



King v. Kottemann Law Firm et al

2020 | Cited 0 times | M.D. Louisiana | November 30, 2020

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF LOUISIANA

ERICKA BANKS VERSUS KOTTEMAN LAW FIRM, ET AL.

AND

CIVIL ACTION NO. 19-375-JWD-EWD

SHELITA KING VERSUS KOTTEMAN LAW FIRM, ET AL.

CIVIL ACTION NO. 20-340-BAJ-EWD

RULING AND ORDER Motion to Transfer and Consolidate (Doc. 9). Defendants, Kotteman Law Firm and Stanley Kotteman, seek to consolidate this matter with the action captioned Banks v. Kotteman Law Firm, et al., No. 19-00375-JWD-EWD, under Federal Rule of Civil Procedure 42(a)(2). The Motion is opposed (Doc. 14). For the reasons set forth below, motion is GRANTED.

I. BACKGROUND

Civil action 20- King and civil action 19- Banks are both actions filed on behalf of Louisiana consumers under the Fair Debt Collection 15 U.S.C. § 1692, et seq. Both actions involve the same attorneys, the same Defendants, functionally the same claims, a request for class certification, and call for the same relief.

Banks was filed on June 10, 2019. (19- Banks Banks alleged harms under the FDCPA under §§ 1692e, 1682f, and 1692g. Id. at ¶¶ 44-57. The Banks Complaint called for

the certification of two classes. The first proposed class is comprised of all individuals with addresses in Ascension Parish who were sent a debt collection letter by t owed is not paid within 30 days then the amount due will be owed plus reasonable attorney fees of 25% of principal and Id. at ¶ 35(a). The second proposed class is comprised of all individuals with addresses in Ascension Parish to whom the Defendant sent an initial debt collect letter that failed to identify the current creditor to whom the debt alleged owed was.

King was filed on June 5, 2020. The complaint in King is essentially identical to the complaint in



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Banks. King alleges the same unlawful debt collection practices as Banks, under the same statutory provisions and extends the proposed classes to include all individuals nationwide. (20- King ¶¶ 39(a), 39(c)). King also proposes an additional class consisting of individuals nationwide to whom Defendants sent a debt collection letter language, but only in connection with attempting to collect a consumer debt owed to

Baton Rouge Cardiology specifically. Id. at ¶ 39(b).

The cases are in slightly different stages. In Banks, an entry of default was entered against the Defendants. (19-00375, Doc. 8). However, a motion to set aside is pending with a motion to compel arbitration. (19-00375, Doc. 16). The King action was filed more recently and currently a motion to dismiss is pending in the matter. (Doc. 8). II. LEGAL STANDARD

If actions before the court involve a common question of law or fact, the court may consolidate the actions. Fed. R. Civ. P. 42(a)(2). Consolidation is discretionary. *Varnado v. Leblanc*, No. 3:13-00348-JWD-EWD, 2016 WL 320146, at *2 (M.D. La. Jan. 25, 2016). ; the actions do not lose their separate identity. *McKenzie v. United States*, 678 F.2d 571, 574 (5th Cir. 1982) and *economy Johnson v. Manhattan Ry. Co.*, 2389 U.S. 479, 497

(1933). However, consolidation may be properly denied in instances where the cases are at different stages of preparedness for trial. *Varnado*, 2016 WL 320146, at *2.

Factors relevant to a determination of consolidation include whether the actions are pending in the same court, the common identity of the parties, the existence of common questions of law or fact, the risk of confusion or prejudice that may result from consolidation, and the extent to which consolidation would promote juridical efficiency. Id. (citing *Arnold & Co., LLC v. David K. Young Consulting, LLC*, No. SA-13-CV-00146-DAE, 2013 U.S. Dist. LEXIS 50103, at *4, 2013 WL 1411773, at *12 (W.D. Tex. Apr. 8, 2013)). III. ANALYSIS

Here, the majority of the factors weigh in favor of consolidation. Both actions are pending before the same court, share common defendants, and have overlapping plaintiffs and counsel. Consolidation would conserve judicial resources because much of the discovery and testimony required in King would also be required in Banks, should the entry of default be set aside. There is also limited risk of confusion from consolidation, as the issues are largely the same.

Plaintiff opposes consolidation on the basis that the two cases are in different stages of litigation, as Defendant defaulted in Banks while King was filed relatively recently. Plaintiff also argues that consolidation premature in light of the motion to compel arbitration in Banks and the motion to dismiss in King. It is important to note identities of the cases, and the rights of the separate parties in them See *Hall v.*



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Hall, 138 S.Ct. 1118, 1125 (2018). The fact that the cases have slightly different litigation postures and perhaps may require different legal strategies does not outweigh the overwhelming interest in judicial economy that will be achieved by consolidation. Should the entry of default remain in Banks or should the motion to compel arbitration be granted in Banks, it will not affect the rights and obligations of the parties with respect to King. Therefore the motion is not premature, and consolidation is warranted. IV. CONCLUSION

Accordingly, IT IS ORDERED that Civil Action No. 20-00340 is transferred to Judge John W. deGravelles and Magistrate Judge Erin Wilder-Doomes and consolidated with the lead case, Civil Action No. 19-00375, styled Ericka Banks v. Kottemann Law Firm, et al.

Baton Rouge, Louisiana, this 23 rd

day of November, 2020.

JOHN W.
DEGRAVELLES, JUDGE BRIAN A. JACKSON, JUDGE UNITED STATES DISTRICT COURT
UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF LOUISIANA MIDDLE DISTRICT
OF LOUISIANA

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