UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ALBERT E. LODRINI, Plaintiff, V. TYLER E. LYMAN, INC. AND RONALD E. LYMAN, Defendants.	:	CASE NO. 3:00CV01015(RNC)

RULING AND ORDER

Plaintiff Albert E. Lodrini claims that defendants Tyler E. Lyman, Inc. and Ronald E. Lyman brought a sham lawsuit against him and his wife Virginia in Connecticut Superior Court in violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat.§§ 42-110b, et seq. ("CUTPA"). Defendants have moved for summary judgment contending that the suit was not a sham. For reasons discussed below, defendants' motion is denied without prejudice to renewal and the action is stayed pending the outcome of closely related, prior-filed state court proceedings.

I. Facts

In November 1994, Albert and Virginia Lodrini entered into a six-month "open listing" agreement with defendant Tyler E. Lyman, Inc., a real estate agency ("the Agency"), concerning the sale of a piece of land. In January 1995, the Lodrinis and the Agency executed an addendum that extended the listing agreement. The addendum stated

that the Lodrinis would pay the Agency a 10% commission if the land was sold within two years to the State of Connecticut Department of Environmental Protection ("DEP"). In October 1995, well within this two-year period, the Lodrinis and the DEP signed a letter of intent stating that the land would be purchased by the DEP. The proposed transaction was subject to numerous conditions, including prior approval by the State Bonding Commission and a closing date before March 31, 1996. In August 1997, after the two-year period agreed to by the Lodrinis and the Agency expired, a second letter of intent, identical in most respects to the first, was signed by the Lodrinis and the DEP. In December 1997, the DEP purchased the Lodrinis' land in accordance with the terms of this second letter.

On learning of the Lodrinis' sale of the land to the DEP, the Agency sued the Lodrinis in state court claiming a right to a 10% sales commission. The complaint did not mention the date of the sale, and thus did not alert the court to the fact that the sale took place only after the two-year extension of the listing agreement expired. The Lodrinis failed to appear in response to the complaint, so the Agency moved for a default judgment on the basis of an affidavit that also contained no mention of the date of sale. A default judgment was entered against the Lodrinis in the amount of $73,732, reflecting a 10% sales commission plus costs.

On appeal, the default judgment against Virginia Lodrini was

upheld, but the judgment against Albert was vacated for procedural reasons and the case was remanded. The Agency then dropped the action against Albert but continued to press the action against Virgina. Albert now has an appeal pending in state court in which he argues that he is entitled to recover attorney's fees for the costs of appealing the default judgment against him. Virginia also has an appeal pending in which she argues that the default judgment against her must be set aside because it was obtained by fraud.

After they appealed the default judgment, the Lodrinis brought this CUTPA action based on diversity of citizenship claiming that the Agency's suit in state court was a sham. Virginia's claim has been dismissed pursuant to the Rooker-Feldman doctrine. See Court of Appeals v. Feldman, 460 U.S. 462, 486-87 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923). Thus, the sole remaining claim in this Court is Albert's CUTPA claim, which seeks attorney's fees, costs, and punitive damages.

II. Discussion

To prevail on his CUTPA claim, Albert must show that "no objective litigant [could] conclude that the [Agency's] suit was reasonably calculated to elicit a favorable outcome...." T.F.T.F. Capital Corp. v. Marcus Diary, Inc., 33 F. Supp. 2d 122, 126 (D. Conn. 1998) (internal citations omitted). Factors to consider in determining whether a suit is a sham include

> the presence of repetitive litigation (although one action may constitute a sham under certain conditions), deliberate fraud, supplying false information, and whether lower courts have stated or implied that the action is frivolous or objectively baseless and whether they have dismissed it out of hand.

Zeller v. Consolini, 59 Conn. App. 545, 555 (2000) (internal citations omitted).

Albert contends that the Agency perpetrated a fraud on the state court by failing to disclose the sale date in its complaint and later in its affidavit in support of its request for a default judgment. He further contends that the suit was objectively unreasonable because no litigant in the Agency's position could reasonably expect to recover a commission on a sale that did not occur until more than twenty months after its listing agreement with the seller expired. Defendants counter that the Agency's nondisclosure of the sale date does not constitute fraud, and the Agency's suit was objectively reasonable, because the proper date for determining whether the Agency was entitled to the commission was not the sale date, but rather the date when all conditions precedent to the sale were met.

As one can readily see, the overlap between the pending state court appeals and this CUTPA case is substantial. If the Connecticut Appellate Court rules in favor of the Lodrinis on the ground that the Agency committed fraud by failing to disclose the sale date, its decision may very well lead to a judgment in favor of Albert on his

CUTPA claim. If, on the other hand, the Appellate Court determines that the key date is not the sale date but the date all conditions precedent were met, Albert's CUTPA claim will be doomed. Given this significant overlap, and the fact that we are dealing with an alleged fraud on the state court, the question naturally arises whether this is one of those unusual cases that should be stayed in deference to prior-filed state court proceedings. I believe it is.

Though a federal court has a nearly unflagging obligation to exercise the jurisdiction vested in it by Congress, in some circumstances a district court may stay proceedings pending the resolution of closely-related proceedings in state court. See Giulini v. Blessing, 654 F.2d 189, 193 (2d Cir. 1981). In deciding whether to order a stay, a court should consider

> (1) whether the controversy involve[s] a res over which one of the courts has assumed jurisdiction, (2) whether one forum is more inconvenient than the other for the parties, (3) whether staying the federal action will avoid piecemeal litigation, (4) whether one action is significantly more advanced than the other, (5) whether federal or state law provides the rule of decision, and (6) whether the federal plaintiff's rights will be protected in the state proceeding. . . . No one factor is determinative, and the weight to be given to each may vary substantially from case to case.

United States v. Pikna, 880 F.2d 1578, 1582 (2d Cir. 1989)(internal citations omitted).

In the circumstances presented here, a stay of this action pending a decision by the Connecticut Appellate Court seems

undeniably appropriate as a matter of comity in order to accommodate that Court's interest in determining for itself in the first instance whether the Agency has perpetrated a fraud on the Superior Court. A stay also offers a number of other significant advantages. By staying this action, I can gain the benefit of the Appellate Court's views on the state law issues presented by Albert's CUTPA claim, minimize duplicative litigation, avoid waste of judicial and litigant resources, and eliminate a risk of inconsistent outcomes. A stay appears to risk no undue prejudice to the Lodrinis, who brought the case here after instituting the state court appeals, or the Agency, which presumably prefers a definitive ruling by the Appellate Court on the state law issues raised by Albert's CUTPA claim.

III. Conclusion

Accordingly, this action is hereby stayed pending the outcome of the litigation between the parties in state court, and defendants' motion for summary judgment is hereby denied without prejudice to renewal after the state court litigation is completed. The parties will file a joint status report in 90 days.

It is so ordered this 19th day of March 2003.

_____

Robert N. Chatigny
United States District Judge