

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DUKE/FLUOR DANIEL CARIBBEAN, S.P., :
DUKE/FLUOR DANIEL INTERNATIONAL, :
DUKE/FLUOR DANIEL INTERNATIONAL SERVICES, :
FLUOR DANIEL CARIBBEAN, INC., :
CARIBBEAN ARCHITECTS & ENGINEERS, :
 :
 :
Third-Party Plaintiffs, :
 :
 :
v. : Civil Action No.
 : 03-544 JJF
ALSTOM POWER, INC., :
 :
 :
Third-Party Defendants. :

Donald E. Reid, Esquire of
MORRIS, NICHOLS, ARSHT & TUNNELL, Wilmington, Delaware.
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Attorneys for Third-Party Defendant.

MEMORANDUM OPINION

September 20, 2004
Wilmington, Delaware

FARNAN, District Judge

Pending before the Court is Third-Party Defendant ALSTOM Power, Inc.'s Motion To Dismiss (D.I. 52). For the reasons discussed, ALSTOM Power, Inc.'s Motion To Dismiss (D.I. 52) will be granted.

BACKGROUND

This is an action arising out of a construction project in Puerto Rico and involves allegations of breach of contract and indemnification.

Plaintiff AES Puerto Rico, L.P. ("AES") filed this diversity action against Defendants Duke Fluor Daniel Caribbean S.P., and its partners Duke/Flour Daniel International, Duke/Flour Daniel International Services, Caribbean Architects & Engineers, and Fluor Daniel Caribbean, Inc. (collectively "Duke"). In its amended Complaint (D.I. 3), AES claimed over \$90 million in damages arising out of a 1996 contract between AES and Duke. Duke filed an Answer and Counterclaim (D.I. 15) demanding in excess of \$100 million in damages from AES. Duke also filed a Third-Party Complaint (D.I. 20) against ALSTOM Power, Inc. ("ALSTOM"), pursuant to the Court's supplemental jurisdiction under 28 U.S.C. § 1367, as Duke and ALSTOM lack complete diversity of citizenship. Duke's Third-Party Complaint (D.I. 20) alleges \$90 million in damages and asserts state law claims in contractual indemnity, common law indemnity, and breach of

contract against ALSTOM. ALSTOM filed an Answer and Counterclaim (D.I. 31) for damages in excess of \$25 million. ALSTOM's Counterclaim (D.I. 31) raises a state law statutory claim and common law counts of breach of contract, breach of implied contract, unjust enrichment, indemnification, and equitable relief. The claims in dispute between Duke and ALSTOM arise out of two purchase orders between them. The purchase orders contained provisions providing the parties shall be subject to the law and jurisdiction of the State of Delaware. (D.I. 70 at 4).

AES and Duke settled their dispute and filed motions to dismiss all claims between them (D.I. 41, 42). The Court entered Orders (D.I. 41, 42) dismissing the Complaint and Counterclaim with prejudice. Thus, only non-diverse parties, Duke and ALSTOM, and their state law claims remain in the case.

Following the dismissal of AES from the case, ALSTOM filed the instant Motion To Dismiss (D.I. 52). The parties have briefed the motion, and the Court held oral argument on the motion on July 21, 2004.

DISCUSSION

By its motion, ALSTOM contends that the Court should decline to exercise supplemental jurisdiction over the third-party action because all claims over which this Court had original, diversity jurisdiction have been dismissed. Specifically, ALSTOM contends

that, pursuant to 28 U.S.C. § 1367(c)(3), whether the Court should continue to exercise supplemental jurisdiction rests in the discretion of the Court. ALSTOM argues that the Court should, in the circumstances in this case, decline to exercise jurisdiction. Relying on Third Circuit precedent, ALSTOM argues that the "district court must decline to decide the pendent state claims unless considerations of judicial economy, convenience, and fairness to the parties provide an affirmative justification for doing so." Borough of West Mifflin v. Lancaster, 45 F.3d 780, 788 (3d Cir. 1995). ALSTOM contends that retaining jurisdiction over state law claims that are in the early stages of litigation will not benefit judicial economy. ALSTOM further contends that Duke has not demonstrated any prejudice or unfairness in having its state law claims litigated in the Delaware state courts.

In response, Duke contends that dismissal of the action would be unduly prejudicial to them for four reasons. First, discovery would be burdensome because Duke plans to cease operations by the end of December, 2004, and, therefore, personnel important to the discovery process will no longer be in the employ of Duke. Second, a trial in state court will be later than the trial date in this Court. Third, the procedure for issuing subpoenas in Puerto Rico differs depending on whether a matter is being litigated in state or federal court, and is more burdensome for those being litigated in state court. Fourth,

Duke contends it will be prejudiced in the courtroom because in the state court action¹ ALSTOM will be the plaintiff, thereby speaking first in opening statements and being able to speak to the jury at the beginning and end of closing arguments.

Applying the Third Circuit standard, the Court concludes that the motion to dismiss should be granted.

I. Judicial Economy

The Court finds that retaining jurisdiction over the remaining state law claims will not promote judicial economy concerns for this Court. The Court is persuaded that its trial calendar should first be available to cases involving federal jurisdiction rather than for the exercise of pendent jurisdiction for purely state law claims. Because the Court has several federal jurisdiction cases to schedule, it seems judicial economy is served by granting dismissal.

II. Convenience

The Court is not convinced that convenience is implicated in its analysis, except with regard to Duke's proposed December, 2004 closing and the subpoena practice of Puerto Rico. These types of issues are not unique to this litigation and any inconvenience that may result is not sufficient to overcome the other considerations of the jurisdiction analysis.

¹ ALSTOM has filed an action in the Superior Court of the State of Delaware for New Castle County which is pending and involves the same state law claims asserted here.

III. Fairness to Parties

In the Court's view, the fairness consideration is controlled by the agreement between the parties that they would be subject to the law and jurisdiction of the State of Delaware. Duke's contention that ALSTOM has some advantage in the existing Delaware state court action because ALSTOM is designated as the plaintiff is unpersuasive. Any undue prejudice from the alignment of parties can certainly be addressed by the state court and should not be the rationale for this Court exercising its supplemental jurisdiction.

CONCLUSION

In sum, the Court concludes that the factors a court must consider do not affirmatively support the Court exercising its pendent jurisdiction over the remaining state law claims.

An appropriate Order will be entered.

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ORDER

At Wilmington, this 20th day of September 2004, for the reasons discussed in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that ALSTOM Power Inc.'s Motion To Dismiss (D.I. 52) is **GRANTED**.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE