

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
BUSINESS AND CONSUMER COURT
LOCATION: PORTLAND
DOCKET NO. BCD-CV-2018-01

PETER RITTMASER, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 HARRY L. RIESTER,)
)
 Defendant.)

ORDER ON DEFENDANT’S
MOTION TO STAY

This matter is before the Court on Defendant Harry Reister’s motion to stay. Plaintiffs opposed the motion and Mr. Riester filed both a reply and a supplement to his motion to stay. Pursuant to the discretion granted it by M. R. Civ. P. 7(b)(7), the Court chose to rule on the motion without hearing.

FACTUAL AND PROCEDURAL BACKGROUND

This case is about the ownership of a 1970 Bertram Baron 28 watercraft (the “Bertram”). (Pl’s Compl. ¶ 4.) Plaintiffs purchased the Bertram from Mr. Genick in Michigan, who had himself purchased it from Blue Lagoon Marina after Blue Lagoon foreclosed on its storage lien on the Bertram. (Pl’s Compl. ¶¶ 9-13.) The original owner was Mr. Reister. (Pl’s Compl. ¶ 5.) Mr. Reister filed suit in Michigan against Blue Lagoon, Mr. Genick, “John Doe” from Maine, and others, seeking title to the Bertram. (Pl’s Compl. ¶¶ 24, 28.) Plaintiffs were never served. (Pl’s Compl. ¶ 26.) Mr. Reister succeeded in negotiating a stipulation of dismissal with Blue Lagoon and Mr. Genick, and the Michigan court entered an order dismissing all defendants and declaring Mr. Reister the title owner of the Bertram. (Pl’s Compl. ¶¶ 27-28.) Mr. Reister was able to use his Michigan judgment to obtain a certificate of title from the Michigan Secretary of State. (Def’s

Mot. Stay ¶ 5.)

STANDARD OF REVIEW

“The grant or denial of [a] stay rests in the sound discretion of the court.” *State v. Brown*, 2014 ME 79, ¶ 32, 95 A.3d 82 (quoting *Cutler Assocs., Inc. v. Merrill Trust Co.*, 395 A.2d 453, 456 (Me. 1978)).

DISCUSSION

Mr. Reister argues that a stay of this litigation is necessary “to allow Defendant to pursue his rights under Michigan law and enforce the Order and Certificate of Title in the Michigan Court that entered the Order.” (Def’s Mot. Stay ¶ 7.) Although Mr. Reister cites no legal authority in support of the granting of a stay, it can be inferred from his motion that he relies on the principle of comity. (Def’s Mot. Stay ¶ 11.)

The principle of comity sometimes requires that a second lawsuit be stayed when a prior lawsuit is pending between the same parties. “Ordinarily, when a party has begun an action, it serves no sensible end to permit his adversary to appear as equitable actor and start the proceedings for an autonomous declaration” *Eastern Fine Paper, Inc. v. Garriga Trading Co.*, 457 A.2d 1111, 1113 (Me. 1982) (quotation marks omitted). *See also Jones v. York*, 444 A.2d 382, 384 (Me. 1982). For comity to apply, the first action must still be pending and involve the same subject matter, parties, and issues. *Id.* The appropriate remedy when the rule applies is a stay of the proceedings in the second action, or dismissal of the second action without prejudice. *Eastern Fine Paper, Inc.*, 457 A.2d at 1116.

The principle of comity does not warrant the granting of a stay in this case. Foremost, there is no pending litigation in Michigan. By its terms, the order entered in the Michigan litigation “[r]esolves the last pending claim and closes the Case.” (Def’s Supp. Mot. Stay, Ex. C at 2.) Even

if the Court were to entertain the argument that an enforcement action is a continuation of the Michigan litigation (*see* Def’s Mot. Stay ¶ 11), the prior proceeding did not involve these same parties, as Plaintiffs were never served in the Michigan action. *See Jones*, 444 A.2d at 384. Furthermore, the issues in this case are different from those that were decided in the Michigan case, as Plaintiffs have asserted a claim to title to the Bertram grounded in principles of equity. (Pl’s Compl. ¶¶ 33-34.) *See id.*

A hypothetical enforcement action brought in Michigan might be stayed for the pendency of this lawsuit based on principles of comity, but staying this lawsuit to allow that action to be brought stands comity on its head. *Id.* Put simply, Plaintiffs filed their Complaint here before Mr. Reister ever brought suit against them in Michigan. It would be antithetical to the rule of comity to stay this first action to compel Plaintiffs to defend against a future enforcement action in Michigan. *See id.*, 444 A.2d at 384-84 (“The doctrine of comity . . . [should be] applied to promote justice and equity It should not prevail where justice to the defendant does not reasonably require it, and where to allow it would work manifest injustice to plaintiffs.”).

In sum, the principle of comity weighs against granting this motion to stay. Mr. Reister’s motion to stay is therefore DENIED.

CONCLUSION

Based on the foregoing it is hereby ORDERED:

That Defendant Harry Reister’s motion to stay is DENIED.

The Clerk is requested to enter this Order on the docket by incorporating it by reference.

M.R. Civ. P. 79(a).

