

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

DUANE PERKINS, et al.,

Plaintiffs,

vs.

**Case No.
04-2019-GTV**

RENT-A-CENTER, INC.,

Defendant.

MEMORANDUM AND ORDER

Plaintiff Duane Perkins and fourteen other Plaintiffs originally brought this case against Defendant Rent-A-Center, claiming that Defendant discriminated against them because of their race in violation of 42 U.S.C. § 1981, as well as other federal statutes. Since filing the case, some Plaintiffs have taken their claims to arbitration, and others have settled. Plaintiffs are current and/or former employees of Defendant who allege that Defendant engaged in a pattern and practice of racial discrimination in employment practices and policies.

The case is before the court on Defendant's motion to sever and transfer the claims of Plaintiffs Tony Baker, Shaun Maddox, Don McKnight,¹ Jehad Asad, and Rodney Jones (Doc. 19). Plaintiffs who are the subject of Defendant's motion were either employed exclusively in New York or Oklahoma. For the following reasons, the court grants the motion.

¹ Since the filing of the motion, the court has dismissed the claims of Don McKnight with prejudice.

Also related to the motion to sever and transfer is a motion for leave to join additional Plaintiffs (Doc. 67), a motion for summary judgment on the claims of Jihad Asad and Rodney Jones (Doc. 115), and a motion for summary judgment with respect to certain of Rodney Jones's claims (Doc. 161). The additional parties Plaintiffs seek to add are also in New York, and the question of whether to allow Plaintiffs to amend the complaint is more properly before the United States District Court for the Western District of New York than this court. The summary judgment motion regarding Jihad Asad and Rodney Jones is more properly before the United States District Court for the Northern District of Oklahoma. The court therefore does not rule on these motions, but directs the Clerk of the Court to transfer the motions with the claims of the respective parties.

Parties are properly joined under Fed. R. Civ. P. 20(a) when claims arise out of the same transactions or occurrences, and have common questions of law or fact. Rule 20(a) provides in part:

All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative 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 these persons will arise in the action.

The purpose of Rule 20(a) is "to promote trial convenience and expedite the final determination of disputes, thereby preventing multiple lawsuits." 7 Charles Alan Wright, et al., Federal Practice and Procedure § 1652 (3d ed. 2001). Rule 20(a) is to be construed broadly and "joinder of claims, parties, and remedies is strongly encouraged." Biglow v. Boeing Co., 201 F.R.D. 519, 520 (D. Kan. 2001) (quoting United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 724 (1966)).

Misjoinder is not grounds for dismissal. Fed. R. Civ. P. 21. Severance is the proper remedy for misjoinder and “[w]hether to sever claims under Rule 21 is within the court’s discretion.” Biglow, 201 F.R.D. at 519.

The first requirement for joinder is that the claims must “aris[e] out of the same transaction, occurrence, or series of transactions or occurrences.” Fed. R. Civ. P. 20(a). “‘Transaction’ is a word of flexible meaning. It may comprehend a series of many occurrences, depending not so much upon the immediateness of their connection as upon their logical relationship.” Mosley v. Gen. Motors Corp., 497 F.2d 1330, 1333 (8th Cir. 1974) (citation and internal quotation marks omitted); see also LASA Per L’Industria Del Marmo Societa Per Azioni v. Alexander, 414 F.2d 143, 147 (6th Cir. 1969). “[L]anguage in a number of decisions suggests that the courts are inclined to find that claims arise out of the same transaction or occurrence when the likelihood of overlapping proof and duplication in testimony indicates that separate trials would result in delay, inconvenience, and added expense to the parties and to the court.” 7 Wright, Federal Practice and Procedure § 1653. Several courts have held that the “same transaction or occurrence” requirement is met when the plaintiffs allege a pattern and practice of discrimination. Biglow, 201 F.R.D. at 520 (collecting cases).

The second requirement is that there must be a common question of law or fact. Fed. R. Civ. P. 20(a). Not *all* questions of law or fact need be common; only *some* question must be common. Mosley, 497 F.2d at 1334. Many courts have found that a common allegation of discriminatory conduct is sufficient to satisfy the “common question” requirement. Alexander v. Fulton County, 207 F.3d 1303, 1324 (11th Cir. 2000) (citing cases). But the prejudicial effect

of other parties' discriminatory experiences may outweigh their probative value where the timing of the acts is different, the supervisory authority is different, or the location is different. Id. (citing cases).

In the instant case, Plaintiffs have alleged that Defendant engaged in a pattern and practice of discrimination. On its face, the claim appears to meet both elements of Rule 20(a). There are several distinguishing characteristics, however, between this case and the cases holding that joinder is appropriate. Here, there is one Plaintiff who was employed in Kansas. Two were employed in Buffalo, New York, and two in Tulsa, Oklahoma. The dates of employment are divergent, as are the positions held. The supervisors within each region are generally the same, with some exceptions, but the supervisors and directors for the Kansas Plaintiff are different from those of the New York Plaintiffs and the Oklahoma Plaintiffs. The court determines in this case that the claims do not meet the two-part test of Rule 20(a). Continued joinder of the parties would not "promote trial convenience and expedite the final determination of disputes." Biglow, 201 F.R.D. at 519.

Where claims have not been properly joined under Rule 20, the court may sever the claims pursuant to Rule 21. Whether to sever claims under Rule 21 is within the court's discretion. K-B Trucking Co. v. Riss Int'l Corp., 763 F.2d 1148, 1153 (10th Cir. 1985); Biglow, 201 F.R.D. at 519. "Severance is particularly appropriate where . . . the court determines venue should be transferred as to some claims or parties." Tab Express Int'l, Inc. v. Aviation Simulation Tech., Inc., 215 F.R.D. 621, 624 (D. Kan. 2003). Here, because the New York and Oklahoma Plaintiffs were not properly joined, the court severs the claims of those Plaintiffs.

The court also determines that transfer of venue is appropriate in this case. “[F]or the convenience of the parties and witnesses,” the court may transfer actions to other districts. 28 U.S.C. § 1404(a). Transfer is proper for claims that have been severed under Rule 21. Chrysler Credit Corp. v. Country Chrysler Inc., 928 F.2d 1509, 1518-19 (10th Cir. 1991).

Among the factors [a district court] should consider is the plaintiff’s choice of forum; the accessibility of witnesses and other sources of proof . . . the cost of making the necessary proof; questions as to the enforceability of a judgment if one is obtained; relative advantages and obstacles to a fair trial; difficulties that may arise from congested dockets; the possibility of the existence of questions arising in the area of conflict of laws; the advantage of having a local court determine questions of local law; and, all other considerations of a practical nature that make a trial easy, expeditious, and economical.

Id. at 1516 (citing Tex. Gulf Sulphur Co. v. Ritter, 371 F.2d 145, 147 (10th Cir. 1967)).

Although Plaintiffs chose the District of Kansas as their forum, nearly every other relevant factor works against them. New York and Oklahoma witnesses may not be available for trial, possibly leading to a trial laden with videotaped depositions. Defendant is likely to lose the advantage of presenting live testimony, while Plaintiffs presumably will be able to testify live. The costs of travel, particularly to and from New York, will be expensive. And the jury will have to keep track of claims involving three separate sets of co-workers and management. The fact that all of the claims revolve around alleged discrimination, even a pattern and practice of discrimination, simply is not enough to outweigh the practical difficulties that a single trial in Kansas presents.

For these reasons, the court determines that a transfer of claims under 28 U.S.C. § 1404 is appropriate. The New York Plaintiffs’ claims will be more appropriately heard in a New York

federal court, and the Oklahoma Plaintiffs' claims will be more appropriately heard in an Oklahoma federal court.

IT IS, THEREFORE, BY THE COURT ORDERED that Defendant's motion to sever and transfer claims (Doc. 19) is granted. The Clerk of the Court is directed to transfer the claims of Plaintiffs Tony Baker and Shaun Maddox and the motion to add parties (Doc. 67) to the United States District Court for the Western District of New York. The Clerk is further directed to transfer the claims of Jihad Asad and Rodney Jones and the summary judgment motions regarding those claims (Docs. 115 and 161) to the United States District Court for the Northern District of Oklahoma.

Copies or notice of this order shall be transmitted to counsel of record.

IT IS SO ORDERED.

Dated at Kansas City, Kansas, this 21st day of September 2004.

/s/ G. T. VanBebber
G. Thomas VanBebber
United States Senior District Judge