

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Pamela Gillie, et al.,

Plaintiffs,

v.

Law Office of Eric A. Jones, LLC, et al.,

Defendants.

Case No. 2:13-cv-212

Judge Graham

Magistrate Judge Deavers

OPINION AND ORDER

On September 6, 2013, the Court entered an Order (doc. 6) staying discovery and ordering additional briefing on the issue of bifurcating the trial in this case. Plaintiffs are individuals who have been the subject of debt collection efforts made by “special counsel” to the Ohio Attorney General. These “[s]pecial counsel” . . . are engaged by the Ohio Attorney General” to collect on certain debts owed to the State. Compl. at 3, doc. 1. Plaintiffs have received communications from special counsel on Ohio Attorney General letterhead and claim the letters are misleading. They seek to represent a class of similarly situated consumers in pursuing claims against special counsel under the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692, *et seq.* Compl. at 4. Intervenor, the Ohio Attorney General (OAG), seeks, *inter alia*, a declaration that “the use of Attorney General letterhead by Special Counsel does not violate any provision of the federal Fair Debt Collection Practices Act.” Intervenor Answer at 23, doc. 24.

The Defendants and the OAG argue that bifurcation is appropriate in this case because a declaratory judgment in their favor would prevent the need for burdensome discovery and ensure the efficient use of judicial resources. They request that the Court separate the issue of liability from the issue of damages and decide whether the use of Attorney General letterhead by special

counsel violates the FDCPA. The Defendants and the OAG emphasize that the Plaintiffs will suffer no prejudice if the Court bifurcates the trial and decides the dispositive legal issues first.

The Plaintiffs disagree with the Defendants' and OAG's assertion that the liability issues before the Court are matters of law that can be resolved without further discovery. Rather than addressing the issue of bifurcation, the Plaintiffs' brief mainly focuses on the merits of their underlying FDCPA claim. First, the Plaintiffs argue that the question of whether special counsel are "debt collectors" as defined in the FDCPA is a question of fact that requires further discovery before the Court can resolve the issue. In the alternative, if the Court believes that further discovery is unnecessary, the Plaintiffs maintain that special counsel are independent contractors not subject to the FDCPA's exclusion for "any officer or employee of . . . any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties," 15 U.S.C. § 1692(a)(6)(C). Second, the Plaintiffs agree that the issue of whether the use of Attorney General letterhead by special counsel violates the FDCPA can be determined as matter of law.

In reply to the Plaintiffs, the OAG clarifies its declaratory judgment request:

The Attorney General is not asking this Court to address the question of whether Special Counsel are exempted from the FDCPA's definition of "debt collector" (even though the parties may have a disagreement on that point). Rather, the threshold issue of law that the Attorney General seeks to address—which is a purely legal question—is the ultimate question of whether the use of the Attorney General's letterhead by Special Counsel is "false," "deceptive" or "misleading" under the FDCPA *regardless* of any other issue in this case.

Intervenor's Reply to Pls.' Br. at 2, doc. 37. Continuing, the OAG lays out the legal test for determining whether a debt collector has engaged in false, deceptive, or misleading conduct, stressing that the facts in this case are not in dispute, and, consequently, that the Court can resolve this issue without further discovery. The OAG agrees with the Plaintiffs that special

counsel are independent contractors. *Id.* at 3.¹ However, the OAG notes, the employment relationship between special counsel and the OAG is irrelevant to whether special counsel's conduct in this case was violative of the FDCPA. The Defendants' briefs incorporate the arguments of the OAG and reiterate that bifurcation is appropriate in this case and that the Court should continue to stay discovery pending resolution of the liability issues in this case.

In their Reply, the Plaintiffs challenge the OAG's framing of the issue in this case, and argue that the OAG has adopted an overly narrow definition of the threshold issue in this case. The Plaintiffs maintain that the Court must resolve two liability-related issues in this case: (1) whether special counsel are "debt collectors" as defined in the FDCPA *and* (2) whether special counsel's use of the OAG's letterhead was false, deceptive, or misleading under the FDCPA. In the Plaintiffs' view, it makes little sense to analyze whether the FDCPA was violated without first determining whether the FDCPA actually applies to special counsel in this case.

Bifurcation is an exception to the general rule in favor of a single trial. *See* 9A Charles A. Wright and Arthur R. Miller, *Federal Practice and Procedure* § 2388 (3d ed. 2013) ("The piecemeal trial of separate issues in a single lawsuit or the repetitive trial of the same issue in severed claims is not to be the usual course."). Federal Rule of Civil Procedure 42(b) provides that, "for convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues [or] claims." "Only one of these criteria need be met to justify bifurcation." *Saxion v. Titan-C-Mfg.*, 86 F.3d 553, 556 (6th Cir. 1996) (citing *MCI Commc'ns Corp. v. AT&T Co.*, 708 F.2d 1081, 1177 (7th Cir. 1983)). "Whether resolution of a single issue would likely dispose of an entire claim is extremely relevant in determining the

¹ It is unclear whether the OAG is willing to concede that Special Counsel are "debt collectors" within the meaning of the FDCPA. From their briefs, it appears that the Defendant-law firms will argue that they are not, in fact, "debt collectors" as defined by the FDCPA and that they are excluded from the FDCPA under 15 U.S.C. § 1692(a)(6)(C).

usefulness of a separate trial on the issue. This procedure should be encouraged because court time and litigation expenses are minimized.” Yung v. Raymark Indus., 789 F.2d 397, 401 (6th Cir. 1986) (citations omitted); see also 9A Charles A. Wright and Arthur R. Miller, Federal Practice and Procedure § 2388 (3d ed. 2013) (“If a single issue could be dispositive of the case or is likely to lead the parties to negotiate a settlement, and resolution of it might make it unnecessary to try the other issues in the litigation, separate trial of that issue may be desirable to save the time of the court and reduce the expenses of the parties.”). “It is well-established by a wealth of case law that ultimately the question of whether to conduct separate trials under Rule 42(b) should be, and is, a matter left to the sound discretion of the trial court on the basis of the circumstances of the litigation before it.” 9A Charles A. Wright and Arthur R. Miller, Federal Practice and Procedure § 2388. Similarly, “[t]rial courts have broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined.” Gettings v. Bldg. Laborers Local 310 Fringe Benefits Fund, 349 F.3d 300, 304 (6th Cir. 2003).

Under the circumstances of this case, the Court finds that bifurcation is appropriate. Bifurcation will allow the Court to resolve the issue of liability in this case, potentially preventing the needless expenditure of the Court’s and parties’ resources. Absent bifurcation and a continuing stay of discovery in this case, the parties and Court would begin the Rule 23 class-action certification process, accompanied by complex and time-consuming discovery and pre-trial litigation. An order addressing the issue of liability may obviate the need for such discovery and litigation, and, at the very least, will narrow the legal issues to be resolved in this case.

For the foregoing reasons, the Court ORDERS that this case be bifurcated. The parties shall submit dispositive motions within 60 days of this Order being entered. The Court’s Order staying discovery will remain in place pending resolution of the liability issues in this case.

IT IS SO ORDERED.

S/ James L Graham
James L. Graham
UNITED STATES DISTRICT JUDGE

Date: December 4, 2013