

STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

COLIANT CORPORATION, ADAM
BONISLAWSKI, DAVID MEERHAGEE, and
JOHN SWIATEK,

Plaintiff,

vs.

Case No. 2017-2521-CB

SKYPOINT VENTURES, LLC, PHILIP
HAGERMAN, BRYCE MOE, and
KARL THOMAS,

Defendants.

OPINION AND ORDER

Defendant Karl Thomas ("Defendant Thomas") has filed a motion to reassign this case to Judge Edward Servitto. Plaintiffs have filed a response and request that the motion be denied.

I. Factual and Procedural History

On May 8, 2017, Defendant Thomas filed a complaint in case no. 2017-1679-CK ("First Case"). The First Case was ultimately assigned to Judge Edward Servitto. On August 10, 2017, the First Case was dismissed without prejudice.

On July 14, 2017, Plaintiffs filed their complaint in this matter. On August 2, 2017, Defendant Thomas filed his instant motion to reassign this matter to Judge Edward Servitto. Plaintiffs have since filed a response to the motion in which they request that the motion be denied. On August 14, 2017, the Court held a hearing in connection with the motion and took the matter under advisement.

II. Arguments

In his motion, Defendant Thomas avers that Plaintiffs' claim in this matter arise out of the same transaction or occurrence as those in the First Case and that as a result this matter must be reassigned to Judge Servitto pursuant to MCR 8.111.

In response, Plaintiffs argue that this case does not arise out of the same transaction or occurrence as the First case and that as a result MCR 8.111 is not implicated. Further, Plaintiffs argue that this matter is qualified for the business court and that as a result it is statutorily required to be assigned to a business court judge pursuant to MCL 600.8035.

III. Law and Analysis

Defendant Thomas' motion is based on MCR 8.111(D), the court rule which governs how cases are assigned. The general rule governing the assignment of cases arising from the same transaction or occurrence as a previously filed case is MCR 8.111(D)(1). MCR 8.111(D)(1) requires such cases to be assigned to the same judge as the previously filed action. Accordingly, the preliminary question at issue in Defendant Thomas' motion is whether this matter implicates MCR 8.111(D)(1).

The First Case centered on loans Defendant Thomas gave Plaintiff Coliant Corporation ("Coliant") in order to fund Coliant's operations. Specifically, the First Case was based on Defendant Thomas' allegation that Plaintiff Coliant Corporation ("Plaintiff Coliant") had breached the terms of the loans in question by failing to make the required payments. In this matter, Plaintiffs have alleged that the Defendant Thomas' filing of his complaint in the First Case constituted part of a chain of events in which Defendants,

including Defendant Thomas, allegedly schemed/conspired to seize Plaintiff Coliant for a fraction of what it is worth.

“Actions arise from the same transaction or occurrence only if each arises from identical events leading to the other or others.” *Wayne County Prosecutor v Parole Bd*, 210 Mich App 148, 156; 532 NW2d 899 (1995). The First Case was based on Plaintiff Coliant's alleged failure to make the required payments under the loans to Defendant Thomas. While the loans in question allegedly played a role in Defendants allegedly wrongful actions, the issue of whether Plaintiff Coliant made the required payments under the loans is not at issue in this case. Consequently, while the two cases are tangentially related, they do not arise out of the same transaction of occurrence. As a result, MCR 8.111(D) does not require that this matter be reassigned to Judge Servitto. As a result, Defendant Thomas' motion must be denied.

IV. Conclusion

Based upon the reasons set forth above, Defendant Thomas' motion for reassignment is DENIED. This Opinion and Order neither resolves the last claim nor closes the case. See MCR 2.602(A)(3).

IT IS SO ORDERED.

Date: AUG 17 2017

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge