

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

J.B. HUNT TRANSPORT, INC.,

Plaintiff,

MEMORANDUM AND ORDER

v.

06-C-178-S

NICOLE BOLTON and
DENNIS W. HANSON,

Defendants.

Plaintiff J.B. Hunt Transport, Inc. commenced this declaratory judgment action against defendants Nicole Bolton and Dennis W. Hanson seeking a declaration that: (1) its liability for all claims for loss of society and companionship arising from the death of Lilyana J. Thomas is governed by Wis. Stat. § 895.04 and cannot exceed \$500,000.00; and (2) its liability for all claims for loss of society and companionship arising from the death of Peggy J. Hanson is likewise governed by Wis. Stat. § 895.04 and cannot exceed \$350,000.00. Additionally, plaintiff filed an interpleader action pursuant to Federal Rule of Civil Procedure 22. Plaintiff seeks to obtain a judicial determination identifying all proper recipients of the \$850,000.00 it seeks to deposit with the Court for purposes of satisfying its liability for all claims for loss of society and companionship arising from the deaths of both Lilyana J. Thomas and Peggy J. Hanson. Jurisdiction is based on 28 U.S.C. § 1332. The matter is presently before the Court on defendants'

motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6). The following facts are undisputed.

BACKGROUND

Plaintiff J.B. Hunt Transport, Inc. is a Georgia corporation with its principal place of business in the State of Arkansas. Plaintiff is engaged (at least in part) in the trucking business. Defendants Nicole Bolton and Dennis W. Hanson are both residents and citizens of the State of Wisconsin.

On or about August 17, 2004 at or near the intersection of U.S. Highway 12/18 and Wisconsin State Highway 51 in Madison, Wisconsin a tractor-trailer operated by James W. Sharp rear-ended a vehicle operated by Peggy J. Hanson and occupied by Lilyana J. Thomas and defendant Dennis W. Hanson. Peggy J. Hanson and Lilyana J. Thomas were both fatally injured as a result of the accident.¹ Defendant Dennis W. Hanson was severely injured. At the time of the accident Mr. Sharp was making a delivery while in the course and scope of his employment with plaintiff from Chicago, Illinois to a Home Depot location in Madison, Wisconsin.

The probate estates for both Hanson and Thomas were established in Cook County, Illinois. On or about November 23, 2005 the Circuit Court of Cook County, Illinois, Probate Division

¹Both Peggy J. Hanson and Lilyana J. Thomas were Wisconsin residents at the time of their death.

entered an order appointing defendant Dennis W. Hanson as Independent Administrator of the Estate of Peggy J. Hanson. Additionally, on said date the Court entered an order declaring Mrs. Hanson's heirs as: (1) her husband defendant Dennis W. Hanson, (2) her adult daughter defendant Nicole Bolton, (3) her adult son Derek Hanson; and (4) her adult son Brooke Hanson. On or about February 17, 2006 the Circuit Court of Cook County, Illinois, Probate Division entered an order appointing defendant Nicole Bolton as Independent Administrator of the Estate of Lilyana J. Thomas. Additionally, on said date the Court entered an order declaring Ms. Thomas' heirs as: (1) her mother defendant Nicole Bolton, (2) her father Daniel Thomas, (3) her brother Terrell Thomas, (4) her brother Daniel Bensen; and (5) her sister Samiya Mae Bolton.

On or about February 21, 2006 defendants commenced an action against both plaintiff and Mr. Sharp in the Circuit Court of Cook County, Illinois. On or about March 6, 2006 plaintiff removed defendants' action to the United States District Court for the Northern District of Illinois citing diversity jurisdiction as grounds for removal. Additionally, on or about March 13, 2006 plaintiff filed a motion to transfer venue to this district pursuant to 28 U.S.C. § 1404. However, on or about March 16, 2006 defendants filed a motion to remand their action to the Circuit Court of Cook County, Illinois citing the forum defendant rule as

grounds for remand.² On or about March 27, 2006 while both plaintiff's motion to transfer venue and defendants' motion to remand were pending defendants voluntarily dismissed their action pursuant to Federal Rule of Civil Procedure 41(a)(1).

On the same day defendants voluntarily dismissed their action against both plaintiff and Mr. Sharp they commenced an action against Mr. Sharp individually in the Circuit Court of Cook County, Illinois seeking damages under Illinois law. Defendants allege Mr. Sharp is liable for: (1) the wrongful death of Peggy J. Hanson, (2) the wrongful death of Lilyana J. Thomas, (3) survival damages; and (4) defendant Dennis W. Hanson's personal injuries. Defendants indicate they have begun the process of opening Mr. Sharp's estate in the Circuit Court of Cook County, Illinois, Probate Division which was his county of domicile. Additionally, defendants indicate they will add plaintiff as a defendant to their Illinois state court tort action once the probate court appoints a personal representative for Mr. Sharp's estate and said personal representative is served.

On or about April 4, 2006 plaintiff commenced its declaratory judgment action in this Court seeking a declaration that (1) its liability for all claims for loss of society and companionship arising from the death of Lilyana J. Thomas is governed by Wis.

²Mr. Sharp was a citizen of Illinois residing in Chicago, Illinois. However, Mr. Sharp recently died of causes unrelated to the August 17, 2004 accident.

Stat. § 895.04 and cannot exceed \$500,000.00; and (2) its liability for all claims for loss of society and companionship arising from the death of Peggy J. Hanson is likewise governed by Wis. Stat. § 895.04 and cannot exceed \$350,000.00. Additionally, plaintiff's complaint included its Rule 22 interpleader action.

MEMORANDUM

Defendants assert the Court should decline to exercise its jurisdiction in this action as it concerns plaintiff's request for declaratory relief because there is related Illinois state court litigation pending which raises the same issues between the same parties. Accordingly, defendants argue their motion to dismiss count one of plaintiff's complaint pursuant to Rule 12(b)(6) should be granted. Additionally, defendants assert: (1) plaintiff failed to satisfy the requirements of Rule 22, (2) exceptional circumstances justify declining jurisdiction under Rule 22; and (3) plaintiff's request for injunctive relief violates 28 U.S.C. § 2283. Accordingly, defendants argue their motion to dismiss count two of plaintiff's complaint pursuant to Rule 12(b)(6) should likewise be granted.

Plaintiff asserts its declaratory judgment complaint presents a genuine and actual controversy ripe for declaratory relief because it seeks to avoid the accrual of further damages and costs which would ensue if it paid Wisconsin's statutory maximum for defendants' loss of society and companionship claims without a

judicial declaration that such payment would satisfy its total liability. Accordingly, plaintiff argues defendants' motion to dismiss count one of its complaint should be denied. Additionally, plaintiff asserts it possesses a real and reasonable fear of double exposure because there are "potentially multiple claimants seeking compensation for the loss of society and companionship of Lilyana Thomas and Peggy J. Hanson." Accordingly, plaintiff argues defendants' motion to dismiss count two of its complaint should be denied.

Standard of Review

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) challenges the sufficiency of the complaint for failure to state a claim upon which relief can be granted. Gen. Elec. Capital Corp. v. Lease Resolution Corp., 128 F.3d 1074, 1080 (7th Cir. 1997) (*citing* Fed. R. Civ. P. 12(b)(6)). Dismissal is appropriate only if it appears beyond doubt that plaintiff cannot prove any set of facts in support of its claim which would entitle it to relief. Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957) (citations omitted). When ruling on a motion to dismiss for failure to state a claim courts are restricted to an analysis of the complaint. Hill v. Trustees of Ind. Univ., 537 F.2d 248, 251 (7th Cir. 1976) (*citing* Grand Opera Co. v. Twentieth Century-Fox Film Corp., 235 F.2d 303 (7th Cir. 1956)). Accordingly, courts accept all well-pleaded facts alleged in the complaint as true and draw all reasonable inferences in favor of plaintiff. Jackson v. E.J. Brach Corp., 176 F.3d 971, 977-978 (7th Cir. 1999) (*citing*

Mallett v. Wis. Div. of Vocational Rehab., 130 F.3d 1245, 1248 (7th Cir. 1997)).

However, when "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Fed. R. Civ. P. 12(b); Wilkow v. Forbes, Inc., 241 F.3d 552, 555 (7th Cir. 2001).

Defendants submitted and relied upon the affidavits of Mr. David E. Rapoport in support of their motion to dismiss. Defendants presented Mr. Rapoport's initial affidavit in conjunction with their brief in support of their motion and they submitted his supplemental affidavit in conjunction with their reply brief. Plaintiff in turn submitted: (1) a copy of defendants' February 21, 2006 complaint, (2) a copy of the docket sheet from the United States District Court for the Northern District of Illinois, (3) a copy of Mr. Sharp's death certificate; and (4) a copy of Mr. Sharp's motion to dismiss defendants' March 27, 2006 complaint as exhibits in support of its opposition to defendants' motion to dismiss. While said exhibits alone cannot adequately support (or oppose) a motion for summary judgment because they are not the sort of material enumerated in Rule 56 (c) it demonstrates that plaintiff had a reasonable opportunity to present all material it considered pertinent to the motion.

However, Mr. Rapoport's affidavits are outside the pleadings and are sufficient for the Court to decide the motion at this time.

Accordingly, the Court treats defendants' motion to dismiss as a motion for summary judgment pursuant to Rule 56.

Summary judgment is appropriate where the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

A fact is material only if it might affect the outcome of the suit under the governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986). Disputes over unnecessary or irrelevant facts will not preclude summary judgment. Id. Further, a factual issue is genuine only if the evidence is such that a reasonable fact finder could return a verdict for the non-moving party. Id. A court's role in summary judgment is not to "weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Id. at 249, 106 S.Ct. at 2511.

To determine whether there is a genuine issue of material fact for trial courts construe all facts in the light most favorable to the non-moving party. Heft v. Moore, 351 F.3d 278, 282 (7th Cir. 2003) (citation omitted). Additionally, a court draws all reasonable inferences in favor of that party. Id. However, the non-movant must set forth "specific facts showing that there is a genuine issue for trial" which requires more than "just speculation or conclusory statements." Id. at 283 (citations omitted).

B. Plaintiff's Rule 22 interpleader action

Federal Rule of Civil Procedure 22 states in relevant part as follows:

(1) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability.

The purpose of such an interpleader action is as much to protect a plaintiff from incurring expenses associated with double litigation as it is to protect it from facing the risk of double liability. Union Cent. Life Ins. Co. v. Hamilton Steel Prods., Inc., 448 F.2d 501, 504 (7th Cir. 1971) (*citing* Metro. Life Ins. Co. v. Segaritis, 20 F.Supp. 739, 741 (E.D.Pa. 1937)). Accordingly, an interpleader action is appropriate when a plaintiff possesses a "real and reasonable fear of exposure to double liability." See Id. (citations and internal quotation marks omitted).

Plaintiff asserts it has a real and reasonable fear of exposure to double liability because there are "potentially multiple claimants seeking compensation for the loss of society and companionship of Lilyana Thomas and Peggy J. Hanson." Defendants assert plaintiff will not be exposed to double or multiple liability because the personal representatives of each decedent's estate have "reached agreements with all of the potential wrongful death beneficiaries concerning distribution of the proceeds of this case." The Court finds plaintiff cannot possess a real and reasonable fear of exposure to double liability as a matter of law because neither Wisconsin nor Illinois permits multiple wrongful death actions.

Under Illinois law an action for wrongful death must be brought by and in the name of the personal representative of the deceased. Barna v. United States, 89 F.Supp.2d 983, 1006 (N.D.Ill. 1999); 740 Ill. Comp. Stat. 180/2. Any amount recovered by said personal representative in such an action "shall be for the exclusive benefit of the surviving spouse and next of kin of such deceased person." 740 Ill. Comp. Stat. 180/2. Accordingly, while both Peggy J. Hanson and Lilyana J. Thomas have multiple heirs who are potentially entitled to receive wrongful death damages plaintiff cannot reasonably fear exposure to double liability for loss of society and companionship claims in connection with their deaths because under Illinois law only defendants Hanson and Bolton are allowed to maintain wrongful death actions.

Wisconsin has a similar prohibition against multiple wrongful death actions. Wis. Stat. § 895.04 states in relevant part as follows:

(3) If separate actions are brought for the same wrongful death, they **shall** be consolidated on motion of any party. Unless such consolidation is so effected that a single judgment may be entered protecting all defendants and so that satisfaction of such judgment shall extinguish all liability for the wrongful death, **no action shall be permitted to proceed except that of the personal representative.**

(Emphasis added). Accordingly, while a cause of action for wrongful death in Wisconsin may be "vested in several persons," Truesdill v. Roach, 11 Wis.2d 492, 496, 105 N.W.2d 871, 873 (1960), such actions must either: (1) be consolidated into one action so that a single judgment may be entered, or (2) be maintained solely

by the personal representative. See Wis. Stat. § 895.04(3). As a practical matter Wisconsin's statute demonstrates that even if multiple heirs of both Hanson and Thomas filed wrongful death actions against plaintiff under Wisconsin law such actions must be consolidated into one action. Additionally, said statute ensures that if such consolidation could not be effectuated so as to result in a single judgment only defendants Hanson and Bolton's actions would be permitted to proceed. Accordingly, plaintiff cannot possess a reasonable fear of exposure to double liability as a matter of Wisconsin law. Neither party has argued that the law of any other jurisdiction would apply to this action. Accordingly, because Rule 22 requires that plaintiff "is [exposed to] or may be exposed to double or multiple liability" which the Court determined cannot be the case under either Illinois or Wisconsin law defendants' motion for summary judgment must be granted as it applies to count two of plaintiff's complaint.

C. Plaintiff's declaratory judgment action

28 U.S.C. § 2201 states in relevant part as follows:

In a case of actual controversy within its jurisdiction, ...any court of the United States, ...may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

The purposes of declaratory judgments are to "clarify[] and settl[e] the legal relations at issue" and to "terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding." Tempco Elec. Heater Corp. v. Omega

Eng'g., Inc., 819 F.2d 746, 749 (7th Cir. 1987) (*quoting* Borchard, Declaratory Judgments 299 (2nd ed. 1941)). Accordingly, declaratory judgment actions serve an important role because they permit prompt settlement of actual controversies and establish the legal rights and obligations that will govern the parties' relationship in the future. Hyatt Int'l. Corp. v. Coco, 302 F.3d 707, 711 (7th Cir. 2002) (*citing* Edwin Borchard, Declaratory Judgments 107 (1934)).

However, a court is under no compulsion to exercise its jurisdiction over declaratory judgment actions rather such a remedy is committed to sound judicial discretion. See Brillhart v. Excess Ins. Co. of America, 316 U.S. 491, 494, 62 S.Ct. 1173, 1175, 86 L.Ed. 1620 (1942) (citations omitted). While a court should exercise its jurisdiction in such actions when doing so would effectuate the purposes of the act, Am. Auto. Ins. Co. v. Freundt, 103 F.2d 613, 619 (7th Cir. 1939) (citation and internal quotation marks omitted), said act must not be used to resolve only particular issues without settling the entire controversy. Sears, Roebuck & Co. v. Am. Mut. Liab. Ins. Co., 372 F.2d 435, 438 (7th Cir. 1967) (*citing* Cas. & Sur. Co. v. Quarles, 92 F.2d 321, 325 (4th Cir. 1937)). This is especially true where the entire controversy may be settled by a suit in state court. Ohio Cas. Co. v. Jackson County Bank, 562 F.Supp. 1165, 1169 (W.D.Wis. 1983) (citation omitted). The Court finds plaintiff's declaratory judgment action would not resolve the entire controversy between the parties because defendants' wrongful death claims are just one portion of the underlying tort litigation. Additionally, exercising its

jurisdiction would be a "gratuitous interference with the orderly and comprehensive disposition of state court litigation." Brillhart, at 495, 62 S.Ct. at 1176. Accordingly, the Court declines to exercise its jurisdiction over this action and dismisses count one of plaintiff's complaint.

Plaintiff argues declaratory relief to resolve choice of law issues is necessary because it seeks to avoid the accrual of further damages and costs that would ensue if it paid Wisconsin's statutory maximum for defendants' loss of society and companionship claims without a judicial declaration that such payment would satisfy its total liability. However, the Illinois state court is equally capable of conducting a choice of law analysis and resolving such issues during the course of the underlying state court tort action. Neither party has argued otherwise and the purposes of 28 U.S.C. § 2201 are not advanced by trying a case piecemeal. Ohio Cas. Co., at 1169 (citation omitted).

Additionally, plaintiff is currently under no obligation to pay Wisconsin's statutory maximum for defendants' loss of society and companionship claims without a judicial declaration that such payment would satisfy its total liability. Plaintiff is certainly within its rights to withhold any payment until such a judicial declaration is issued. However, such a declaration should be issued by the Illinois state court. This Court cannot be allowed to usurp the Illinois State Court's power and decide which state's law applies to an action it has not been called upon to ultimately resolve.

ORDER

IT IS ORDERED that defendants' motion for summary judgment is GRANTED.

IT IS FURTHER ORDERED that judgment is entered in favor of defendants' against plaintiff dismissing the action and all claims contained therein without prejudice.

Entered this 20th day of June, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ

District Judge