UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: MIDLAND CREDIT MANAGEMENT, INC., TELEPHONE CONSUMER PROTECTION ACT (TCPA) LITIGATION MDL No. 2286

ORDER VACATING CONDITIONAL TRANSFER ORDER

Before the Panel:[*] Plaintiff in the action listed on Schedule A (*Vales*) moves under Panel Rule 7.1 to vacate our order that conditionally transferred *Vales* to MDL No. 2286. The actions in MDL No. 2286 involve allegations that Midland violated the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227, by placing debt collection calls to debtors' cellular telephones using an automated dialer or an artificial or prerecorded voice, without the debtors' consent. *See In re Midland Credit Mgmt., Inc., Tel. Consumer Prot. Act Litig.*, 818 F. Supp. 2d 1377 (J.P.M.L. 2011). Plaintiff argues that *Vales* is not appropriate for inclusion in MDL No. 2286 because she has moved to voluntarily dismiss her claims that defendants violated the TCPA by placing debt collection calls to her cellular telephone. Defendants Encore Capital Group, Inc., Midland Funding, LLC, and Midland Credit Management, Inc. (collectively, Midland) oppose vacating the conditional transfer order only in the event that plaintiffs' motion to dismiss is not granted.

At this juncture, we conclude that transfer of the *Vales* action is not warranted in order to serve the convenience of the parties and witnesses or further the just and efficient conduct of this litigation. Motions to dismiss pending in the transferor court ordinarily are not an impediment to transfer. Here, though, plaintiff has moved to voluntarily dismiss her TCPA claims. Midland opposes plaintiffs' dismissal motion to the extent that she seeks dismissal without prejudice, but does not oppose dismissal of the TCPA claims with prejudice. Thus, a reasonable prospect exists that the common questions of fact shared by *Vales* and the actions previously transferred to MDL No. 2286 could be eliminated by resolution of plaintiff's motion. In the event that the transferor court denies plaintiff's motion to dismiss, the parties may again notice *Vales* as a potential tag-along.

[*] Judge Lewis A. Kaplan took no part in the decision of this matter.

IT IS THEREFORE ORDERED that the Panel's conditional transfer order designated as "CTO-59" is vacated insofar as it relates to the *Vales* action.

PANEL ON MULTIDISTRICT LITIGATION

Sarah Vance

Sarah S. Vance
Chair

Marjorie O. Rendell
Ellen Segal Huvelle
Catherine D. Perry

Charles R. Breyer
R. David Proctor

IN RE: MIDLAND CREDIT MANAGEMENT, INC., TELEPHONE CONSUMER PROTECTION ACT (TCPA) LITIGATION

MDL No. 2286

SCHEDULE A

Northern District of Georgia

VALES v. MIDLAND CREDIT MANAGEMENT, INC., ET AL., C.A. No. 1:14−02590