IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BIG ONION TAVERN GROUP, LLC; *et al*.. Plaintiffs,	)	
v.	)	Hon. Judge Edmond Chang
SOCIETY INSURANCE, INC.	)	Case No. 20-cv-02005
Defendant.	)	

SOCIETY INSURANCE'S RESPONSE IN OPPOSITION TO JD1455 INC'S MOTION TO REASSIGN CASES AS RELATED

NOW COMES, Defendant, SOCIETY INSURANCE ("Society"), by and through its attorneys Thomas B. Underwood, Michael D. Sanders, Michelle A. Miner and Amy E. Frantz of Purcell & Wardrope, Chtd., and for its Response in Opposition to JDS 1455, Inc.'s Motion to Reassign Cases as Related, states as follows:

The plaintiff in *JDS 1455, Inc. v. Society Insurance*, No. 20-cv-02546 (Pallmeyer, J.) ("JDS"), pursuant to Northern District of Illinois Local Rule 40.4, asks to re-assign its case to this Court as related to the above-captioned matter. JDS has failed to meet the requirements of L.R.40.4, and its motion should be denied.

PROCEDURAL HISTORY

On March 27, 2020 a group of six policyholders ("the Big Onion Plaintiffs") initiated this case against Society, seeking: (1) a declaratory judgment that Society is required to cover their business interruption losses; (2) damages for Society's breach of contract in denying their claims; and (3) damages and costs for Society's bad faith claims handling. (Dkt. No. 1.) On May 8, 2020, the Big Onion Plaintiffs amended their Complaint to add 42 additional Plaintiffs. (Dkt. No. 29.)

The Big Onion Plaintiffs contend that their damages are unique to their individual businesses, which include businesses designated as both essential and non-essential under Illinois Governor Pritzker's executive orders. (Joint Status Report, Dkt. No. 84, at 3-4.) Plaintiffs purposely chose to bring direct claims, rather than join a class action, because they believe their claims warrant individual consideration and adjudication and to avoid a delay in the resolution of their case. (*Id*.)

As the Court is aware, there are two motions for transfer and coordinated or consolidated pretrial proceedings pending now before the JPML. Both motions seek transfer and consolidation of all federal court lawsuits relating to business interruption insurance coverage for losses sustained as a result of orders by state and local governmental authorities that attempt to limit the spread of COVID-19 by encouraging residents to "shelter in place" and placing limitations on the types of operations businesses may perform on their premises. Briefing on these motions will conclude on June 15, 2020 and it is anticipated that the motions will be heard during the JPML's July 30, 2020 session. Both the Big Onion Plaintiffs and Society have asked the Court to proceed with this case without waiting for the resolution of the motions before the JPML, and the Court has agreed. (Dkt. No. 85.)

On April 24, 2020, JDS, a single restaurant in Chicago, filed a putative class action complaint for breach of contract against Society Insurance, alleging that, *inter alia*, Society summarily denied coverage for its losses in connection with the COVID-19 pandemic. (Dkt. 1:20-cv-02546, No. 1.) As a restaurant, the business operated by JDS is designated as an essential business and is allowed to operate and serve food for off-premises consumption. On May 15, 2020, JDS filed its Motion to Reassign Cases as Related in which it sought to transfer its case, as well as a number of additional lawsuits pending in this district by different plaintiffs against Society. (Dkt. No. 79) On May 18, 2020, this Court denied JDS's motion in part, without

prejudice, with respect to its request to transfer the additional lawsuits, of which JDS is not a party. (Dkt. No. 81.) The Court entered a briefing schedule on JDS's Motion only with respect to its request to transfer the JDS litigation to this Court. (*Id.*)

LEGAL STANDARD

In a motion to reassign a case on the basis of relatedness, the moving party must satisfy the requirements of both L.R. 40.4(a) and 40.4(b). *Hollinger International, Inc. v. Hollinger, Inc.*, No. 04 C 0698, 2004 WL 1102327, at *1 (N.D. Ill. May 5, 2004). The court has discretion to reassign the case pursuant to LR 40.4. *Clark v. Ins. Car Rentals Inc.*, 42 F. Supp. 2d 846, 847 (N.D. Ill. 1999). Under L.R. 40.4(a), "[t]wo or more civil cases may be related if: "(1) the cases involve the same property; (2) the cases involve some of the same issues of fact or law; (3) the cases grow out of the same transaction or occurrence; or (4) in class-action suits, one or more of the classes involved in the cases is or are of the same." L.R. 40.4(a).

If the cases are determined to be related under L.R. 40.4(a), L.R. 40.4(b) requires additional criteria, all of which must be met, for the case to qualify for reassignment: "(1) both cases are pending in this Court; (2) the handling of both cases by the same judge is likely to result in a substantial saving of judicial time and effort; (3) the earlier case has not progressed to the point where designating a later-filed case as related would be likely to substantially delay the proceedings in the earlier case; and (4) the cases are susceptible of disposition in a single proceeding." *See also, Clark*, 42 F. Supp. 2d at 848.

Under 40.4(b)(2), the judicial savings alleged by the moving party must be substantial; a mere assertion that some judicial time and effort would be saved by reassignment is insufficient. *Hollinger*, 2004 WL 1102327 at *2 (citing *Lawrence Jaffe Pension Plan v. Household Int'l, Inc.*, No. 02 C 5893, 2003 WL 21011757 at *2 (N.D. Ill. May 5, 2003)). Likewise, if the cases will

require different discovery, legal findings, defenses or summary judgment motions, it is unlikely that reassignment will result in a substantial judicial savings. *See Hollinger,* 2004 WL 1102327 at *2; *Donahue v. Elgin Riverboat Resort*, No. 04 C 816, 2004 WL 2495642 at *1 (N.D. Ill. Sept. 28, 2004). Also, cases are rarely susceptible to disposition in one proceeding pursuant to 40.4(b)(4) where the cases involve unique issues of law and fact and those unique characteristics are dominant. *See Machinery Movers, Riggers, and Machinery Erectors, Local 136 Defined Contribution Retirement Fund v. Joseph/Anthony, Inc.*, No. 03 C 8707, 2004 WL 1631646 at *4 (N.D.Ill. July 16, 2004) (citing *Clark*, 42 F. Supp. 2d at 849); *see also Donahue*, 2004 WL 2495642 at *1 (motion to reassign denied where all cases involved Title VII claims, but each case was based on a unique set of facts different from every other case involved).

In addition, LR 40.4(c) requires that a motion to reassign: "(1) set forth the points of commonality of the cases in sufficient detail to indicate that the cases are related within the meaning of section (a) and (2) indicate the extent to which the conditions required by section (b) will be met if the cases are found to be related." These provisions "impose an obligation on the moving party to specifically identify why each of the four conditions under LR 40.4(b) is met." *Machinery Movers*, 2004 WL 1631646 at *3; *Lawrence Jaffe Pension Plan*, 2003 WL 21001757 at *3. Thus, a motion for reassignment may be denied if a party fails to sufficiently plead each of 40.4(b)'s requirements. *Machinery Movers*, 2004 WL 1631646 at *3

JDS HAS FAILED TO MEET THE L.R. 40.4 CONDITIONS FOR REASSIGNMENT

JDS has failed to establish that the conditions for reassignment set forth in section (b) of LR 40.4 (or section (a) for that matter) are met. Rather the movant repeatedly makes conclusory assertions that both cases concern the "same common operative set of facts and circumstances" and that the two cases are "related." Nothing in the motion, for instance, articulates how the

handling of both cases by the same judge would result in a substantial saving of judicial time and effort or how the Court could resolve the two cases in a single proceeding. Failure to satisfy this pleading requirement, in and of itself, serves as adequate grounds for denying the motion. *See, e.g., Lawrence E. Jaffe Pension Plan,* 2003 WL 21011757, at *3 (denying a motion to reassign because movant failed to articulate why the four conditions of LR 40.4(b) were met as required by LR 40.4(c)); *Davis v. Quebecor World,* No. 01 C 8014, 2002 WL 27660, at *3 (N.D. Ill. Jan.10, 2002) (same); *Daniels v. Pipefitters' Ass'n Local Union No. 597,* 174 F.R.D. 408, 411 (N.D. Ill. 1997) (same).

While the cases are both pending in this district, JDS has failed to demonstrate that: (1) handling of both cases would likely result in a substantial savings of judicial time and effort; (2) re-assgning the JDS case would not substantially delay the proceedings in the Big Onion case; and (3) the cases are susceptible of disposition in a single proceeding.

Each complaint contains allegations not found in the other that raise unique factual and legal issues. The JDS action will require extensive discovery and motion practice relating to class certification and would result in a *significant* delay in reaching the merits of the Big Onion case if the class-action discovery, briefing and certification schedule were imposed on that case, and reassignment should be denied on this basis alone. *See, e.g., Williams v. Walsh Constr.,* 05 C 6807, 2007 WL 178309, at *3 (N.D. Ill. Jan. 16, 2007) (J. Darrah) (denying motion for reassignment of a class action to related non-class action). Additionally, the class action plaintiffs may consist of a wide range of businesses with different circumstances and claims. The types of loss claimed by, for example, a shuttered dentistry practice differ from losses allegedly sustained by a restaurant that continued to provide take-out services under government orders regarding the pandemic. These types of variations weigh against transfer, as any potential damages

calculations would necessarily require highly individualized factual inquiries and expert analysis and would not be susceptible to common proof or inquiry.

Moreover, all of the Big Onion Plaintiffs are Illinois citizens and under Illinois choice-of-law prinicples applicable to insurance contracts, the interpretation of their policies will be governed by Illinois law. *See Lapham-Hickey Steel Corp. v. Protection Mut. Ins. Co.*, 655 N.E.2d 842, 845 (Ill. 1995). The putative class definition in JDS, in contrast, broadly covers any insured that "had in place a Society Insurance insurance policy, containing coverage for Civil Authority losses that were within the scope of or impacted by the Closure Orders." (Dkt. No. 79-5, ¶ 41.) "Closure Orders" refers to executive orders entered by the Governors of the states of Illinois, Indiana, Wisconsin, Iowa, and Tennessee; thus, JDS's putative class will include members from five different states. Under Illinois choice-of-law principles, it is very likely that resolving the JDS class action will require the application of the law of each of these states and separate coverage determinations for each state. Thus the JDS action will involve different legal issues and different factual issues, such as the different requirements of the various states's executive orders and how they impacted different industries. Consequently, the cases are not susceptible of a disposition in a single proceeding and reassignment is unlikely to lead to substantial gains in judicial economy.

Because the Big Onion and JDS actions will require different legal findings, JDS has failed to establish that (1) reassignment will likely result in a substantial savings of judicial time and effort; (2) re-assgning the JDS case would not substantially delay the proceedings in the Big Onion case; and (3) the cases are susceptible of disposition in a single proceeding.

The Court Should Decline Reassignment Due to the Pending MDL Motions

In the alternative, the Court should deny JDS's Motion to Reassign Cases as Related with leave to re-file, if appropriate, after the Joint Panel on Multi-district Litigation has resolved the

pending motions for centralization. Although Society feels that centralization is inappropriate, there is no way to know, at this point, what the JPML will decide. There would be no judicial efficiency in re-assignment followed by a potential transfer for coordinated proceedings to another judge, either in the Northern District of Illinois or in another forum. If the Court is not inclined to deny JDS's motion, Society requests that the Court either deny it with leave to re-file or defer consideration of it until after the JPML's decision.

Respectfully submitted,

SOCIETY INSURANCE

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