

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

D. RAY STRONG,

Plaintiff,

vs.

KIRBY D. COCHRAN; JEFF
AUSTIN; AUSTIN CAPTIAL
SOLUTIONS; WILLIAM H.
DAVIDSON; DOUGLAS W.
CHILD; CHILD, VAN WAGONER
& ASSOCIATES, PLLC, ROBERT
CLAWSON; HYBRID ADVISOR
GROUP, and JOHN DOES 150,

Defendants.

ORDER

Lead Case No. 2:14-cv-00788-TC
Member Case 2:15-cv-00837-TC

On December 23, 2016, Plaintiff D. Ray Strong (the Trustee) filed a motion to consolidate Strong v. Geringer, Case No. 2:15-cv-837 (the Geringer Case) and Geringer v. Strong, Case No. 2:16-cv-319 (the Breach of Contract Case) into the above-captioned case (the Insider Case). The Trustee also asked the court to enter a scheduling order in the consolidated case.

Rule 42 of the Federal Rules of Civil Procedure allows a court to consolidate actions “[i]f the actions before the court involve a common question of law or fact.” And DUCivR 42-1 states:

Any party may file a motion and proposed order to consolidate two or more cases before a single judge if the party believes that such cases or matters

- (i) arise from substantially the same transaction or event;
- (ii) involve substantially the same parties or property;
- (iii) involve the same patent, trademark, or copyright;
- (iv) call for determination of substantially the same questions of law;
or
- (v) for any other reason would entail substantial duplication of labor or unnecessary court costs or delay if heard by different judges.

DUCivR 42-1. The decision to grant a motion for consolidation is left to the trial court's discretion. Shump v. Balka, 574 F.2d 1341, 1344 (10th Cir. 1978).

Here, the Geringer Case and the Insider Case are remarkably similar. The cases will call for a determination of substantially the same questions of law and they arise from substantially the same transactions and events. But the Breach of Contract Case stems from different events: namely the settlement negotiations between Mr. Geringer and the Trustee. Additionally, the Geringer case appears to require substantially less discovery and, consequently, should advance more quickly.

For these reasons, the court GRANTS IN PART AND DENIES IN PART the Trustee's motion. (ECF No. 81.) The Clerk of the Court is directed to

consolidate Case No. 2:15-cv-837 into Case No. 2:14-cv-00788. The parties are directed to submit to the court either a stipulated scheduling order or, if the parties are unable to agree, competing motions for a scheduling order by March 15, 2017.

DATED this 28th day of February, 2017.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
U.S. District Court Judge