

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION**

LOONEY RICKS KISS ARCHITECTS,
INC.

CIVIL ACTION NO. 07-572

VERSUS

JUDGE S. MAURICE HICKS, JR.

STEVE H. BRYAN, ET AL.

MAGISTRATE JUDGE HORNSBY

MEMORANDUM ORDER

Before this Court is a Motion to Consolidate (Record Document 494) the above-captioned case with State Farm Fire & Casualty Co. v. Steve H. Bryan, et al., Civil Action Number 10-1329 (W.D. La.) filed by Plaintiff, Looney Ricks Kiss Architects, Inc. ("LRK"). The motion is opposed. [Record Document 496]. For the reasons discussed herein, LRK's motion is **GRANTED**.

Rule 42(a) provides that,

If actions before the court involve a common question of law or fact, the court may:

- (1) join for hearing or trial any or all matters at issue in the actions;
- (2) consolidate the actions; or
- (3) issue any other orders to avoid unnecessary cost or delay.

Fed.R.Civ.P. 42(a).

Rule 42(a) is permissive, and consolidation lies within the discretionary authority of the court. In re Air Crash Disaster at Florida Everglades on December 29, 1972, 549 F.2d 1006, 1013-14 (5th Cir.1977) (citations omitted). "[I]t is for the court to weigh the saving of time and effort that consolidation would produce against any inconvenience, delay, or expense that it would cause." Daybrook Fisheries, Inc. v. American Marine Const., 1998

WL 748586, at *2 (E.D.La. Oct. 19, 1998) (quoting 9 Wright & Miller, FEDERAL PRACTICE AND PROCEDURE, § 2383 at 439 (2nd ed.1995)). Consolidation is properly denied where suits are at different stages of preparation, the transactions forming the basis of the suits are entirely separate, or where consolidation would prejudice the rights of the parties involved. See Mills v. Beech Aircraft Corp., Inc., 886 F.2d 758, 762 (5th Cir.1989); Alley v. Chrysler Credit Corp., 767 F.2d 138, 140 (5th Cir.1983); and St. Bernard Gen. Hosp., Inc. v. Hos. Serv. Ass'n of New Orleans, Inc., 712 F.2d 978, 989-90 (5th Cir.1983).

The Court readily acknowledges that in a minute entry dated January 3, 2011, this Court denied an oral motion to consolidate these two matters stating:

On December 20, 2010, during the oral arguments on the various pending motions, counsel for State Farm Fire and Casualty Co. suggested that they would be open to consolidating civil action 10-cv-1329 (captioned as State Farm Fire and Casualty Co. v. Steve H. Bryan, et al.) with the above captioned matter. Civil action 10-cv-1329 began as a declaratory judgment action filed in the Southern District of Mississippi by State Farm Fire and Casualty Co. to determine whether they had a duty to provide coverage under several policies of insurance that they issued. On August 23, 2010, civil action 10-cv-1329 was transferred to the Western District of Louisiana. [Record Document 40, Docket Number 10-cv-1329]. At no time was a motion filed to consolidate 10-cv-1329 with the above captioned matter.

On December 22, 2010, counsel for State Farm Fire and Casualty Co. sent a letter to chambers stating that they were agreeable to consolidating 10-cv-1329 with the above captioned matter.

Upon review, this Court **DENIES** the oral application to consolidate the actions. Given the lateness of this request, this Court simply is not in a position to address the new issues raised by 10-cv-1329.

[Record Document 467]. The Court denied this earlier motion for consolidation because it was made three weeks before the scheduled trial date. However, subsequently on

January 6, 2011, the Court granted LRK's Motion for Entry of Judgment Under Rule 54(b) and continued the matter pending appeal. [Record Document 472]. Therefore, the Court's original concern is alleviated. The Court finds that given the related nature of these two actions judicial efficiency would be best served by consolidating these matters. Therefore, the motion to consolidate is **GRANTED**.

For the foregoing reasons,

IT IS ORDERED that LRK's Motion to Consolidate [Record Document 494] be and is hereby **GRANTED**. All future filings are to be filed in the lead case: 07-cv-0572.

THUS DONE AND SIGNED in Shreveport, Louisiana, on this 27th day of June, 2011.



S. MAURICE HICKS, JR.
UNITED STATES DISTRICT JUDGE