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Fourth Circuit Tells District Court Not to Abstain in False Ad Holy War

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At the heart of this unique Lanham Act case is a dispute between the Episcopal Church (the "Church") and one of its "disaffiliated" districts, the Diocese of South Carolina ("Diocese"). In 2012, led by its Bishop Mark Lawrence, the Diocese withdrew from the Church, but the Church did not recognize the withdrawal, and appointed Bishop Charles vonRosenberg to replace Bishop Lawrence as the head of the Diocese. Lawsuits ensued, and the dispute raised an interesting question: when a federal court confronts false advertising claims that are related to issues of intellectual property ownership that are being litigated separately in state court, should the federal court abstain from hearing the false advertising claims?

The Diocese fired the opening salvo by suing the Church in state court, and seeking a judgment resolving the ownership of various property rights, including intellectual property rights. The Episcopal Church counterclaimed for, among other things, trademark infringement and dilution.

Thereafter, the newly appointed Bishop vonRosenberg filed a federal lawsuit claiming that Bishop Lawrence falsely advertised himself as the Bishop of the Diocese despite having been removed from that post after the Diocese withdrew from the national church. Bishop Lawrence maintained that he acted properly in continuing to represent himself as the Bishop of the Diocese because the Diocese existed as an independent entity following its withdrawal from the Church.

Initially, the federal court agreed to abstain under the *Brillhart/Wilton* doctrine, which provides that when a complaint seeks only declaratory relief, federal courts have broad discretion to decline jurisdiction. Bishop vonRosenberg appealed. While the federal appeal was pending, the state court held that the disassociation was valid and that the Diocese, not the Church, owned the property at issue, including trademarks. The Church then appealed the state court order.

On the appellate front, the Fourth Circuit acted first, holding that the district court applied the wrong abstention doctrine. Because the federal complaint sought both declaratory and non-declaratory relief, the Fourth Circuit held that *Colorado River,* not *Brillhart/Wilton,* was the appropriate doctrine. Under *Colorado River*, a federal court may decline jurisdiction only under exceptional circumstances. The Fourth Circuit remanded for a determination of whether such exceptional circumstances existed.

On remand, the district court abstained again, and Bishop vonRosenberg appealed again. The Fourth Circuit once again ruled that the district court had erred, and that abstention was not appropriate under *Colorado River* because the state and federal cases, while raising overlapping issues, were not duplicative. Because neither vonRosenberg nor Lawrence (the federal parties) was a party to the state action, resolution of the state court case would not resolve all claims at issue in the federal litigation. Additionally, the false advertising claims were not in front of the state court. Thus, the Court determined that abstention was inappropriate. The Court did acknowledge, however, that both proceedings involved the same central issue – the validity of the Diocese's withdrawal – and remanded the case again for the district court to determine whether the federal claims were collaterally estopped by the state court's decision.

The state court decision remains on appeal and Bishop vonRosenberg's case is back in federal district court for the third time. Last month, he filed an amended complaint in the federal action, and Bishop Lawrence has answered. The district court cannot abstain this time, but could apply collateral estoppel if it wants to stay out of the religious fray. Whatever the outcome, the Fourth Circuit may not have seen the last of these dueling bishops.

The case is *vonRosenberg v. Lawrence*, 849 F.3d 163 (4th Cir. 2017).

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