

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED

AUG - 8 2003

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY CA DEPUTY

DIRECTV, Inc.,)
)
Plaintiff,)
)
-vs-)
)
JOE HURST, et al.,)
)
Defendants)

Case No. CIV-03-0674-F

DOCKETED

ORDER

On June 19, 2003, the court entered an order indicating that defendants may not be properly joined in this action under Fed.R.Civ.P. 20 and directing plaintiff, DIRECTV, Inc., to show cause why all named defendants other than the first named defendant in this action should not be dropped from this action and a separate complaint be filed against each of the dropped defendants.

On that same day, defendants, Jerry Stultz and Zachary K. McLain, separately filed motions to dismiss, seeking to dismiss plaintiff's complaint on the grounds that the defendants were improperly joined and venue is improper. Thereafter, on July 11, 2003, defendant, Joe Hurst, filed a motion to dismiss likewise seeking dismissal of plaintiff's complaint on the grounds that he was improperly joined and venue is improper.

In response to the court's show cause order and in response to the motions to dismiss of defendants, Stultz and McLain,¹ plaintiff contends that defendants were

¹It appears from the record that plaintiff has not responded to the motion to dismiss filed by defendant Hurst on July 11, 2003.

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properly joined in this action under Rule 20 and venue is proper. In regard to joinder, plaintiff asserts that the claims against defendants arise out of the same series of transactions or occurrences and contain common questions of law and fact. Plaintiff additionally maintains that continued joinder of these defendants promotes judicial economy. As to venue, plaintiff asserts that venue is proper because defendant, Tommy Ronio, resides in this district. Finally, addressing the court's proposed action if misjoinder is found, plaintiff asserts that under Fed.R.Civ.P. 21, the cure for misjoinder is severance rather than dismissal.

Fed.R.Civ.P. 20 provides in pertinent part:

... All persons ... may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.

The purpose of Rule 20 is promote trial convenience and expedite the final determination of disputes, thereby preventing multiple lawsuits. *See*, 7 C. Wright, A. Miller & M. Kane, Federal Practice and Procedure § 1652 (3d ed. 2001). Permissive joinder, however, is not applicable in all cases. Rule 20 imposes two specific requisites to the joinder of defendants: (1) a right of relief asserted against defendants in respect of or arising out of the same transaction or occurrence, or series of transactions or occurrences, and (2) any question of law or fact common to all defendants will arise in the action. Both of these requirements – transactional relatedness and commonality – must be satisfied. Watson v. Blankinship, 20 F.3d 383, 389 (10th Cir. 1994); 4 James Wm Moore, Moore's Federal Practice § 20.02(1)(a) (3d ed. 2003). While the requirement of commonality is easy to satisfy, the transactional relatedness requirement is more difficult to assess. *Id.* It generally requires a case by case analysis. *Id.* at

§ 20.05. Commonly, courts have applied the Fed.R.Civ.P. 13(a) “logical relationship” standard: “[A]ll ‘logically stated’ events entitling a person to institute a legal action against another generally are regarded as comprising a transaction or occurrence.” Mosley v. General Motors Corporation, 497 F.2d 1330, 1333 (8th Cir. 1974) (quoting 7 C. Wright, A. Miller & M. Kane, Federal Practice and Procedure, § 1653).

Upon further review, the court agrees with its initial assessment that defendants are not properly joined under Rule 20. The court does not agree with plaintiff that its right of relief against defendants arises out of the same series of transactions or occurrences. In the court’s view, the transactional relatedness requirement, even when read broadly, is not satisfied. It is true that plaintiff alleges that each defendant purchased a number of “illegal signal theft devices” and that these devices were purchased from distributors who filled their orders through Fulfillment Plus or USA Card Cleaners, Inc. The devices, however, were not purchased by defendants from the same distributor, were not purchased at the same time and were not shipped to the same location. It should also be noted that plaintiff’s right of relief against each defendant does not arise out of his alleged purchase or purchases of “illegal signal theft devices.” Rather, the right of relief asserted by plaintiff arises out of each defendant’s alleged designing, developing, manufacturing, modifying, importing, exporting, trafficking, distributing and/or selling of “illegal satellite signal theft devices.” In regard to the alleged wrongful conduct of distributing and/or selling “illegal satellite signal theft devices,” these devices were presumably distributed and/or sold by each defendant to unidentified individuals at different times and different locations. The alleged designing, developing, manufacturing, modifying, importing, exporting and trafficking also presumably occurred at different times and different locations. In light

of these alleged distinct and separate acts by defendants, the court cannot say that the claims against defendants are logically related so as to permit joinder under Rule 20.

In addition, permissive joinder is not warranted simply because identical causes of action are alleged against defendants. There is no allegation that the named defendants acted jointly or conspired with each other in any alleged wrongful conduct. In the absence of any alleged joint action or conspiracy, courts have concluded that joinder is inappropriate. *See, Tele-Media Company of Western Connecticut v. Antidormi*, 179 F.R.D. 75 (D. Conn. 1998) (in absence of conspiracy or joint action, cable television company not allowed to bring action against 104 individual defendants claiming each used altered converter to obtain unauthorized reception of premium or pay-per-view programming); *see also, Movie Systems, Inc. v. Abel*, 99 F.R.D. 129 (D. Minn. 1983) (in the absence of joint action, distributor of television programs, claiming unlawful pirating of microwave signals, not permitted to sue 1795 individuals by filing 18 separate actions with approximately 100 defendants in each action). Moreover, the discovery or detection by plaintiff of the alleged wrongful conduct through the execution of civil writs of seizure upon distribution centers and the voluntary disclosure or surrender of business records by certain distributors does not warrant permissive joinder. *See, Tele-Media Company of Western Connecticut*, 179 F.R.D. at 76 (“same transaction” requirement not met because each defendant’s alleged violation came to light as a result of an electronic countermeasure plaintiff instituted to detect and disable altered converters).

Because the court concludes that plaintiff’s right to relief against defendants does not arise out of the same series of transactions or occurrences, the court concludes that joinder of defendants is not permissible under Rule 20. Plaintiff’s joinder of defendants in this case, therefore, constitutes a misjoinder.

Fed.R.Civ.P. 21 provides in pertinent part:

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped . . . by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

Due to statute of limitations concerns, plaintiff urges the court to sever the claims against the misjoined defendants rather than to dismiss the misjoined defendants. Defendants Hurst, Stultz and McLain request dismissal. The court, upon careful consideration, concludes that dismissal of misjoined defendants, Stultz, McLain, Ronio, and John Does 1-10, is not appropriate. Nor is dismissal of the action against the first named defendant, Hurst, appropriate. Instead, the court concludes that the claims against defendants, Stultz, McLain, Ronio and John Does 1-10 should be severed from the claims against defendant, Hurst and **ORDERS** as follows:

1. Within 30 days from the date of this order, plaintiff shall file new separate complaints against defendants, Stultz, McLain and Ronio, and pay the appropriate filing fee for each of the complaints. The new complaints, if timely filed, shall relate back to the filing of the original complaint in this case.

2. Within 30 days from the date of this order, plaintiff shall also file a new amended complaint against defendant Hurst.

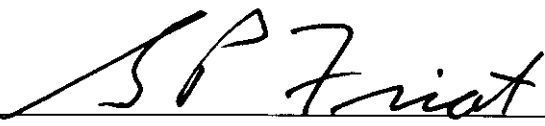
3. Upon the filing of the new complaints (and the reassignment of the new actions to the undersigned, if necessary) and the amended complaint, the court shall transfer the actions against defendants, Hurst, Stultz and McLain, who are residents of Tulsa, Oklahoma, to the Northern District of Oklahoma, pursuant to 28 U.S.C. § 1406, in light of the fact that venue will no longer be proper in this district for those actions.

4. As to the newly filed complaints against defendants, Stultz, McLain, and Ronio, plaintiff shall not be required to effect service of process pursuant to Fed.R.Civ.P. 4. Plaintiff shall be entitled to serve the pleading under the requirements of Fed.R.Civ.P. 5.

5. Defendants shall file an answer or otherwise respond to the new complaints or amended complaint within 20 days from the filing of the new complaint or amended complaint.

6. In light of the court's ruling, Defendant Zachary McLain's Motion to Dismiss filed June 19, 2003 (docket entry no. 14), Defendant Jerry Stultz's Motion to Dismiss filed June 19, 2003 (docket entry no. 15) and Defendant Joe Hurst's Motion to Dismiss filed July 11, 2003 (docket entry no. 24) are **DENIED**.

Entered this 8th day of August, 2003.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE