

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

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| DONNA ROJAS, et al., |) | |
| Plaintiffs, |) | |
| v. |) | Case No. 467322V |
| MANCHESTER FARM |) | |
| COMMUNITY ASSOCIATION, INC., et al., |) | |
| Defendants. |) | |

MEMORANDUM OPINION AND ORDER

Before the court is Defendant Hunting Creek Homeowners’ Association, Inc.’s (“HCHA”) Motion to Sever Trial (DE 42) and Memorandum of Law (DE 95), and Plaintiffs’ Opposition (DE 56) and Supplement to its Opposition (with exhibits) (DE 97). The court has considered HCHA’s Motion, the briefing of the parties, and the arguments of counsel on August 10, 2020. For the reasons below, HCHA’s Motion will be GRANTED.

In this putative bilateral class action, eight named Plaintiffs, living in four of Maryland’s counties, are each owners of homes or condominiums that are subject to homeowners’ association or condominium association dues. The eight named Defendants¹ are the homeowners’ or condominium associations (collectively, “HOA’s”) to which dues were owed,

¹ Plaintiff Donna Rojas resided at Manchester Farm in Montgomery; Plaintiff Luis Santizo apparently resided at Stonehedge in Prince George’s; Plaintiff Jason Tonkins apparently lived at Acton Village in Charles; Plaintiff Milly Terry apparently lived at Belle Point in Prince George’s; Plaintiff Eugene (sometimes spelled “Eugene” in the Second Amended Complaint) Marty Thompson apparently lived at Huntington in Charles; Plaintiff Darlene (sometimes spelled “Darlean” in the Second Amended Complaint) Thompson apparently lived at Hunting Creek in St. Mary’s; and Plaintiff Loila S. Samuel-Horsfall apparently lived at Brentwood in Charles. Plaintiff Cumanda Cisneros lived in Montgomery, but she does not allege precisely where.

the one law firm that represented the HOA's, and the individual lawyers in that firm (collectively, "Lawyers"). Seeking a variety of remedies, each Plaintiff alleges that the applicable HOA required him to sign a confessed judgment promissory note to enable the HOA or the Lawyers to collect on a consumer debt allegedly owed by him. Specifically, in their Second Amended Complaint, Plaintiffs seek Declaratory Judgment (Count I). Further, they allege that Defendants' conduct violates the Maryland Consumer Protection Act (Count II); the Maryland Consumer Debt Collection Act (Count III); and Maryland's Consumer Loan Law (Count IV). Plaintiffs also allege that Defendants improperly Had and Received Money from Plaintiffs (Count VII). Against the lawyers only, Plaintiffs allege violation of the Maryland Consumer Debt Collection Act (Count V) and Fraud (Count VI).

With the instant Motion, Defendant HCHA asserts that they are improperly joined with the other Defendant HOA's. HCHA asks that the claims against it, its third-party claims against the Lawyers, its counterclaim against Plaintiff Darlene Thompson, and her claims against the Lawyers, become a separate case or at least the subject of separate, and far shorter, trial in this case. Plaintiffs contend that joinder is proper, in large measure because the Lawyers represented all Defendant HOA's and used similar, if not identical, confessed judgment promissory notes to collect consumer debts from Plaintiffs. As a consequence, Plaintiffs add, their claims raise common questions of law and fact that warrant permissive joinder. Plaintiffs' arguments fail.

The mere presence of common questions of law or fact is insufficient to warrant permissive joinder of defendants. In addition to such commonality, Maryland Rule 2-212(a) requires that joined defendants face claims that seek ". . . relief jointly, severally, or in the alternative in respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences. . ." Maryland Rule 2-212(a). To satisfy this requirement, Plaintiffs

must allege that “. . . ‘Defendants caused the *same harm* (rather than the *same type of harm*)’ . . . [.]” *Patrick Collins, Inc. v. Does*, 2012 WL 1144918 (D. Md. April 4, 2012)(citing *Arista Records, LLC v. Does 1-11*, 2008 WL 4823160 at 6 (N.D. Ohio Nov. 3, 2009)(emphasis in original)).² See also *Hard Drive Prods. v. Does 1-30*, 2011 WL 4915551 (E.D. Va. Oct. 17, 2011). Where neither defendant can be held liable for the injuries allegedly caused by the other, Plaintiff cannot join them in one suit. See *Georges, et ux. v. Duncan, et al.*, 16 Md. App. 256, 259 (1972)(citing Rule 313 d 1).

Measured against Rule 2-212(a), joinder of HCHA is not permitted because Plaintiffs allege only the same type of, not the same, harm at the hands of the HOA’s. In one section per Plaintiff, the Second Amended Complaint details what happened to each Plaintiff, *see, e.g.*, Plaintiffs’ Second Amended Complaint at Paragraphs 207-226, and while these sections describe similar kinds of harm, no Plaintiff pins blame for the harm he sustained beyond his HOA or the Lawyers that represented it. In other words, Plaintiffs allege eight sets of harm, all similar but separate, committed by eight HOA’s individually, not one harm committed against one Plaintiff by eight HOA’s, or one harm committed against eight Plaintiffs by eight HOA’s. None of the HOA’s is alleged to be liable for harm caused by another. Plaintiffs conceded as much when they agreed that each HOA is not jointly and severally (or jointly or severally) liable for the wrongs allegedly caused by other HOA’s.³

To overcome the conclusion that joinder of HCHA is not permitted, Plaintiffs point principally to *DIRECTTV, Inc. v. Barrett*, 220 F.R.D. 630 (D. Kan. 2004) and *Moore v. Comfed*

² Because this Rule is styled after Rule 20 of the Federal Rules of Civil Procedure, federal opinions are often persuasive in analyzing severance issues.

³ Plaintiffs made this concession at the August 10, 2020 hearing.

Sav. Bank, 908 F.2d 834 (11th Cir. 1990). Having reviewed both, the Court is not persuaded by them because they focus on what comprises “. . . the same transaction, occurrence, or series of transactions or occurrences,” but do not explicitly address the additional requirement of “relief jointly, severally, or in the alternative” that appears in FRCP 20 and Maryland Rule 2-212(a).⁴

Beyond these two cases, Plaintiffs suggest that the instant motion is premature while discovery is ongoing. Specifically, Plaintiffs contend that HCHA is attempting to avoid discovery of other homeowners against whom it used confessed judgment promissory notes. Even if Plaintiffs are correct, Plaintiffs have not suggested how discovery about harm to other HCHA homeowners makes the other HOA’s liable for that harm. Such discovery may lead to other cases or claims against HCHA, but not to claims against the other HOA’s. In any event, avoiding discovery would not be a basis for permitting joinder where it is otherwise inappropriate.

Finally, at hearing on August 10, 2020, Plaintiffs raised the new argument that severance could somehow lead to inconsistent decisions due to the operation of *res judicata*. That argument not appearing in Plaintiffs’ written submissions, the Court declines to address it here.

ORDER

Wherefore, for the foregoing reasons, it is this 17th day of August, 2020, by the Circuit Court for Montgomery County, Maryland, hereby

ORDERED, that Defendant Hunting Creek Homeowners’ Association, Inc.’s Motion to Sever (DE ⁴²36) be and is hereby GRANTED; and it is further

⁴ The other federal cases Plaintiffs cite are not persuasive either, as they are factually inapposite or, as above, do not explicitly address the joint and/or several liability component of FRCP 20.

ORDERED, that (a) Darlene Thompson's claims against Hunting Creek Homeowners' Association, Inc.; (b) Darlene Thompson's claims against Andrews & Lawrence Professional Services, LLC, Kary B. Lawrence, Esquire and Torin K. Andrews, Esquire; (c) Hunting Creek Homeowners' Association, Inc.'s claims against Andrews & Lawrence Professional Services, LLC, Kary B. Lawrence, Esquire and Torin K. Andrews, Esquire; and (d) Hunting Creek Homeowners' Association, Inc.'s claims against Darlene Thompson, together with all defenses to the aforesaid claims (a) – (d), be and are hereby SEVERED and shall proceed in a separate civil action under Case No. 483185V; and it is further

ORDERED, no later than 15 days after the entry of this Order, Darlene Thompson, HCHA, Andrews & Lawrence Professional Services, LLC, Kary B. Lawrence, Esquire, and Torin K. Andrews, Esquire, (hereinafter "the Thompson/HCHA parties") shall amend their pleadings to reflect the above severance, and file said pleadings in Case No. 483185V ; and it is further

ORDERED, that all further pleadings and papers pertaining to the claims and defenses above between the Thompson/HCHA parties shall be filed in Case No. 483185V; and it is further

ORDERED, that all parties in Case No. 483185V shall appear remotely before the court for further scheduling hearing on September 8, 2020 at 8:30 a.m.; and it is further

ORDERED, that a copy of this Memorandum Opinion and Order shall be filed in Case No. 483185V.

Anne K. Albright
Judge
Circuit Court for Montgomery County, Maryland