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Drummond Financial Services LLC Order on Defendants' Motion for Partial Stay

John J. Goger

Fulton County Superior Court Judge

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**IN THE SUPERIOR COURT OF FULTON COUNTY
BUSINESS CASE DIVISION
STATE OF GEORGIA**

DRUMMOND FINANCIAL SERVICES, LLC; et al.,)	
)	
Plaintiffs,)	
)	Civil Action File No.
v.)	2014CV253677
)	
TMX FINANCE HOLDINGS, INC.; et al.,)	BUS 4
)	
Defendants.)	
)	

ORDER ON DEFENDANTS' MOTION FOR PARTIAL STAY

This matter is before the Court on Defendants' Motion for Partial Stay of certain of Plaintiff's claims based on prior pending action doctrine. Upon consideration of the Motion and briefs submitted the Court finds as follows:

This case concerns a dispute between businesses which compete in the title loan industry. Plaintiffs¹ are affiliated companies engaged in the business of making loans to consumers secured by motor vehicles (i.e. "title loans"). Plaintiffs Drummond Financial Services, Inc. ("Drummond") and LoanStar² are loan brokers that assist customers seeking to obtain title loans from third-party lenders. The remaining Plaintiffs are direct lenders who specialize in making title loans directly to consumers. The various TitleMax Defendants³ ("Defendants") are part of a

¹ "Plaintiffs" include Drummond Financial Services, LLC; Anderson Financial Services, LLC; LoanSmart, LLC; Kipling Financial Services, LLC; Huffman Title Pawn, Inc.; LoanMax, LLC; Mid-American Title Loans, LLC; Fairfax Financial Services, LLC; Wellshire Financial Services, LLC; Cash Loans of Marietta, Inc.; Meadowwood Financial Services, LLC; Select Management Funding, LLC; and various North American Title Loans, LLC entities registered in Georgia, South Carolina, New Mexico and Utah.

² "LoanStar" collectively refers to Plaintiffs Wellshire Financial Services LLC and Meadowwood Financial Services, LLC.

³ Defendant TitleMax ("TMX") Finance Holdings, Inc. is the parent company that owns all ownership and membership interest in Defendant TMX Finance, Inc. Defendant TMX Finance, Inc. is the parent company that owns all ownership and membership interests of all the TMX subsidiaries, including Defendants TMX Ohio, TMX

conglomerate of related companies which engage in the business of automobile title lending and/or the brokering of automobile title loans. Defendants are direct competitors with Plaintiffs and operate stores across the United States.

Plaintiffs filed their Complaint in this Court on November 7, 2014, asserting six claims against Defendants including misappropriation of trade secrets, unfair competition, two counts of tortious interference with prospective contracts and business relationships, trespass, and civil conspiracy. Plaintiffs have alleged that Defendants have improperly used DMV records in all states but Texas to solicit Plaintiffs' customers, have bribed Plaintiffs' employees to divert business, and have trespassed on Plaintiffs' properties to solicit their customers.

More than a year earlier, on June 5, 2013, LoanStar and another non-party filed a suit against TMX Finance Holdings, Inc., TMX Finance LLC, TMX Finance of Texas, Inc. and TitleMax of Texas, Inc. ("TMX Texas Defendants"), in the District Court of Harris County, Texas (the "Texas Action"). In the Texas Action, LoanStar asserted claims for misappropriation of Plaintiffs' alleged trade secrets, tortious interference with prospective contracts and business relationships, and included a request for injunctive relief. These claims are based on allegations that Defendants improperly used DMV records in Texas to solicit their customers. In other words, claims related to the use of DMV records in Texas have been carved out of the lawsuit pending in this Court and instead are being maintained in the Texas Action.

Defendants claim that certain Plaintiffs in this case have filed identical claims to those pending in the Texas Action and that Plaintiffs are seeking identical discovery and identical relief in the two pending cases. First, Plaintiffs have requested a nationwide injunction which

Texas, TMX Virginia, TMX Utah, TMX Alabama, TMX New Mexico, TMX Arizona, TMX Missouri, TMX South Carolina, and TMX Georgia.

would encompass Texas conduct. Second, Plaintiffs included Texas in their discovery requests for this case. Third, in the discovery requests in the Texas Action, Plaintiffs sought the same information that is sought in this case. Defendants move to stay all proceedings in this case related to Defendants' alleged conduct in Texas or stay all proceedings in this case for claims against Defendants who only do business in Texas.

The Court finds that Defendants have not provided a sufficient basis for a stay. First, Defendants rely on the "prior action pending doctrine" which provides:

No plaintiff may prosecute two actions in the courts at the same time for the same cause of action and against the same party. If two such actions are commenced simultaneously, the defendant may require the plaintiff to elect which he will prosecute. If two such actions are commenced at different times, the pendency of the former shall be a good defense to the latter.

O.C.G.A. § 9-2-5(a). However, "[t]he pendency of a prior action in another state shall not abate an action between the same parties for the same cause in this state." O.C.G.A. § 9-2-45; see also *Flagg Energy Dev. Corp. v. General Motors Corp.*, 223 Ga. App. 259, 261 (1996). Here, the prior pending case is filed in Texas and so the prior pending action doctrine does not apply.


The Court has the discretion to stay the Georgia proceedings, even if the prior action pending does not apply. See *Flagg* at 261; see also *Fludd v. Tiller*, 184 Ga. App. 93, 93 (1987). "The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Bloomfield v. Liggett & Myers*, 230 Ga. 484, 485 (1973) (noting the court must weigh competing interests and maintain an even balance).

Defendants argue that it is wasteful for Plaintiffs to proceed with their claims in Georgia when a ruling in the Texas Action will bar the claims in Georgia that were or should have been

raised in the Texas Action under the theory of res judicata and collateral estoppel. “A judgment of a court of competent jurisdiction shall be conclusive between the same parties and their privies as to all matters put in issue or which under the rules of law might have been put in issue in the cause wherein the judgment was rendered until the judgment is reversed or set aside.” O.C.G.A. § 9-12-40; see also *Bhindi v. Patel*, 275 Ga. App. 143 (2006) (“Significantly, in order for res judicata to apply, a final judgment must have been entered in the prior suit.”). The Court will not speculate as to the preclusive effect of a judgment that has not yet been reached in the Texas Action. See *Flagg* at 261 (“Assertions of res judicata based on a verdict not yet reduced to judgment in the Connecticut action are therefore premature.”). Defendants have not shown that pursuing similar or overlapping discovery in this litigation will result in unnecessarily burdensome duplication of effort or that a stay will result in greater efficiency for the parties or the Court.

Defendants Motion for Partial Stay and Incorporated Memorandum of Law is **DENIED**.

SO ORDERED this 10 day of February, 2017.



JUDGE JOHN J. GOGER
Superior Court of Fulton County
Business Case Division
Atlanta Judicial Circuit

Copies to:

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