031	1110
Dallas National Insurance Company a/s/o Awni Mansour v. Tania K. Bynum	13 M1 011258	1110
Dallas National Insurance Company, a/s/o Koffi Soglohoun v. Juan D. Espana, Rene Zetinno-Lopez and Irma Herrera	12 M1 017560	1110

Dallas National Insurance Company, a/s/o Mustapha Aitzemkour v. Melvin Coleman	11 M1 016156	1112
Dallas National Insurance Company, a/s/o American United Cab Association v. Cara Walters and Fayez Asad Barawi	11 M1 010935	1112
Dallas National Insurance Company a/s/o Mustapha Aitzemkour	11 M1 016156	1112
Dallas National Insurance Company As Subrogee of Akinwunmi Omokaiye v. Cierra Bruce	12 M1 010481	1112
Mohammad Ahmad, f/b/o Dallas National Insurance Company v. Dusan Premovic	13 M1 011829	1112
Dallas National Insurance Company As Subrogee of Omotunde Ewuoso v. Lamont R. Coleman	11 M1 010094	1501

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