

MARSHALL A. BELL,

vs.

Defendants.

JURY TRIAL DEMANDED

THIS MATTER is before the Court on Defendants' Motion to Dismiss (filed on March 11, 2015) and Plaintiff Marshall A. Bell's Opposition to Motion to Dismiss & Motion to Consolidate (filed on May 7, 2015). For the reasons set forth herein, the Defendants' Motion to Dismiss will be granted and the Plaintiff's Motion To Consolidate will be denied.

This case concerns a dispute between Marshall Bell, a formerly active member of the Virgin Islands Bar, and attorney Lee Rohn over the sharing of legal fees. Bell alleges that he and Rohn entered into a fee-sharing arrangement in 2006 for the joint representations of two different personal injury plaintiffs, David Pettigrew and Luis Moquete-Mella, whereby Bell and Rohn divided the duties of representing these clients between them (with Bell primarily responsible for client relations and Rohn for trial practice). Bell then left the practice of law in the Virgin Islands in 2009 while

these representations were still pending. Pettigrew's case settled fully by the end of 2011 and Moquete-Mella's is still pending. Bell and Rohn now dispute how much of the final settlement and judgment amounts are, or will be, owed to Bell.

Rohn's firm acted first and filed suit against Bell's firm in the St. Croix Division of the Superior Court in November 2012, asking for a declaratory judgment on whether and how much Rohn owed Bell for the Pettigrew representation. *Rohn and Associates, LLC v. Marshall A. Bell and Associates, P.C.*, No. SX-12-CV-482 (V.I. Super. Ct. filed on Nov. 30, 2012). Rohn argued that Bell failed to perform under the fee-sharing agreement and, moreover, that Bell's inactive status precluded his sharing in attorney fees. In response, Bell moved the St. Croix court either to dismiss the case for improper venue or to transfer the case to his preferred venue in St. Thomas. Motion to Dismiss for Improper Venue or in the Alternative Motion to Transfer, *Rohn and Associates, LLC v. Marshall A. Bell and Associates, P.C.*, No. SX-12-CV-482 (V.I. Super. Ct. Apr. 4, 2013). That motion is still pending. In addition, Bell later brought counterclaims for breach of contract and declaratory judgment for the Pettigrew and Moquete-Mella representations. Answer at 2-6, *Rohn and Associates, LLC v. Marshall A. Bell and Associates, P.C.*, No. SX-12-CV-482 (V.I. Super. Ct. Apr. 15, 2014). The St. Croix case is presently before the Honorable Judge Robert A. Molloy.

Then, on December 12, 2014, while the prior case was still pending in St. Croix, ~~Bell filed the present case in the Division of St. Thomas and St. John.~~ His Complaint

pleads causes of action for breach of contract and wrongful enrichment for the now-settled Pettigrew representation and for anticipatory breach of contract for the still-pending Moquete-Mella representation.

Now, Rohn moves to dismiss (or stay) this case on account of the parallel action before Judge Molloy in St. Croix, arguing that Bell's claims here were compulsory counterclaims in the St. Croix case and that the "first-filed" rule against duplicate law suits counsels in favor of this Court's abstention. Bell's reply does not address the merits of Rohn's motion head-on, but rather requests that this Court transfer Judge Molloy's St. Croix case to St. Thomas and then consolidate it here with this action. Bell argues, as he did in the St. Croix case, that St. Croix is an improper venue because Bell is a resident of St. Thomas, the contract in dispute was signed in St. Thomas, and the underlying representations took place in St. Thomas. By contrast, Rohn's residence is the only connection to St. Croix.

II. Analysis

Rohn argues, and Bell appears to concede,¹ that the issues presented in this case are substantively identical to those in the St. Croix action presently before Judge Molloy. This Court agrees.² Further, the Court considers it obvious and

¹ Bell's moving to consolidate necessarily implies a belief that the two cases "involve a common question of law or fact." Fed. R. Civ. P. 42 (as incorporated by Super. Ct. R. 7).

² There may be marginal differences in the causes of action. However, they recapitulate the same factual and legal issues raised in the breach of contract counterclaims in St. Croix. Even if the Court is incorrect and there are legitimately unique aspects to the causes of action in St. Thomas, they nevertheless ought not to be considered

uncontroversial that two judges in the same judiciary should not preside over parallel litigations of the same dispute simultaneously. To do otherwise would be an inefficient waste of judicial resources (and the parties'). *See Crosley Corp. v. Hazeltine Corp.*, 122 F.2d 925, 930 (3d Cir. 1941). It also opens up the risk of potentially conflicting rulings and inconsistent adjudications of essentially the same factual and legal issues. *Id.*

Therefore, in order to decide Rohn's Motion to Dismiss, the key question here is: which judge should handle the dispute? The Court accepts Rohn's invitation to apply the "first-filed" rule. This common sense rule, which provides that as between two judges with jurisdiction, the judge "which first has possession of the subject must decide it," has an ancient pedigree in the United States, going back at least as far as Justice John Marshall's opinion in *Smith v. M'Iver*, 22 U.S. (9 Wheat.) 532, 535 (1824). Similarly, it is the accepted judicial policy in many other jurisdictions, *see, e.g.*, James C. Rehnquist, *Taking Comity Seriously: How to Neutralize the Abstention Doctrine*, 46 Stan. L. Rev. 1049, 1064 n. 86 (1994), including the Third Circuit. *EEOC v. University of Pennsylvania*, 850 F.2d 969, 971 (3d Cir. 1988) (citing *Crosley Corp.*, 122 F.2d at 929)). Although the Virgin Islands Supreme Court has not yet expressly adopted the first-filed rule, the Court is confident that it is appropriately applied in

further as they should have been raised in *St. Croix* pursuant to Fed. R. Civ. P. 13(a), (as incorporated by Super. Ct. R. 7), which required Bell to plead there all claims "aris[ing] out of the transaction or occurrence that is the subject matter of [Rohn's] claim."

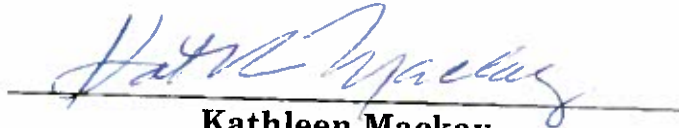
this case as a non-jurisdictional, prudential doctrine of deference and forbearance that best promotes the ends of efficiency and comity.

Bell's Opposition does not address Rohn's "first-filed" arguments at all, but instead focuses almost exclusively on arguing that St. Thomas is the appropriate venue for this case and that Rohn ought never to have filed the sibling case in St. Croix in the first place. Bell may well be correct as to venue in *Rohn and Associates, LLC v. Marshall A. Bell and Associates, P.C.*, but, even if he is, his arguments do not satisfactorily address the crux of Rohn's motion, i.e. that the judge in St. Croix should make that venue determination. Bell has already moved Judge Molloy for a ruling on venue and to transfer to St. Thomas. That motion is still pending. Bell's request that this Court transfer and consolidate the St. Croix case is effectively just an attempt to circumvent the usual litigation process by taking a standard venue motion out of the hands of one judge and put it in the hands of another in Bell's preferred location. Just as it would be inappropriate for two judges to simultaneously try substantively identical cases, so too would it be inappropriate for two judges to decide substantively identical venue motions. Again, the Court declines to consider the merits of the venue and transfer questions and instead defers to Judge Molloy. If the case belongs in St. Thomas, he must be the one to put it here as V.I. Code Ann. tit 4 § 78(b) does not enable a judge to transfer a case that is not hers.

III. Conclusion

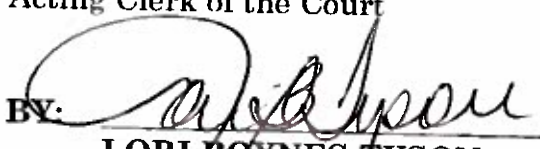
Bell's motion to transfer and consolidate will be denied and Rohn's Motion to Dismiss will be granted because decisions on venue and transfer are appropriately before Judge Molloy in the Division of St. Croix. Pursuant to the first-filed principle and in furtherance of judicial efficiency and of appropriate comity and respect between judges, it would be improper for this judge to interfere with *Rohn and Associates, LLC v. Marshall A. Bell and Associates, P.C.*, No. SX-12-CV-482 (V.I. Super. Ct. filed on Nov. 30, 2012). An appropriate order will accompany this opinion.

DATED: July 8, 2015


Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE
Acting Clerk of the Court

BY:


LORI BOYNES-TYSON

Court Clerk Supervisor 7/8/15