

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIVISION IH
CASE NO. 50-2013-CP-005060-XXXX-NB

DAVID ALAN KLEIMAN,
Decedent.

ORDER STAYING PETITION OF LYNN WRIGHT

THIS CAUSE comes before the Court on the motion (“Motion”) of Ira Kleiman (“Ira”), as personal representative of the estate of David Alan Kleiman, to dismiss or alternatively, stay, the petition (“Petition”) filed by Lynn Wright (“Lynn”) seeking a determination of her interest in W&K Info Defense Research, LLC (“W&K”) and also seeking a declaratory judgment enjoining Ira from pursuing the action styled, *Ira Kleiman, as personal representative of the Estate of David Kleiman and W&K Info Defense Research, LLC v. Craig Wright*, No. 9:18-cv-80176-BB (USDC S.D. Fla.) (“the Federal Case”). (Petition, D.E. # 50.) Ira filed his Motion on August 4, 2020 (D.E. # 53). On November 24, 2020, Ira filed a notice of supplemental authority and motion to supplement his motion to dismiss (D.E. # 64). (Hearing no objection from Lynn, the motion for leave is hereby granted, and the Court will consider the supplement.) Lynn responded to the Motion on November 24, 2020 (D.E. # 65). Ira filed a reply on November 30, 2020 (D.E. # 69.) The Court held a hearing on the Motion on December 3, 2020. The Court has considered the submissions of the parties and the arguments of counsel, it has reviewed the docket and certain matters in the Federal Case, and is otherwise advised of the premises.

BACKGROUND

The background of this matter is complex and must be recounted in order to afford full context to the dispute and the basis for the Court’s decision. In doing so, pursuant to section 90.202(6), Florida Statutes, the Court takes judicial notice of certain aspects of the record of proceedings before the United States District Court for the Southern District of Florida in the Federal Case.

In their submissions the parties do not provide the Court any information regarding the underlying stakes of the dispute between them, but during oral argument and in reference to the

pending Federal Case, the matter relates to Bitcoin. As explained by the federal court, David and Craig Wright (“Craig”) allegedly created Bitcoin, a cybercurrency computer protocol/system. (Federal Case, Omnibus Order Sept. 21, 2020 at 3, ECF # 615.) Together, they allegedly “mined” bitcoins (“bitcoin,” with a lower-case “b,” being the term used for the unit of currency, as opposed to the Bitcoin protocol/system) and also developed “blockchain” related intellectual property. (*Id.*) (The Court will not here go into the complexities of the Bitcoin system, “mining” bitcoins, or the meaning and purpose of a “blockchain,” as those matters are immaterial to the Motion before this Court.) In February 2011 David formed W&K as a Florida limited liability company, and it was allegedly through that entity that David and Craig continued their work. (*Id.*)

(a) Lynn’s Petition.

According to Lynn’s Petition in this case, David formed W&K as a Florida limited liability company in February 2011. (Petition, D.E. # 50, ¶ 13.) Lynn alleges in her Petition that when W&K was formed, she was an initial member and owner of one-third of the membership interest in W&K; Craig, through an entity called Craig Wright R & D, of which Craig was trustee, owned a one-third interest in W&K; and David owned the remaining one-third. (*Id.*) She alleges that on February 14, 2011, David filed the articles of organization for W&K, naming himself as the managing member. (*Id.*, ¶ 15.) She further alleges that there is no “fully executed” operating agreement for W&K. (*Id.*, ¶ 16.)

Lynn further alleges in her Petition that she was married to Craig, and they divorced effective March 15, 2013. (*Id.*, ¶ 17.) She further alleges that before their divorce, in June 2011 Craig and she agreed to a property settlement under which half of Craig Wright R & D’s one-third interest in W & K Info was transferred to her, essentially making her just shy (33.33% plus 16.66%, or 49.99%) of owning half of the membership interest in W & K Info. (*Id.*)

Lynn then alleges that in December 2012 – before her divorce from Craig became final – she transferred all of her interests in W & K Info back to Craig Wright R & D. (*Id.*, ¶ 19.) This would make Craig Wright R & D the owner of two-thirds of W&K, with David still holding the remaining third.

David died on or about April 26, 2013 (the exact date of death has not been established; the death certificate states as the date of death, “FOUND ON April 26, 2013.”) (Death Certificate, D.E. #6.) On October 25, 2013, Ira, as a named personal representative in David’s will, initiated the proceedings before this Court by filing his Petition for Disposition of Personal Property Without Administration and also filing a copy of David’s will. (D.E. # 5, 6.) The Court denied that petition on November 11, 2013 (D.E. # 11), and Ira then filed an amended petition on January 6, 2014 (D.E. # 12). He then filed a petition for subsequent administration on February 2, 2016. (D.E. 16.)

By Order filed February 4, 2016, this Court admitted the will to probate, appointed Ira as personal representative as per the will, and issued letters of administration. (D.E. # 23, 24.) Ira filed the Federal Case on February 14, 2018.

To return to the chronology alleged in Lynn’s Petition, after she conveyed all of her interests in W&K back to Craig Wright R & D in December 2012, she thus had no interest in W&K at the time of David’s death in April 2013. Lynn then makes a series of allegations about Craig Wright R & D changing its name to Tulip Trust at some point after David’s death (D.E. # 51, ¶ 20), that Craig is not a trustee of Tulip Trust (*id.*, ¶ 21), that a person named “Ramona Ang” is a trustee of Tulip Trust, “with full right and power to make transfers from the Tulip Trust to other persons” (*id.*, ¶ 22), that a “Ms. Nguyen” came into the picture, along with an entity called Coin-Exch Pty, Ltd., and “it is believed” that Ms. Nguyen made filings with the Florida Secretary of State’s Office reinstating W&K’s status and changing W&K’s registered agent from David to Ms. Nguyen and changing the principal place of business to California. (*Id.*, ¶ 23, 24.)

There is still more in the Petition about Ms. Nguyen and Coin-Exch, with allegations that “Ms. Nguyen may claim an interest in W&K Info Defense” and there “may be a business relationship between Ms. Nguyen and Ira to attempt to obtain control of W&K Info Defense.” (*Id.*, ¶ 25, 26). Lynn then alleges that in 2018 Ira filed a reinstatement of W&K with the Florida Secretary of State, claiming to be the registered agent and managing member, and that in 2019 and 2020 Ira filed annual reports on behalf of W&K, again stating himself as registered agent

and managing member. (*Id.*, ¶¶ 27-29.)

Lynn then alleges that on July 10, 2020 (six days prior to the filing of her Petition, as Ira points out in his submissions), Tulip Trust “transferred” to her “one-third of all of the membership interest” in W&K, representing “one-third of all voting interest” and “one-third of all the transferable economic interest” in W&K, which includes a “one percentage interest” in W&K that was “previously owned only by Tulip Trust” and not “previously owned” by Lynn. (*Id.*, ¶ 30.)

Lynn then filed her Petition on July 16, 2020. In Count I of her Petition, she seeks a “determination of beneficiary shares” in W&K. (*Id.*, ¶¶ 31-36.) (As Ira notes in his submissions, Lynn is not named as a “beneficiary” in David’s will.) In Count II, she seeks a “declaratory judgment and injunctive relief” under section 86.041, Florida Statutes, seeking to prohibit Ira, as personal representative of David’s estate, from acting in the capacity as a representative of W&K, including his prosecution of the Federal Case against Craig. (*Id.*, ¶¶ 37-51.)

(b) The Federal Case.

Because the pending Federal Case bears directly on the Court’s decision in this Order, the Court will recount pertinent aspects of that case. Ira filed the Federal Case on February 14, 2018. The docket in the Federal Case, which consists of over 600 entries, reflects that discovery has been robust, dispositive motion practice essentially has been completed, and the case currently is set for a jury trial beginning on June 1, 2021. (ECF # 626.)

Ira’s second amended complaint in the Federal Case (ECF # 83), filed January 14, 2019, is 49 pages long and contains ten counts, all of which pertain to the relationship between David and Craig and the dispute over the ownership interests in W&K, assets allegedly held by W&K, and/or assets held by David. The complaint contains detailed allegations about schemes perpetrated by Craig to take, from David and David’s estate, David’s interest in W&K, assets allegedly held by that entity, and/or assets held by David, individually. Review of the voluminous summary judgment submissions filed in the Federal Case by the parties demonstrates that the Federal Case turns on disputes between Ira and Craig over David’s ownership of W&K and its assets and Craig’s interest (if any) therein, David’s own assets, the existence of trusts and

roles of trusts including the Tulip Trust, the role and involvement of Coin-Exch, the role and involvement of Uyen Nguyen with respect to W&K, and Lynn's alleged ownership interests in W&K. (Federal Case, ECF # 487, 488, 495, 511, 531, 535, 549, 550, 560, 561.)

The federal court's 93-page Omnibus Order on the motions for summary judgment (ECF # 615) demonstrates that issues regarding the ownership interests in W&K and its assets, and David's individual assets, are fundamentally intertwined with that case.

The federal court's Omnibus Order, other orders and the overall record of the federal case demonstrate that there are numerous, complicated factual issues before the federal court bearing upon the very issue that Lynn presents in her Petition before this Court; *i.e.*, her "beneficial" interest (even though she is not named as a "beneficiary" in David's will), if any, in W&K. Additionally, the Court notes that in her Petition, Lynn names all of the same individuals and entities peripherally referenced in the Federal Case that might have an interest in W&K – Ira, Lynn, Craig (as beneficiary of the Tulip Trust), Ms. Ang (as trustee of the Tulip Trust), W&K, Uyen Nguyen, and Coin-Exch. (Petition, ¶ 34.)

(c) The Motion.

Ira asserts in his Motion that Lynn's petition should be dismissed on three grounds, each of which is contested by Lynn. Alternatively, Ira alternatively requests the Court to stay the proceedings before it pending final resolution of the proceedings in the Federal Case. For the reasons next explained, the Court has determined that all proceedings related to Lynn's Petition should be stayed pending final resolution of the Federal Case.

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ANALYSIS

The Court's focus is on Ira's alternative request to stay Lynn's petition pending resolution of the Federal Case. The Court has carefully reviewed the docket in the Federal Case (a docket that comprises over 600 entries), Florida law governing a state court's staying of proceedings in favor of a prior, pending federal action, and the so-called "probate exception" to federal diversity jurisdiction.

I. The principles underlying a stay of the Petition pending resolution of the Federal Case.

“It is well-settled that when a previously filed federal action is pending between substantially the same parties on substantially the same issues, a subsequently filed state action should be stayed pending the disposition of the federal action.” *Robeson v. Melton*, 52 So. 3d 676, 679 (Fla. 4th DCA 2009) (quoting *Beckford v. General Motors Corp.*, 919 So. 2d 612, 613 (Fla. 3d DCA 2006). “Comity principles dictate that ‘[w]here a state and federal court have concurrent jurisdiction over the same parties or privies and the same subject matter, the tribunal where jurisdiction first attaches retains jurisdiction.” *OPKO Health, Inc. v. Lipsius*, 279 So.3d 787, 791 (Fla. 3d DCA 2019) (quoting *Shooster v. BT Orlando Ltd. P’ship*, 766 So. 2d 1114, 1115 (Fla. 5th DCA 2000) (citing *Wade v. Clower*, 114 So. 548, 551 (Fla. 1927)). “Florida law is clear that, “the causes of action do not have to be identical ... [i]t is sufficient that the two actions involve a single set of facts and that resolution of the one case will resolve many of the issues involved in the subsequently filed case.”” *Id.* (quoting *Pilevsky v. Morgans Hotel Grp. Mgmt., LLC*, 961 So. 2d 1032, 1035 (Fla. 3d DCA 2007) (quoting *Fla. Crushed Stone Co. v. Travelers Indem. Co.*, 632 So. 2d 217, 220 (Fla. 5th DCA 1994))). Likewise, complete identity of the parties and claims is not required. *In re Guardianship of Morrison*, 972 So. 2d 905, 910 (Fla. 2d DCA 2007). A stay (as opposed to abatement) does not require complete identity of both the parties and the causes of action, but requires a substantial similarity of the parties and actions. *Sauder v. Rayman*, 800 So.2d 355, 358 (Fla. 4th DCA 2001). While the decision whether to grant a stay is within the trial court’s “broad discretion,” the failure to stay a subsequently filed state court action in favor of a previously filed federal action involving the same parties or privies and substantially the same issues is “an abuse of discretion.” *Fla. Crushed Stone, supra*.

The purposes underlying these principles are equally well settled: staying the subsequently filed state court case while the federal case proceeds to final disposition avoids “duplication of efforts and costs, as well as the possibility of inconsistent judgments.” *J.M. Smucker Co. v. Rudge*, 877 So. 2d 820, 822 (Fla 3d DCA 2004.) Moreover, the disposition of the federal

action may dispose of or materially affect the claims asserted in the state court action. *Benihana of Tokyo, Inc. v. Benihana, Inc.*, 129 So. 3d 1153, 1155 (Fla. 3d DCA 2014).

Applying these principles, the Federal Case necessarily involves the same foundational issues that Lynn's Petition presents to this Court, among them being the membership interests in W&K, both at its creation and its evolution, the assets alleged held in W&K, and the alleged transference of interests in W&K, or assets of W&K, to Craig Wright R & D, then to Tulip Trust, and/or Ms. Nguyen and Coin-Exch. Indeed, Lynn asserts as much in her own Petition. (Petition, ¶ 34.) That Lynn is not a party to the Federal Case does not militate against staying the proceedings before this Court: By the allegations of her own Petition, her interests in W&K derive from the "chain" she describes in her Petition, ending up with the alleged transfer by Tulip Trust to her in July 2020.

All of this convinces the Court that a stay of all proceedings relating to Lynn's Petition before this Court is not only warranted but would be an abuse of discretion not to do so. *Fla. Crushed Stone, supra*. If the Court were to proceed with the Petition in the face of the previously filed and greatly developed Federal Case, and if the Court were not to dispose of the Petition on Ira's pending Motion (which is well argued by both sides), the Court perceives that much of the same, voluminous discovery that has occurred in the Federal Case (which itself produced many skirmishes) would be sought in the proceedings before this Court, creating expensive duplication of effort which could be entirely meaningless in event of final disposition in the Federal Case that might entirely foreclose Lynn's Petition. Additionally, were this Court to move forward with Lynn's Petition in the face of the pending Federal Case, the hazard of inconsistent or conflicting results is starkly self-evident.

In sum, this matter is a very large onion of which only one court – the federal court, as the "first-filed" court – should peel back its several layers. Accordingly, following Florida's well-established precedent, this Court is staying its hand while the federal court completes the case before it.

II. The “Probate Exception.”

The Court also should address Lynn’s contention that the so-called “probate exception” to federal court jurisdiction precludes a stay. (Lynn response to Motion at 14-15, D.E. # 65.) Of course, it is not within the province of this Court to determine issues regarding the federal court’s jurisdiction – that is the federal court’s prerogative. However, insofar as Lynn is suggesting that this Court should rely upon the “probate exception” to forge ahead without regard to the pendency of the Federal Case, this Court will not do so. The “probate exception” is neither as broad nor as absolute as Lynn asserts. Contrary to Lynn’s reliance on the decision in *Marshall v. Marshall*, 547 U.S. 293, 126 S.Ct. 1735 (2006), in fact that decision rejects the view she espouses and particularly rejects the notion, implied by Lynn, that a state probate court can unilaterally ignore a pending federal action and declare exclusive jurisdiction over all things that might impact interests in an estate.

As Justice Ginsburg explained in *Marshall*, the holdings in *Markham v. Allen*, 326 U.S. 490, 66 S.Ct. 296 (1946) that draw the limited contours of the “probate exception” are still good law, and *Marshall* does not depart from them. In *Markham*, while a state court probate administration was pending, a federal district court exercised jurisdiction in ruling that resident heirs had no interest in the estate at issue, and the Alien Property Custodian (a federal officer appointed by the President pursuant to the Trading with the Enemy Act), acting on behalf of German legatees, was entitled to the entire net estate. *Marshall*, 527 U.S. at 309-10. The Ninth Circuit Court of Appeals reversed, holding that the district court was without jurisdiction under the “probate exception.” *Allen v. Markham*, 147 F.2d 136 (9th Cir. 1945).

The Supreme Court in *Markham* reversed, establishing the limits of the “probate exception:”

It is true that a federal court has no jurisdiction to probate a will or administer an estate, the reason being that the equity jurisdiction conferred by the Judiciary Act of 1789, 1 Stat. 73, and s 24(1) of the Judicial Code, which is that of the English Court of Chancery in 1789, did not extend to probate matters. . . . **But it has been established by a long series of decisions of this Court that federal courts of equity have jurisdiction to entertain suits ‘in favor of creditors, legatees and**

heirs and other claimants against a decedent's estate 'to establish their claims' so long as the federal court does not interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court. . . .

Similarly while a federal court may not exercise its jurisdiction to disturb or affect the possession of property in the custody of a state court, . . . **it may exercise its jurisdiction to adjudicate rights in such property where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court. . . .**

Although in this case petitioner sought a judgment in the district court ordering defendant executor to pay over the entire net estate to the petitioner upon an allowance of the executor's final account, the judgment declared only that petitioner 'is entitled to receive the net estate of the late Alvina Wagner in distribution, after the payment of expenses of administration, debts, and taxes.' **The effect of the judgment was to leave undisturbed the orderly administration of decedent's estate in the state probate court and to decree petitioner's right in the property to be distributed after its administration. This, as our authorities demonstrate, is not an exercise of probate jurisdiction or an interference with property in the possession or custody of a state court.**

Markham, 326 U.S. at 494-95 (citations omitted, emphasis added.)

In *Marshall*, the issue centered on disputes between Vickie Lynn Marshall (a/k/a Anna Nicole Smith) and the heirs of her late husband, J. Howard Marshall II. The particular dispute in *Marshall* was an adversary proceeding brought by Mr. Marshall's son in Ms. Marshall's Chapter 11 bankruptcy proceedings alleging that Ms. Marshall had defamed him. Ms. Marshall counterclaimed against the son for tortiously interfering with her expectancies of an inheritance or gift from Mr. Marshall upon his death. The adversary proceeding was brought while Mr. Marshall's probate was pending before a Texas probate court. The bankruptcy court for the Central District of California dismissed the son's complaint and ruled in favor of Ms. Marshall on her counterclaim. The son then moved to set aside the judgment in favor of Ms. Marshall, arguing that under the "probate exception" the bankruptcy court had no jurisdiction over her counterclaim; it was within the exclusive province of the Texas probate court. The bankruptcy court rejected the son's argument, and the federal district court confirmed the bankruptcy court's decision (as modified), relying upon *Markham*. *Marshall*, 547 U.S. at 293-94 (syllabus).

The stepson appealed to the Ninth Circuit Court of Appeals, which reversed, holding that

the “probate exception” applied to bar the bankruptcy court’s jurisdiction over Ms. Marshall’s counterclaim, particularly noting that the Texas probate court had ruled that it had exclusive jurisdiction over Ms. Marshall’s claims. *Id.* at 294-95 (syllabus). The Supreme Court reversed. Justice Ginsburg, writing for the Court, reaffirmed the holdings of *Markham* in ruling that the “probate exception” did not apply to divest the bankruptcy court of jurisdiction. *Id.* at 308-12.

Markham and *Marshall* control the question of the “probate exception.” Distilled to its essence, the Federal Case involves claims and causes of action arising from the business relationships between David and Craig. Were David alive, he could have prosecuted these same claims in federal court, but he is dead, and Ira, as personal representative of David’s estate, is pursuing them in his stead, as he is authorized to do. Personal representatives routinely prosecute (and defend) actions on behalf of a decedent’s estate before state and federal courts, outside of proceedings before the probate court, which well might affect those claiming interests in the estate. Such actions, however, do not offend the jurisdiction of a probate court or implicate the “probate exception” recognized in federal court jurisdiction. Applying *Markham* and *Marshall*, nothing in the Federal Case suggests that the federal court, in entertaining that case, is usurping or interfering with this Court’s probate jurisdiction.

Accordingly, it is hereby **ORDERED** -

That the Petition of Lynn Wright, and all pending motions relating thereto, and all discovery relating thereto, are hereby **STAYED** pending final disposition of the Federal Case; Ira’s Motion, insofar as it seeks outright dismissal of Lynn’s Petition, is denied without prejudice to present those issues later, should they maintain vitality after final disposition of the Federal Case.

DONE AND ORDERED, in Palm Beach Gardens, Palm Beach County, Florida this 14th day of December, 2020.



50-2013-CP-005060-XXXX-NB 12/14/2020
Dina Keever-Agrama
Judge

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