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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

ALANDO SMITH and)
MAURICE HARRIS-BALL,)
)
Plaintiffs)
)
v.) Case No.: 13-1481
)
ALAMO CLAIM SERVICE, PETER)
PERRINE, THORLIN LEE, DAVID)
SERFASS, CIS ALAMO, LLC, and)
STATE FARM MUTUAL AUTOMOBILE)
INSURANCE COMPANY,)
Defendants.)

ORDER

This matter is before the Court on Defendants' Alamo Claim Service, Peter Perrine, Thorlin Lee, David Serfass ("Alamo Defendants) and CIS Alamo, LLC ("CIS") Motion for Reconsideration and Alternatively for Leave for Interlocutory Appeal and Stay Pursuant to 28 U.S.C. § 1292(b) [88], and Plaintiffs Alando Smith ("Smith") and Maurice Harris-Ball's ("Harris") Response [103]. For the reason set forth below, the Motion to Reconsider is DENIED.

BACKGROUND AND PROCEDURAL HISTORY

On October 10, 2013, Plaintiffs filed a complaint alleging they were employed as independent contractors, they worked more than 40 hours per week, but were not paid overtime. The Alamo Defendants and Defendant CIS moved to dismiss this action for improper venue pursuant to Federal Rule of Civil Procedure 12(b)(3) and 28 U.S.C. § 1404(a). Defendant State Farm opposed the transfer of venue. On June 10, 2014, this Court denied The Alamo Defendants and Defendant CIS's Motion to Dismiss or in the Alternative Transfer Venue. On June 20, 2014,

The Alamo Defendants filed the current Motion to Reconsider of which the Defendant CIS joined, pending before the Court.

DISCUSSION

1. Legal Standard

Motions for reconsideration serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence." Caisse Nationale de Credit v. CBI Industries, 90 F.3d 1264, 1269 (7th Cir. 1996). Furthermore, it is not appropriate to argue matters that could have been raised in prior motions or rehash previously rejected arguments in a motion to reconsider. Id. at 1270.

2. Analysis

The Alamo Defendants and Defendant CIS base the current motion on new factual and legal developments that have arisen after they filed their initial combined motions to dismiss or in the alternative transfer venue.

The Alamo Defendants and CIS argue that since their initial combined motions to dismiss or in the alternative transfer venue was filed approximately 25 people ("Opt-Ins") have filed "Consent to Sue Under FLSA" seeking to join these lawsuits and all live outside of Illinois. The Plaintiffs concede that all the Opt-Ins live outside of Illinois. Slightly less than half of the Opt-Ins reside in Texas, and the rest of the Opt-Ins reside in Arizona (1), Georgia (4), Michigan (1), Florida (3), Oklahoma (1), Tennessee (1), and Louisiana (1). (See Doc. [103], Ex. 1). The Alamo Defendants and CIS argue that venue is appropriate in the Western District of Texas because approximately fifty percent of the Opt-Ins reside in Texas or in state bordering Texas. This Court finds this argument unpersuasive as it disregards the remaining fifty percent of the Opt-Ins and the Court does not believe a numerical inquiry is appropriate. Perhaps the eight Florida, Georgia, and Tennessee Opt-Ins would prefer to litigate this case in a district that is

located closer to them. While the Court does not deny that the Western District of Texas may be an appropriate venue, if other Opt-Ins file consents to sue and they are not from Texas or a bordering state, applying the Alamo Defendants and CIS's argument, venue would be a moving target. Convenience of the parties and witnesses is a factor in determining venue, and as this Court stated in its previous Order, there is no choice of forum that will avoid imposing inconvenience, and the inconvenience of the alternative venues is at best comparable. By transferring this case to the Western District of Texas, it would inconvenience half the plaintiffs and the remaining defendant, State Farm; a factor that the Alamo Defendants and CIS fail to take into account.

The Alamo Defendants and CIS also argue that Supreme Court's holding in Atlantic Marine Const. Co., Inc. v. U.S. Court for Western Dist. Of Texas, 134 S. Ct. 568 (2013) dispels this Court's original premise that no specific judicial forum outweighs another; therefore, venue is proper in Texas, not Illinois. In Atlantic Marine the Supreme Court held a forum-selection may be enforced by a motion to transfer under 28 U.S.C. §1404(a) unless the extraordinary circumstances unrelated to the convenience of the parties clearly disfavors transfer. Section 1404(a) states in part: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to **which all parties have consented**" (emphasis added).

Here, after reviewing the record, the Court finds the Alamo Defendants and CIS do not meet their initial burden of showing that a valid forum-selection clause existed between all the parties. In his Declaration, Defendant Thorlin Lee stated that the agreements between ACS and independent contractors, including plaintiffs, state "the agreements are to be construed and governed by the laws of State of Texas, and specify that enforcement of the said agreements is

set in the venue of Bexar County, Texas, which is located in the Western District Texas." (See Doc. [30-1], pg. 2, para. 8). However, the Alamo Defendants and CIS failed to file the purported agreements that were signed by the Plaintiffs. The sample agreement attached to Thorlin Lee's Declaration does not suffice. Further, the Alamo Defendants and CIS failed to produce any documentation evidencing that all the parties consented to the alleged forum selection clause. Given that Defendant State Farm opposed the transfer of venue, it seems unlikely that a forum selection clause agreement signed by State Farm exist. Accordingly, this Court finds the Alamo Defendants and CIS reliance on Atlantic Marine is misplaced.

The Alamo Defendants and CIS also argue that the appropriate venue for FLSA actions is the location where work was performed and cite cases supporting their argument. However, the opinions cited by the Alamo Defendants and CIS come from federal courts outside this district; therefore, this Court is not bound by those decisions. A review of the cases decided in this district supports this Court's previous decision to deny the Alamo Defendants and CIS's Motions to Transfer Venue.

In McCants v. C.H. Robinson Worldwide, Inc., 2007 WL 1650103, the district judge transferred plaintiff's FLSA case to the district where the misclassification occurred. In Ambrose v. C.H. Robinson Worldwide, Inc., 521 F. Supp. 2d 731 (2007), the district judge also elected to transferred plaintiff's case where the plaintiffs purportedly work and where the misclassification occurred. While the Court agrees that the location of the where the work was done is a factor in determining venue, where the misclassification occurred is also a factor that the court may consider.

The central issue that is common to the current Plaintiffs and potential opt-in Plaintiffs' claim is the Defendants executed a contract in which the claim adjusters were misclassified as independent contractors. Here, the misclassification occurred in this District at State Farm's

headquarters in Bloomington, Illinois; therefore this Court finds that a substantial facts giving raise to the Plaintiffs' claim occurred in this district. While the Court finds some merit in Defendant's argument that Plaintiffs' are seeking compensation for work performed outside the District, this alone does not establish that a transfer to a District in Texas is proper because plaintiffs performed work in multiple states. As stated in this Court's previous order, given that the plaintiffs performed work in the multiple states, there is no choice of forum that will avoid imposing inconvenience, and the inconvenience of the alternative venues is at best comparable. Therefore, the Court finds that venue is appropriate here, where the misclassification allegedly occurred. Accordingly, the Court respectfully denies The Alamo Defendants and CIS Motion for Reconsideration.

3. Interlocutory Appeal

The Alamo Defendants and CIS have alternatively moved for leave to file an interlocutory pursuant to 28 U.S.C. § 1292(b), combined with an entry of a stay order, should the Court deny their Motion to Reconsider. Section 1292(b) permits a district judge to certify an interlocutory order for appeal if there is "a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation."

The Seventh Circuit has held "that there are four statutory criteria for the grant of a section 1292(b) petition to guide the district court: there must be a question of *law*, it must be *controlling*, it must be *contestable*, and its resolution must promise to *speed up* the litigation." Ahrenholz v. Bd. of Trustees of Univ. of Illinois, 219 F.3d 674, 675 (7th Cir. 2000). The Court finds that the Alamo Defendants and CIS do not meet the standard for an interlocutory appeal.

Here, the Alamo Defendants and CIS base their request for an interlocutory appeal on the holding in Atlantic Marine. However, as discussed *supra*, this Court has determined that the

Alamo Defendants and CIS's reliance on the Atlantic Marine, is misplaced because they failed to prove that valid forum-selection exists between all the parties. Therefore, there is no controlling, contestable, question of law to warrant an interlocutory appeal. Further, the Court finds that certifying an interlocutory order for appeal would not speed of up the litigation, but rather cause substantial delays. This case was filed in October 2013 and it is still in the pleadings stage. The Court takes some responsibility for this due to the delay in ruling on the motions at bar. However, his Court's familiarity with this case and the applicable law increases the likelihood that this case will proceed to trial quickly. Accordingly, the Alamo Defendants and Defendant CIS's request for an interlocutory appeal and stay is denied.

CONCLUSION

For the reasons set forth above the Alamo Defendants and Defendant CIS's Motion for Reconsideration and Alternatively for Leave for Interlocutory Appeal and Stay Pursuant to 28 U.S.C. § 1292(b) [88] is DENIED in its entirety. The Alamo Defendants and Defendant CIS's Motions for Extensions of time [91], [97] are MOOT. Defendants are directed to file their responses to Plaintiffs' Motion to Certify Class on or before October 16, 2014.

Entered this 16th day of September, 2014.

/s/ James E. Shadid
James E. Shadid
Chief United States District Judge