

FILED
SEP 10 2018

**THE CIRCUIT COURT FOR THE CITY OF ST. LOUIS
STATE OF MISSOURI**

22ND JUDICIAL CIRCUIT
CIRCUIT CLERK'S OFFICE
BY _____ DEPUTY

LCRA HOLDINGS CORPORATION,)
)
 Plaintiff,)
)
v.)
)
BANK OF WASHINGTON, *et al.*,)
)
 Defendants.)

Cause No. 1822-CC10860
Division 2

ORDER

This matter is before the Court on the Motion of Defendants Bank of Washington and Northside Regeneration, LLC (“NSR”) to Dismiss Plaintiff’s Petition to Quiet Title. Having fully considered the Motion, the filings of the parties and argument of counsel, the Court **DENIES** the Motion for the reasons set forth below.

1. In their Motion, Defendants argue that this action should be dismissed pursuant to the doctrine of abatement because this case involves the same parties and the same issues raised in the action filed by Bank of Washington in Franklin County, Missouri. Defendants also argue that Plaintiff is required to file its claim to quiet title as a compulsory counterclaim in the Franklin County action.

2. On the other hand, Plaintiff argues that this case is not subject to the doctrine of abatement because it does not involve the same parties, same claims, or the same object or purpose as the Franklin County action and compelling circumstances exist that allow this case to proceed. Plaintiff also argues that its claim to quiet title is not a compulsory counterclaim that it is required to be filed in the Franklin County action.

3. The relevant background on the filings of these actions began on June 12, 2018,

when the City of St. Louis sent a notice to Defendant NSR saying that it was in default under its redevelopment agreement with the City. The City advised that if those defaults were not cured, which they apparently have not been, the redevelopment agreement would be terminated by the City. (Petition at ¶ 21).

4. On July 6, 2018, just a few weeks after the City's default letter, Defendant Bank of Washington filed its action in Franklin County, where the Bank is located, alleging that Plaintiff and the Land Clearance for Redevelopment Authority of the City of St. Louis fraudulently induced the Bank to enter into two agreements pursuant to which the Bank released its liens on property owned by NSR within the 97 acres being readied for transfer to the National Geospatial Intelligence Agency ("NGA") for the construction of its \$1.75 billion facility. While pleaded as a tort, the fundamental claim in the Franklin County action is that the City's default letter breached the terms of the agreements. The Franklin County action seeks damages and a partial rescission of the agreements. (Petition at ¶¶ 22, 23). Specifically, in its First Amended Petition in the Franklin County action, the Bank requests a judgment "severing and rescinding provisions of the FAA and PSA applicable to the Bank, restoring the Bank's lien rights on the NSR NGA Property transferred by NSR . . ."

5. According to Plaintiff, NGA believes the claim for rescission and the possibility of reinstatement of the Bank's liens on the property it will accept from LCRAH is an unacceptable "cloud" on title and the closing may be threatened. Therefore, on July 27, 2018, LCRAH filed this action to quiet title to the NGA site.

6. This Court has discretion in determining whether to stay or dismiss an action in favor of a previously-filed action. Our courts have held that a second-filed case may proceed under compelling circumstances. *Anheuser-Busch, Inc. v. Supreme Int'l Corp.*, 167 F.3d 417, 419 (8th

Cir. 1999). The Court believes that the circumstances in this case are as compelling as those in the *Supreme Int'l Corp.* case.

7. In addition, the Missouri Supreme Court has denominated a number of other factors this Court can consider, any one of which would allow a second-filed case to proceed, including:

- (1) public policy and interest;
- (2) efficiency;
- (3) convenience;
- (4) economy; and
- (5) the good or bad faith of the party who filed the first-filed action.

See State ex rel U.S. Fire Ins. Co v. Terte, 351 Mo. 1089, 1098 (Mo. banc 1943).

8. The Court believes that several of these factors are also present here. Among others, public policy and interest should permit this action to proceed. Plaintiff's action to quiet title relates to property to be transferred to the United States government in November 2018 that will be used to construct the regional headquarters for the NGA. (Petition at ¶ 19). The NGA project is expected to cost approximately \$1.75 billion and will retain and attract thousands of high-wage jobs and create many growth and redevelopment opportunities for the City of St. Louis. (Petition at ¶ 6).

9. The Court also believes that the parties, claims, and object and purpose of the Franklin County action are different than those asserted here.

The Court therefore orders, adjudges and decrees that Defendants' Motion to Dismiss is DENIED.

SO ORDERED:

David Dowd

Hon. David L. Dowd
Division 2