

STATE OF MICHIGAN
COURT OF APPEALS

VALEO SWITCHES AND DETECTION
SYSTEMS, INC.,

Plaintiff,

v

EMCOM, INC.,

Defendant/Third-Party Plaintiff-
Appellant,

v

MASSACHUSETTS BAY INSURANCE
COMPANY, CITIZENS INSURANCE
COMPANY, HANOVER INSURANCE
COMPANY, and ALLMERICA FINANCIAL,

Third-Party Defendants-Appellees.

FOR PUBLICATION
September 26, 2006
9:00 a.m.

No. 264618
Oakland Circuit Court
LC No. 2005-064178-CK

Official Reported Version

Before: Owens, P.J., and Kelly and Fort Hood, JJ.

FORT HOOD, J. (*concurring in part and dissenting in part*).

MCR 2.116(C)(6) provides for summary disposition of a case when "[a]nother action has been initiated between the same parties involving the same claim." This court rule is a codification of the former plea of abatement by prior action. *Chapple v Nat'l Hardwood Co*, 234 Mich 296, 297; 207 NW 888 (1926). A plea in abatement is an objection to the jurisdiction of a court of general jurisdiction. *Nat'l Fraternity v Wayne Circuit Judge*, 127 Mich 186, 188; 86 NW 540 (1901). To utilize the plea in abatement, one must demonstrate another forum where the rights of the parties have become subject to judicial authority. *Id.* The *Chapple* Court delineated the purpose of the rule:

The courts quite uniformly agree that parties may not be harassed by new suits brought by the same plaintiff involving the same questions as those in pending litigation. If this were not so repeated suits involving useless expenditures of money and energy could be daily launched by a litigious plaintiff

involving one and the same matter. Courts will not lend their aid to proceedings of such a character, and the holdings are quite uniform on this subject. [*Chapple, supra* at 298.]

The construction and interpretation of a court rule is reviewed de novo and under the general rules of construction that apply to statutory review. *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 526; 672 NW2d 181 (2003). The goal is to give effect to the intent of the rule as expressed in the plain language. *Id.* at 526-527.

I agree that the plain language of the court rule does not contain any limitations on the location of the commencement of the other action. However, interpretative case law released both before and after the promulgation of the court rule at issue and its predecessors provides that the rule does not apply when the litigation has been filed in another state. Although we are not required to follow *Sovran Bank, NA v Parsons*, 159 Mich App 408; 407 NW2d 13 (1987), see MCR 7.215(J)(1), the *Sovran* Court relied on Michigan Supreme Court precedent. The Supreme Court has expressly stated that a "foreign court does not lose jurisdiction by reason of the pendency of litigation covering the same subject-matter in the court of another State." *In re Elliott's Estate*, 285 Mich 579, 584; 281 NW 330 (1938); see also *Owen v Owen*, 389 Mich 117, 120 n 2; 205 NW2d 181 (1973). I would not trace the history of Michigan Supreme Court precedent and distinguish the law. The role of an intermediate appellate court is limited, and we are not free to disregard clear precedent of the state's highest court. *Komendera v American Bar & Cabinet Manufacturers*, 39 Mich App 370, 377; 197 NW2d 511 (1972), rev'd on other grounds 390 Mich 305 (1973). Under the circumstances, I would not disregard *Sovran* in light of its citation of Michigan Supreme Court precedent.

/s/ Karen M. Fort Hood