

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: AHERN RENTALS, INC.,
TRADE SECRET LITIGATION

MDL No. 2945

ORDER VACATING CONDITIONAL TRANSFER ORDER

Before the Panel: Ahern Rentals, Inc. (Ahern)—plaintiff in the action listed on Schedule A (*EquipmentShare*) and common plaintiff in MDL No. 2945—moves under Panel Rule 7.1 to vacate our order that conditionally transferred the action to MDL No. 2945. Defendant, EquipmentShare.com, Inc. (EquipmentShare), opposes the motion to vacate.

After considering the argument of counsel, we are not persuaded that Section 1407 transfer of this action to MDL No. 2945 would benefit either the action before the Panel or the MDL. The MDL No. 2945 actions involve factual questions arising out of allegations of a nationwide scheme by common defendant EquipmentShare to capture market share in the equipment rental business from competitor Ahern “by (1) luring away its employees and customers, and (2) using Ahern’s confidential and proprietary information and trade secrets.” *In re Ahern Rentals, Inc., Trade Secret Litig.*, __ F. Supp. 3d __, 2020 WL 4673646, at *1 (August 7, 2020). When it centralized this litigation in the Western District of Missouri, the Panel noted that a related action by EquipmentShare against Ahern and its Chief Development Officer (*Rosencranse*) was pending in that district. *Id.* at *2 n.4. *Rosencranse* includes an abuse of process claim alleging that Ahern has improperly used the MDL No. 2945 actions and other state court actions “to disrupt EquipmentShare’s business relationships, discourage Ahern employees from seeking employment with EquipmentShare, and put it out of business.” *Id.*

In the action now before the Panel, Ahern alleges that EquipmentShare’s Track telematics system infringes a patent Ahern recently acquired. EquipmentShare, for its part, maintains that this patent lawsuit is the latest in Ahern’s campaign to burden EquipmentShare with litigation. EquipmentShare argues in favor of transfer that its defense of the patent claim overlaps with EquipmentShare’s abuse of process allegations in *Rosencranse*. Specifically, EquipmentShare argues that the short turnaround between Ahern’s purchase of the patent and filing suit, Ahern’s alleged fraud in procuring the underlying patent, and the scope of Ahern’s pre-suit investigation will be at issue in both *EquipmentShare* and *Rosencranse*. EquipmentShare recently amended the *Rosencranse* complaint to add the patent inventor as a defendant, and to allege that Ahern purchased the patent solely to subject EquipmentShare to another abusive lawsuit. EquipmentShare also argues in favor of transfer that *EquipmentShare* can proceed efficiently in the transferee court, and that witnesses named in the patent infringement complaint are named in the MDL No. 2945 actions, including the patent inventor and a co-founder of EquipmentShare.

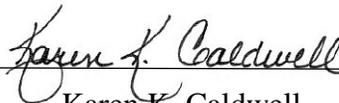
We agree that there is some factual overlap between EquipmentShare's defenses to the patent infringement claim and the *Rosencranse* action. But we are persuaded that any possible overlapping discovery and pretrial proceedings will be overshadowed by the unique claims, allegations, and procedures presented by this patent action. The central issues, as in any patent infringement action, will be the validity of the patent and whether it was infringed by defendant's technology. These issues will not figure prominently, if at all, in the MDL No. 2945 actions.

More importantly, we are not convinced that inclusion of a patent infringement claim in this MDL would promote the just and efficient conduct of the litigation as a whole. The particular procedures of patent litigation often make pretrial proceedings lengthier and more burdensome than other types of litigation. Injecting these proceedings into the MDL could slow the litigation's progress considerably. And while the Panel determined that, taken together, the MDL No. 2945 actions were sufficiently complex to warrant centralization, the thirteen pending actions almost all name a common defendant and common plaintiff, and each allege a pattern of misconduct in the other's attempt to compete in the market for rental construction equipment. Common discovery in MDL No. 2945 is scheduled to end November 2021, dispositive motions also are due this year, and the actions will not otherwise be slowed by complex proceedings, such as class certification.

Given the common parties, we are of the view that the parties and the courts can informally coordinate any overlapping discovery. Indeed, the transferee judge already has entered a discovery coordination order to coordinate with related state court cases.

IT IS THEREFORE ORDERED that the Panel's conditional transfer order designated as "CTO-3," is vacated.

PANEL ON MULTIDISTRICT LITIGATION



Karen K. Caldwell
Chair

Catherine D. Perry
Matthew F. Kennelly
Roger T. Benitez

Nathaniel M. Gorton
David C. Norton
Dale A. Kimball

**IN RE: AHERN RENTALS, INC.,
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SCHEDULE A

Eastern District of Texas

AHERN RENTALS, INC. v. EQUIPMENTSHARE.COM, INC., C.A. No. 2:20-00333