



## Linlor v. Holman et al

2024 | Cited 0 times | D. Kansas | May 3, 2024

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

JAMES LINLOR )

Plaintiff, ) v. ) Case No. 24-1001-DDC-GEB JOHN HOLMAN, et al., ) Defendants. ) MEMORANDUM  
AND ORDER This matter comes before the Court on Defendants John Holman, Marcella Warner  
Holman, Black Diamond Angus Ranch Partnership, Black Diamond Angus Ranch LLC, Warner  
Angus Ranch Morgans, Aaron Kite, and Ansel Kay Barngrover Consolidate (ECF No. 7 Bifurcate and  
Stay Case Elements Related to Defendants Kite and Barngrover (ECF No.

19). These Motions are fully briefed 1

and the Court is ready to rule. For the reasons set forth below, the Court finds both Motions  
premature, and thus DENIES WITHOUT PREJUDICE TO REFILEING both Motions.

I. On January 23, 2024, Defendants, pursuant to Fed. R. Civ. P. 42(a), filed a Motion to Consolidate the  
present case with Holman, et al. v. Future Growth, LLC et al., Case No. 24-CV-1012-EFM-TJJ, which  
was removed from Kansas State Court to Federal Court on

1 See ECF Nos. 18, 28, and 34. January 17, 2024. 2

However, on February 29, 2024, Defendants filed a Motion for Judgment on the Pleadings or to  
Dismiss for Failure to State a Claim Upon Which Relief Can be Granted 3

. The Dispositive Motion asks the Court to dispose of this case in its entirety by either granting  
judgment for Defendants or dismissing all of Pla

Under Fed. R. Civ. P. 42(a), if actions before the court involve a common question of law or fact, the  
court may consolidate the actions. The decision whether to consolidate is left to the sound discretion  
of the trial court. 4

xercising its discretion, the court 5



## Linlor v. Holman et al

2024 | Cited 0 times | D. Kansas | May 3, 2024

generally weighs the saving of time and effort that consolidation would produce against any inconvenience, delay, or expense tha

6 Courts also consider (1) whether the relief sought varies substantially between the two actions; (2) whether defendants are being sued in different capacities; and (3) what would be gained by consolidation and what injury would be suffered by failure to

2 ECF No. 7. 3 ECF No. 35. 4 ns, Inc., No. 11-2683-JAR-KMH, 2012 WL 1825222, at \*1 (D. Kan. May 18, 2012) (citing Shump v. Balka, 574 F.2d 1341, 1344 (10th Cir.1978)). 5 Id. (quoting McCoy v. Whirlpool Corp., No. 02 2064 KHV, 2003 WL 124531, at \*2 (D. Kan. Jan. 12, 2003)). 6 Id. (quoting C.T. v. Liberal Sch. Dist., 562 F.Supp.2d 1324, 1346 (D.Kan.2008) (citing 9A Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 2383, at 35 36 (3d ed.2008))). consolidate. 7

The party requesting consolidation bears the burden of showing that the balance weighs in favor of consolidation. 8

the Court finds that judicial economy would not be served by consolidation at this time. Instead, judicial efficiency is best served by deciding the Dispositive Motion prior to any consolidation. A favorable ruling on the Dispositive Motion could resolve this case in its entirety, making consolidation unnecessary. If, however, the Court denies the Dispositive Motion, Defendants may renew their request for consolidation. 9

Alternatively, the ruling could narrow the claims, making any renewed consolidation motion, if Defendants find one necessary, more focused. While both cases deal with real estate in Ford County, Kansas, the present action is much more encompassing in terms of claims presented, relief sought, and defendants included. For example, in this Complaint, Plaintiff alleges a myriad of claims against Aaron Kite and Ansel Kay Barngrover, the attorney and his legal assistant, representing the Holmans in the removal case. 10

While the Holmans are parties in both cases, Kite and Barngrover are not. If the Court, in ruling on the Dispositive Motion, should dismiss the claims against

7 Id. (citing Shump, 574 F.3d at 1344; Lane v. United States, Nos. 90 4228 S, 90 4229 S, 1991 WL 105204, at \*1 (D. Kan. May 28, 1991)). 8 Id. (citing Blagg v. Line, Nos. 09 CV 0703 CVE FHM, 09 CV 0708 TCK PJC, 10 CV 0502 GKF PJC, 2010 WL 3893981, at \*1 (N.D. Okla. Sept. 23, 2010) (citing Bank of Montreal v. Eagle Assocs., 117 F.R.D. 530, 532 (S.D.N.Y.1987))). 9 See id. at \*1-2 (denying without prejudice to refiling a motion to consolidate due to pending motions to dismiss and transfer). 10 See generally ECF No. 1. Kite and Barngrover as premature, but allow certain other claims to proceed, a decision on consolidation would be more appropriate at that time.



## Linlor v. Holman et al

2024 | Cited 0 times | D. Kansas | May 3, 2024

II. Stay In his Motion to Bifurcate and Stay, Plaintiff requests that his claims against Kite and Barngrover be separated under Fed. R. Civ. P. 42(b) into another case and stayed pending resolution of the removal action. 11

court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third- party claims. 12 to decide

claims will proceed.

IT IS THEREFORE ORDERED Motion to Consolidate (ECF No. 7 Bifurcate and Stay Case Elements Related to Defendants Kite and Barngrover (ECF No. 19) are DENIED WITHOUT PREJUDICE TO REFILEING. IT IS SO ORDERED. Dated May 3, 2024, at Wichita, Kansas. s/ Gwynne E. Birzer  
GWYNNE E. BIRZER United States Magistrate Judge

11 ECF No. 19 at pp. 1-2. 12 Emphasis added.

