STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

FCA US **NO. 2016-155786-CB**
Plaintiff

V **HON. VICTORIA VALENTINE**

RIGHTTHING
Defendant

_____/

ORDER REGARDING PLAINTIFF FCA US LLC MOTION FOR SEPARATE TRIAL

At a session of Court
held in Oakland County, Michigan
on 4/19/2023

Plaintiff FCA US LLC, f/k/a Chrysler Group has filed a motion for separate trial under MCR 2.505(B).[1] Plaintiff wants one trial as to claims against Defendant RightThing (Counts I and II of the Second Amended Complaint) and another trial as to the claims against Defendants Kyyba and CES (Counts IV, V, VI, and VII of the Seconded Amended Complaint.) RightThing, Kyyba, and CES have filed responses opposing the motion. The motion should be denied.

Overview

Plaintiff FCA and Defendant RightThing entered into a Master Service Agreement ("MSA") dated May 16, 2011 whereby RightThing was to provide

[1] FCA filed a supplemental brief on April 13, 2023, without leave of the Court and contrary to MCR 2.119(A)(2)(b). The supplemental brief is herby struck.

"recruitment process outsourcing services" to Chrysler. In order to fulfill its obligations to Chrysler under the MSA, RightThing contracted with Defendant APC Workforce Solutions, LLC d/b/a ZeroChaos ("ZeroChaos"). Under the February 22, 2012 Management Services Agreement between RightThing and ZeroChaos. ZeroChaos agreed to provide certain services related to RightThing's temporary workforce program.

In March and April of 2012, ZeroChaos entered into "Staffing Company Agreements" with three Staffing Companies, Defendant CES; Defendant KYYBA; and Defendant Aerotek, Inc. The Staffing Companies agreed to "recruit, interview, select, hire and assign employees ("Staffing Company Worker"), who, in Staffing Company's judgment, are best qualified to perform the Work requested by ZeroChaos."

Chrysler was named as a defendant in four lawsuits arising out of motor vehicle accidents involving drivers alleged to be employees of the Staffing Companies.

In two Washtenaw County lawsuits, the plaintiffs, Laura Holliday and Gregory Green, alleged injuries arising out of an automobile accident occurring on or about July 19, 2012 and involving Bradley Erdman. It was alleged that, at the time of the accident, Erdman, an employee of CES, was driving a vehicle owned by Chrysler. The Holliday and Green suits were settled with Chrysler contributing

$456,250 and ZeroChaos' insurer, National Union Fire Insurance Company of Pittsburgh, contributing $456,250.

In a Texas lawsuit, the plaintiff, Dennis Olson, alleged that he suffered serious injuries as a result of a motor vehicle accident occurring on or about June 2014 and involving Adam Martin. It was alleged that at the time of the accident Martin, an employee of KYYBA, was driving a vehicle owned by Chrysler and was "performing work for [Chrysler] such that it is liable for Plaintiff's damages under the doctrine of respondeat superior." The Olson suit settled with Chrysler paying $2,500,000.

On September 28, 2016, the Estate of Ahmad Anique Ashraf filed a complaint in the Connecticut Superior Court, Judicial District of New London, alleging that Ashraf suffered fatal injuries which resulted from a motor vehicle accident involving James Sposito in December 2015. Sposito was allegedly employed by Defendant Aerotek, Inc. to perform services for Chrysler. The Ashraf Complaint against Chrysler was withdrawn on March 22, 2017.

Procedural History

Chrysler filed the instant action seeking to recover the amounts it paid to defend and settle the underlying lawsuits. The case was filed in this Court on October 28, 2016 against RightThing. The case was removed to federal court in December 2016. In January 2018 an amended complaint was filed adding Defendants

Zerochaos, CES, Kyyba, and Aerotek. The case returned to this Court in January 2019. In May 2019, a Second Amended Complaint was filed adding claims against two insurance companies. In November 2019, this Court's predecessor entered an Order denying Plaintiff's Motion for Leave to File a Third Amended Complaint.

Currently, only three Defendants remain in the case- RightThing, Kyyba, and CES.

Defendant RightThing: FCA filed a motion for summary disposition on Counts I and II of the Second Amended Complaint which are claims for Breach of Contract-Indemnification and Breach of Contract-Insurance against RightThing. The contract at issue is governed by Michigan law. This Court issued an Opinion and Order granting the motion as to the issue of liability only. Thus, the issue of damages remains outstanding as to RightThing.

Defendant Kyyba: FCA and Kyyba filed cross-motions for summary disposition on Count VI (Breach of Contract-Insurance) and Count VII (Breach of Contract-Indemnification). The contract at issue is governed by Florida law. In September 2022 this Court issued an Opinion and Order denying Kyyba's motion as to Count VI and granting Plaintiff's motion as to the issue of liability only. The Court also denied both Plaintiff's and Kyyba's motions for summary disposition as to

Count VII of the Second Amended Complaint. Thus, issues of liability and damages remain outstanding as to Kyyba.

Defendant CES: FCA and CES filed cross-motions for summary disposition on Counts IV (Breach of Contract-Insurance) and Count V (Breach of Contract-Indemnification) of the Second Amended Complaint. The contract at issue is governed by Florida law. In November 2022, this Court issued an Opinion and Order denying the cross-motions. Thus, the issues of liability and damages remain outstanding with regard to CES.

Analysis

Plaintiff argues that separate trials are necessary in this case because the only issue remaining as to Defendant RightThing is the issue of damages. Plaintiff asserts that a trial which included the claims against RightThing and the remaining claims against Kyyba and CES would be improper because "if the claims proceed jointly, a jury will have to comprehend and evaluate numerous facts and issues unrelated to the simple question of RightThing's liability for damages." This Court disagrees that separate trials are required in this case.

Pursuant to MCR 2.505(B):

> For convenience or to avoid prejudice, or when separate trials will be conductive to expedition and economy, the court may order a separate trial of one or more claims, cross-claims, counterclaims, third-party claims, or issues.

The exercise of the power to order separate trials is within the trial court's discretion, however, the power "should be exercised only upon the most persuasive showing that the convenience of all parties and the court requires such a drastic action or that prejudice to a party cannot otherwise be avoided than by such order of separation." *Danyo v Great Lakes Steel Corp*, 93 Mich App 91, 97; 286 NW2d 50 (1979). *See also LeGrende v Monroe County*, 234 Mich App 708, 719; 600 NW2d 708 (1999).

The Court agrees with Defendants that the circumstances of this case do not amount to a "persuasive showing" that separate trials should be ordered.

First, there is really no argument to be made that separate trials would be "conductive to expedition and economy" where the claims against RightThing and the Staffing Companies arise out of the same underlying lawsuits and the settlements made in those suits are relevant to Plaintiff's damage claim against all remaining Defendants. Separate trials would necessarily include repetition of evidence and witnesses regarding the underlying lawsuits.

Second, Plaintiff has not made a "persuasive showing" that separate trials are required to avoid prejudice to Plaintiff. As all of the remaining Defendants point out, it was Plaintiff's decision to add Kyyba and CES to the action in 2018. This decision was made even though the relationship between Plaintiff and RightThing and Plaintiff and the Staffing Companies are based upon different contracts. Moreover,

even knowing that different contracts (with different choice of law provisions) were involved, Plaintiff did not move for a separate trial until after the claims against all the remaining defendants were pending for five years. Additionally, because Plaintiff is seeking to recover on the same damages (cost to defend and indemnify the underlying lawsuits) from all the remaining Defendants there is the possibility of inconsistent verdicts if two trials are held. Lastly, there is no reason to assume that the jury would be unable to distinguish between the issues involved in the claims against each of the remaining Defendants.

In support of its motion Plaintiff relies on *LeGendre v Monroe County*, 234 Mich App 708; 600 NW2d 78 (1999). The Court agrees with the Defendants that *LeGendre* is distinguishable. In *LeGrendre* co-plaintiffs brought an action against Monroe County and the County Prosecutor's officer. The *defendants* moved for separate trials on claims made by co-plaintiffs. *Id.* at 710. The Court of Appeals found that the trial court did not abuse its discretion in ordering separate trials where the co-plaintiffs' claims arose from different circumstances and "different proofs, to a great extent" would be required to establish each case. *Id.* at 720.

In this case, as was discussed, it was Plaintiff who decided to proceed against all Defendants in the same cause of action. Additionally, as was discussed, there is a significant overlap in factual circumstances and the evidentiary proofs related to the claims of the Defendants.

The unpublished decision of the Court of Appeals in *S & S Builders v Kings Lane*, 2017 WL 722168 (Case Nos. 328654, 328745, Feb. 23, 2017) is not persuasive authority for Plaintiff's argument that a separate trial is required. That case involved the severance of certain claims and the consolidation of those claims in another pending lawsuit. The Court of Appeals found that the severance of claims was not authorized by MCR 2.505(B). Rather, the court found that the trial court properly severed the claim under MCR 2.207. Id. at p 2.

For the foregoing reason's Plaintiff' Motion for Separate Trial of Counts I and II of the Second Amended Complaint is DENIED. FCA's Supplemental brief filed on April 13, 2023, without leave of the court and contrary to MCR 2.119(A)(2)(b) is struck.

/s/Victoria A. Valentine