

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN P. FOLEY,
Appellant,

vs.

SMA LIFE ASSURANCE COMPANY; STATE
MUTUAL OF AMERICA, A/K/A ALLMERICA
FINANCIAL LIFE INSURANCE AND
ANNUITY COMPANY; AND JOHN HANCOCK
LIFE INSURANCE COMPANY,
Respondents.

No. 48687

FILED

MAR 05 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of dismissal in a contract action. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Appellant John P. Foley filed a claim in district court against respondents alleging that he was overcharged by \$10,327.58 for insurance premiums. Respondents removed the case to the United States District Court for the District of Nevada, which determined that it lacked jurisdiction over the matter, as Foley had not alleged that the amount in controversy exceeded \$75,000 or asserted that his claim involved a federal question, and thus remanded the matter to district court. Thereafter, the district court stayed the proceedings, noting that respondents had filed a motion in the United States District Court for the District of Massachusetts to enforce a class action settlement that assertedly encompassed Foley's claim. The Massachusetts federal district court subsequently entered an order determining that it had continuing

jurisdiction over the class action, that it included Foley's claim, and that Foley was bound by the terms of the settlement agreement in the class action. The Massachusetts federal district court noted in its order "that its decision does not preclude [Foley] from seeking relief pursuant to the terms of the settlement agreement to which he is bound."

Shortly after the Massachusetts federal district court entered its order, respondents moved for summary judgment in the Nevada district court, based on the Massachusetts federal district court's order determining that the prior settlement concluded Foley's claim and enjoined Foley from pursuing the case in Nevada's district court. The district court granted respondents' motion and ordered the Nevada state court case dismissed with prejudice but noting "[t]his dismissal does not preclude [Foley] from seeking a remedy, if any, under the settlement agreement in Bussie v. Allmerica, No. 97-40204 (D. Mass.)." Foley timely appealed.

Thereafter, on December 13, 2007, Foley filed a motion in this court requesting that we stay this appeal until the United States Court of Appeals for the First Circuit resolved his appeal of the Massachusetts federal court's order determining that it had jurisdiction over the matter and a subsequent order denying, as untimely, Foley's motion to seek alternative dispute resolution relief under the terms of the settlement agreement from the prior class action. On January 17, 2008, this court entered an order granting the unopposed stay motion. We reinstated briefing several months later, after receiving a status report indicating that the pending appeal before the First Circuit had been resolved. In its April 2008 decision, the First Circuit affirmed the Massachusetts federal court's order regarding jurisdiction because Foley's appeal of that order

was untimely and also affirmed, on the merits, the subsequent order by the Massachusetts federal court denying Foley alternative dispute resolution relief under the settlement agreement.

On appeal, Foley argues that the district court's summary judgment was based on the Massachusetts federal court's determination that it had jurisdiction over his claim and that this determination was incorrect. Foley also argues that dismissal here was unnecessarily drastic and that the district court erred in denying his countermotion to continue the stay pending the resolution of his claims in Massachusetts federal court.

Respondents contend that the issue regarding the Massachusetts federal court's jurisdiction is now moot because the First Circuit has ruled on that question and that the issue regarding Foley's motion for a stay is also moot because the Massachusetts federal court has denied Foley's request for relief. According to respondents, the only issue remaining on appeal is whether the district court properly granted their motion for summary judgment and ordered the Nevada case dismissed. They contend that the district court's dismissal should be affirmed because the Massachusetts federal court had determined that it had jurisdiction over Foley's claims and properly enjoined Foley from pursuing his claims in the Nevada district court, and dismissal with prejudice was proper as respondents (1) had requested summary judgment, (2) the Massachusetts federal court's order required a dismissal with prejudice, and (3) allowing Foley's claims to remain open and pending would serve no logical purpose.

In Stoll v. Gottlieb, 305 U.S. 165 (1938), the United States Supreme Court reviewed a judgment of the Supreme Court of Illinois that declined to apply res judicata to orders of a federal district court in

bankruptcy. While noting that a federal court does not have the power to extend its jurisdiction by judicial fiat, the Court held that the Illinois state courts could not inquire into the federal court's determination that it had jurisdiction over the matter. As the Court wrote,

[a]fter a party has his day in court, with opportunity to present his evidence and his view of the law, a collateral attack upon the decision as to jurisdiction there rendered merely retries the issue previously determined. There is no reason to expect that the second decision will be more satisfactory than the first.

305 U.S. at 172; see also Insurance Corp. v. Compagnie des Bauxities, 456 U.S. 694, 702 n.9 (1982) (explaining that “[a] party that has had an opportunity to litigate the question of subject-matter jurisdiction may not . . . reopen that question in a collateral attack upon an adverse judgment”); Chicot County Dist. v. Bank, 308 U.S. 371, 376 (1940) (noting that while determinations of jurisdiction are open to direct review they “may not be assailed collaterally”).

Here, the question of the Massachusetts federal court's jurisdiction was litigated before that court and the First Circuit subsequently found that Foley failed to timely appeal that decision. In light of these circumstances and the U.S. Supreme Court authority noted above, and for reasons of judicial comity, we decline to consider Foley's challenge regarding the Massachusetts federal court's jurisdiction. See Miannecki v. District Court, 99 Nev. 93, 98, 658 P.2d 442, 424-25 (1983) (explaining that comity “is a principle whereby the courts of one jurisdiction may give effect to the laws and judicial decisions of another jurisdiction out of deference and respect”); see also Aguirre v. Albertson's, Inc., 117 P.3d 1012, 1018 (Or. Ct. App. 2005) (reviewing a collateral attack of a federal court order in state court and concluding that “the time and

place for a party to a case to attack a trial court's subject matter jurisdiction is while the case is pending before that court or before an appellate court on direct appeal of the judgment, not in a later proceeding before a different tribunal"); Theatres of America, Inc. v. State, 577 S.W.2d 542, 548 (Tex. App. 1979) (stating that "[o]nce a federal court has decided the question of its jurisdiction as a contested issue, a State court has no power to inquire again into such question, in absence of allegations of fraud"); and see Simmermon v. Dryvit Systems, Inc., 953 A.2d 478, 486-87 (N.J. 2008) (setting forth reasons why state courts should decline to permit collateral attacks on class-action judgments from other states).

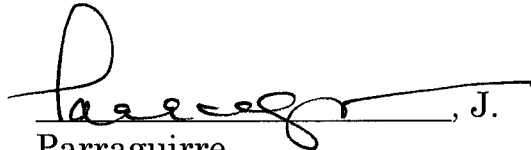
Regarding the remaining issues on appeal, Foley argues that the district court abused its discretion in not dismissing the case without prejudice and in denying his countermotion to continue the stay. Respondents disagree. This court reviews an order granting summary judgment de novo. Sustainable Growth v. Jumpers, LLC, 122 Nev. 53, 61, 128 P.3d 452, 458 (2006). A request for a stay, however, is reviewed for an abuse of discretion. Maheu v. District Court, 89 Nev. 214, 510 P.2d 627 (1973).

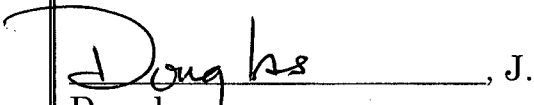
Here, the Massachusetts federal court had asserted jurisdiction over Foley's claims and Foley's own opposition to respondents' motion for summary judgment expressed an intent to resolve his claims on the merits before the Massachusetts federal court. As the case was proceeding to a resolution on the merits in the Massachusetts federal court, we agree with the district court that the pending district court case should have been dismissed with prejudice with the single exception noted. Further, as we conclude that the district court properly dismissed this case with prejudice, we also conclude that the district court did not

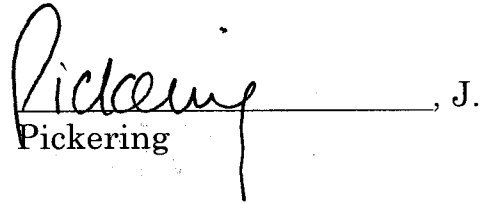
abuse its discretion in denying Foley's countermotion to continue the stay.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Parraguirre, J.


Douglas, J.


Pickering, J.

cc: Hon. Douglas W. Herndon, District Judge
Larry J. Cohen, Settlement Judge
Elizabeth J. Foley
Lewis & Roca, LLP/Las Vegas
Eighth District Court Clerk