UNITED STATES DISTRICT COURT
for the SOUTHERN DISTRICT OF INDIANA,
INDIANAPOLIS DIVISION

RICHARD N. BELL,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**CAUSE NO. 1:14-cv-525-SEB-DKL**
	)	1:14-cv-785-WTL-DML
DIVERSIFIED VEHICLE SERVICES, ***et al.*****,**	)	
	)	
	)	
Defendants.	)	

ORDER OF SEVERANCE

On April 21, 2014, the Court ordered Plaintiff to show cause why all defendants but one should not be dropped from this Cause for misjoinder. Rule 20(a)(2) of the *Federal Rules of Civil Procedure* provides:

> Persons . . . may be joined in one action as defendants if:
>
> **(A)** any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions; and
>
> **(B)** any question of law or fact common to all defendants will arise in the action.

Fed. R. Civ. P. 21 provides:

> Misjoinder of parties is not a ground for dismissing an action. On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party.

In his return to the order to show cause, Plaintiff argues that the Court should give Rule 20(a) a broad scope because its purpose is to avoid multiple lawsuits and, thus, improve judicial efficiency and, therefore, the terms "transaction" and "occurrence" should be

interpreted. He contends that "all 'logically related' events entitling a person to institute a legal action against another generally are regarded as comprising a transaction or occurrence." He argues that joinder of all Defendants in this Cause is proper under Rule 20(a) because he asserts a right to joint, several, or alternative relief against all defendants and that this right to relief respects or arises out of the same transaction, occurrence, or series of transactions or occurrences:

> All Defendants meet the first prong a "series of transactions or occurrences" because it is alleged each and every Defendant downloaded the Indianapolis photo on to their own website. . . . Having interviewed dozens of the Defendants nearly all say they goggled [*sic*] "Indianapolis Skyline [*sic*] and selected the Indianapolis photo to download to their site which is a "series of transactions or occurrences." Thud [*sic*] there is no question that all defendants meet the first prong and no Defendant will say otherwise.

(*Plaintiff's Response to Order To Show Cause* [doc. 10] ("*Return*") at 4.) Plaintiff then argues that there are questions of law and fact common to all Defendants that will arise in this action. He relies on his allegations that all Defendants violated federal copyright and Indiana theft laws and then identifies sixteen specific questions of fact or law raised by his claims.

Plaintiff asserts federal copyright, federal unfair competition, and state theft claims against seventeen[1] defendants for their commercial use of one of two photographs taken by Plaintiff without his permission, without proper attribution, and without paying for the

[1] An eighteenth party, "WRTV", appears in the complaint's caption, *Complaint* [doc. 1] at 1, but, in his *Return*, Plaintiff states that WRTV is "not currently a defendant" and "was inadvertently not deleted from the caption;' *Return* at 1 n. 2.

use. The complaint alleges that "[e]ach defendant, independently of each other, created or had created a website to promote and advertise the business of each Defendant," *Complaint* [doc. 1] ¶ 31, and that Plaintiff discovered that "the website [of] each of these Defendants contained [one of the photographs]," *id.* ¶ 32. Except for defendants Cameron Taylor and Taylor Computer Solutions, the *Complaint* contains no allegation that any defendant acted in concert with another defendant in appropriating Plaintiff's photographs and it does not allege any transaction, occurrence, or series of transactions or occurrences in which two or more defendants participated.

To properly join all Defendants, Plaintiff's claims against them must respect or arise out of the "same" occurrence or the "same" series of occurrences, Fed. R. Civ. P. 20(a)(2)(A); in other words, the copyright violations alleged by Plaintiff must constitute a single occurrence or a single series of occurrences. *See* Wright, Miller, & Kane, *Federal Practice and Procedure*, Civil 3rd § 1653 at 409 (2001). While Plaintiff alleges that the same copyright was infringed by each defendant and the same *types* of fact questions will likely arise, he alleges no other logical relationship among the defendants or their acts of infringement, or any aggregate of identical operative facts or evidence[2] that justifies

[2] Plaintiff appears to believe that if the same types of factual or legal questions will arise in each claim against each defendant (*e.g.*, how did the defendant find Plaintiff's photograph, what did the defendant know about the photograph's copyright status, did the defendant make commercial use of the photograph, and did the defendant pay for the use of the photograph), then the logical-relationship and/or overlapping-evidence tests are satisfied. But it is not the *types* or *categories* of facts or evidence that must be the same or common for each defendant, but the actual fact or evidence in question. That Defendant A found Plaintiff's photograph through a Google search, downloaded it, and then uploaded it to its commercial website without paying for the use has no relationship to or effect on Defendant B's liability to Plaintiff.

requiring Defendants to jointly defend against his claims. *See In re EMC Corp.*, 677 F.3d 1351, 1357-59 (Fed. Cir. 2012). Rather, he alleges that Defendants independently engaged in separate and distinct acts of copyright infringement that happened to involve the same photograph. Such unrelated claims against unrelated defendants belong in different suits, in part to ensure that plaintiffs pay the required filing fees. *See George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

Therefore, the Court finds that there is misjoinder of defendants in this case and that all but one defendant should be dropped from this Cause under Fed. R. Civ. P. 21. See *George*, 507 F.3d at 607; *Lester v. San Francisco Sheriff Dept.*, No. C 13-1120 WHA, *Order Denying Motion to Dismiss*, 2013 WL 6326152 (N. D. Calif., Dec. 4, 2013); *reFX Audio Software, Inc. v. Does 1-141*, No. 1:13-cv-940, *Memorandum Opinion and Order*, 2013 WL 5835704, *3 (N.D. Ill., Oct. 28, 2013); *Simon v. Shawnee Correctional Center*, Civil No. 13-521-GPM, *Memorandum and Order*, 2013 WL 3463595, *2 (S.D. Ill., July 9, 2013). However, in order to avoid statute-of-limitations consequences, district courts in this circuit have been instructed to sever, rather than dismiss, claims and / or parties as a remedy for misjoinder. *Elmore v. Henderson*, 227 F.3d 1009, 1012 (7th Cir. 2000).

Therefore, the Clerk of the Court is **DIRECTED** to sever all defendants other than Diversified Vehicle Services from this Cause and to open separate Causes for each of the severed defendants, except defendants Cameron Taylor and Taylor Computer Solutions shall be joined in one Cause. The Clerk need not open a Cause for defendant WRTV as

Plaintiff has stated that it was inadvertently named. The Clerk shall send copies of this Order to each of the defendants at the service addresses supplied by Plaintiff with his summonses, together with notice to each defendant of that defendant's new Cause Number, for the purposes of answering and all further proceedings.

Plaintiff is **ORDERED** to file the required filing fee for each of the severed cases **no later than Monday, June 2, 2014**.

SO ORDERED this date: 05/15/2014

Denise K. LaRue
United States Magistrate Judge
Southern District of Indiana

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