

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION

LEXINGTON INSURANCE COMPANY,)	
)	
Plaintiff.)	Case No.: 2:12-cv-00097
)	
v.)	
)	
DATA AIRE, INC. and TRANE U.S. INC.,)	
)	
Defendants.)	

CONSENT MOTION TO STAY ALL PROCEEDINGS

Comes Now the Plaintiff, by and through undersigned counsel, pursuant to Western District of North Carolina Local Rule 7.1 and Federal Rule of Civil Procedure 7(b), and respectfully moves this Court for a Motion to Stay All Proceedings. This matter has been concurrently filed in The Cherokee Tribal Court for the Eastern Band of Cherokee Indians located in Qualla Boundary, Cherokee, North Carolina. The Plaintiff, with consent from all Parties, respectfully requests this Court to grant this Motion to Stay All Proceedings pending the Cherokee Tribal Court's determination of Plaintiff's Motion for Leave of Court to Amend the Proceedings and Defendant Trane U.S. Inc.'s Motion to Dismiss pursuant to Rules 12(1)(2) and (6) of the North Carolina Rules of Civil Procedure. In support, Plaintiff states as follows:

1. This action arises out of a loss of cooling event that occurred in Cherokee Casino and Hotel on or about November 30, 2009, in Cherokee, North Carolina. (Doc #1, Ex. A. ¶¶ 8-14). It is alleged that one of the HVAC units supplied and manufactured by Defendants failed, resulting in a loss of cooling to the video security/surveillance

areas. (Doc #1, Ex. A. ¶¶ 9,10). Plaintiff alleges that the failure of the loss of cooling damaged the hard drives and related equipment, causing Plaintiffs to sustain damages in excess of \$10,000.00. (Doc #1, Ex. A. ¶ 10).

2. This matter was filed in the District Court of Swain County on or about November 19, 2012, and subsequently removed to this Court on or about December 27, 2012, based upon diversity of citizenship upon motion by Defendant Trane. (Doc. #1).

3. Concurrently, this matter was filed in The Cherokee Tribal Court for the Eastern Band of Cherokee Indians located in Qualla Boundary, Cherokee, North Carolina on or about November 20, 2012.

4. On or about January 29, 2013, Defendant Data Aire filed their Answer, Cross-claims and Motion to Dismiss in the Cherokee Tribal Court.

5. On or about February 1, 2013, Defendant Trane filed their Answer, Cross-claims and Motion to Dismiss in the Cherokee Tribal Court.

6. On or about February 13, 2013, Defendant Trane filed its Answer to Defendant Data Aire's Cross-claims and their renewed Motion to Dismiss in the Cherokee Tribal Court.

7. On or about February 18, 2013, Defendant Data Aire filed its Amended Answer to Plaintiff's Complaint and Cross-claims against Defendant Trane in the Cherokee Tribal Court.

8. On or about February 27, 2013, Defendant Trane filed their Amended Motion to Dismiss, Answer and Cross-claim against Defendant Data Aire in the Cherokee Tribal Court.

9. On or about March 7, 2013, Plaintiff filed their Motion for Leave of Court to

Amend the Complaint in the Cherokee Tribal Court.

10. On or about March 13, 2013, Defendant Trane filed their Amended their Amended Motion to Dismiss and Answer to Cross-claims of Defendant Data Aire in the Cherokee Tribal Court.

11. On or about March 26, 2013, Defendant Data Aire filed their Response to Cross-claims of Defendant Trane in the Cherokee Tribal Court.

12. On or about March 29, 2013, Plaintiff and Defendants jointly filed a Notice of Hearing for Plaintiff's Motion for Leave to Amend the Complaint and Defendant Trane's Motion to Dismiss pursuant to Rules 12(1)(2) and (6) of the North Carolina Rules of Civil Procedure. Said hearing has been set for the June 12, 2013 Civil Docket in the Cherokee Tribal Court.

13. The Plaintiff requests, and the Defendants consent, the Federal Court Proceedings to be stayed in this matter until the Cherokee Tribal Court rules on Plaintiff's Motion for Leave of Court to Amend the Complaint and Defendant's Motion to Dismiss pursuant to Rules 12(1)(2) and (6) of the North Carolina Rules of Civil Procedure. Otherwise, the parties may engage in a time consuming, costly and burdensome litigation without being properly subject to this Court's jurisdiction.

14. A stay of the proceedings in this Court will not harm or prejudice any party to this action. Plaintiff respectfully suggests the parties would be best served if the Cherokee Tribal Court first rules on Plaintiff's Motion for Leave of Court to Amend Plaintiff's Complaint and Defendant's Motion to Dismiss pursuant to Rules 12(1)(2) and (6) of the North Carolina Rules of Civil Procedure before requiring the parties proceed with the action filed in this Court.

15. On or about March 29, 2013, this Court Ordered that the Initial Attorney Court be Stayed pending this Court's ruling on Plaintiff's Motion for Leave of Court to Amend the Complaint. (Doc. #20).

16. Pursuant to Local Rule 7.1(c), no brief is required in support of timely motions for extension of time. This motion seeks a stay of all proceedings until after the Cherokee Tribal Court rules on Plaintiff's Motion for Leave of Court to Amend the Complaint and Defendant's Motion to Dismiss pursuant to Rules 12(1)(2) and (6) of the North Carolina Rules of Civil Procedure. This motion is timely filed and is consistent with this Court's local rules.

CERTIFICATE OF CONFERENCE

The undersigned certifies that he conferred in good faith with opposing counsel in an effort to resolve the issues raised by the motion and all parties have consented to this motion.

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served by electronic notification generated by CM/ECF system on April _____, 2013, on all counsel or parties of record on the Service List Below.

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