NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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August 5, 2024

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Re: ***Rejuvenation Clinic, LLC,* et al. *v. Thang Van Dang,* et al.**
Case No. CL-2022-15857

Dear Counsel:

The issue before the Court is whether two or more plaintiffs may bring a lawsuit together, and, if not, whether the appropriate remedy is to dismiss all but one of the plaintiffs from the original suit.

The Court holds that, *technically*, the default rule in the Commonwealth is "one plaintiff per suit"—unless there are six or more plaintiffs. However, for practical reasons, two to five plaintiffs almost always bring a single lawsuit when their claims are so substantially similar that they will be consolidated anyway. Defendants almost never object because this predictable consolidation remedy makes objection pointless. If moving to sever a lawsuit only results in a court granting severance only to consolidate the cases back together again for trial, why bother with the motion?

In the present case two defendants do object to the initial consolidation and, technically, they are correct. So, the Court will separate the cases so that they can be properly reconsolidated for trial. The Court will, thus, deny in part and grant in part Defendants Thang Van Dang and Source Builders & Design, LLC's Motion to Dismiss Improperly Joined Party. It will deny the request to dismiss either of the two plaintiffs. It will grant the implicit request to separate the two plaintiffs into different cases. And, it will consolidate the two cases for discovery and trial.

I. BACKGROUND.

The First Amended Complaint ("FAC") of Plaintiffs Rejuvenation Clinic, LLC ("Clinic") and Yalda Soroush sets forth 10 causes of action: (1) fraud, (2) conversion, (3) breach of fiduciary duty against Defendant Van Dang, (4) computer trespass under Virginia Code § 18.2–152.4, (5) computer fraud under Virginia Code § 18.2–152.3, (6) computer invasion of privacy under Virginia Code § 18.2–152.5, (7) common law conspiracy, (8) statutory business conspiracy, (9) fraudulent conveyances, and (10) voluntary conveyances.[1] (*See generally* FAC at 12–28.)

Plaintiff Yalda Soroush owns Plaintiff Rejuvenation Clinic. (*Id.* at 2–3 ¶¶ 2–3.) Defendant Thang Van Dang owns (1) Defendant Source Builders and Design, (2) Defendant Amped Investments, (3) Defendant DMV Real Estate Experts, (4) Defendant Creations from Scratch, and (5) Defendant Source Distro. (*Id.* at 3 ¶¶ 4–9.) Defendant Talithia Morris owns Defendant TLM Investments. (*Id.* at 3–4 ¶¶ 10–11.) Defendant Andy Merino owns Defendant Pream Properties. (*Id.* at 4 ¶¶ 12–13.)

In December 2020, the individual Defendants—Merino, Dang, and Morris—began flipping houses together. They collaborated to obtain financing, acquired properties, renovated the properties, and resold them. (FAC at 5 ¶ 17.) Morris, a real estate agent, would list the properties, assist in their sale, and would sometimes provide financing to Pream for purchase of the property through TLM. (*Id.*) The individual Defendants flipped a total of eight houses together between December 2020 and December 2022. (*Id.* at 5 ¶ 18.)

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[1] On June 26, 2024, the Court sustained Defendants Talithia Morris and TLM Investments' Demurrer to Counts IX and X of the FAC, with leave to amend. (*See* Order entered on June 26, 2024.)

In November 2019, Plaintiffs hired Dang to help grow the Clinic's business and marketing operations after Dang allegedly held himself out as someone who had experience growing business. (*Id.* at 5 ¶ 20.) Ultimately, by January 2022, Dang became the Clinic's Vice President of Operations, although his official title was changed to Chief Operations Officer in June 2022. (*Id.* at 5 ¶ 21.) In his role as Chief Operations Officer, Dang managed the Clinic's finances and had access to the Clinic's business accounts, including its bank accounts, lines of credit, payroll accounts, social media accounts, security camera records, and other accounts used for the Clinic's day-to-day operations. (*Id.* at 5 ¶ 22.)

Between February 2022 and October 2022, Dang allegedly engaged in a pattern of abusing his position in the Clinic and misappropriating corporate resources. (*Id.* at 6 ¶ 24.) On February 4, 2022, Dang purportedly used Plaintiffs' credit card to order eight smart televisions from Amazon—for the total price of $2,745.32—which he had shipped to Merino, presumably for the purpose of renovating a property. (FAC at 6 ¶ 25.) On May 26, 2022, Merino likewise obtained services from the Clinic for $6,000, but Dang refunded $5,826 to Merino the same day, effectively providing Dang free services. (*Id.* at 6 ¶ 26.) Between May and October 2022, Dang likewise is alleged to have opened a series of lines of credit in the Clinic's name, forging Soroush's signature on the applications and guarantees. (*Id.* at 6–7 ¶ 27.) Although Soroush was aware of many of these applications, she was not aware that Dang was using her name, nor was Soroush aware of the extent of the lines of credit opened. (*Id.*) In doing so, Dang purportedly represented to Soroush that the lines of credit were being used for legitimate business purposes, and that the credit lines would not be listed on Soroush's personal credit report. (*Id.* at 7 ¶ 28.)

Dang allegedly would also transfer Clinic funds to himself, claiming the transfers were payments for vendor invoices, (*Id.* at 7 ¶ 29), and use Clinic funds to pay for services for himself, disguising the services as invoices payable from the Clinic. (FAC at 7 ¶ 30). For example, on October 17, 2022, Dang claimed he paid for decorations at a masterclass event at the Clinic, citing an invoice from "DaMommies Xperience" for $2,438, even though the Clinic paid for these services directly. (*Id.* at 7–8 ¶ 31.) On October 13, 2022, Dang claimed he paid $200 for services from Moving Memories, receiving reimbursement even though the Clinic paid for these services directly. (*Id.* at 8 ¶ 32.) Again, on October 17, 2022, Dang claimed reimbursement for $500 for services rendered by Creations from Scratch, despite the fact that Creations did not perform any services. (*Id.* at 8 ¶ 33.) On October 11, 2022, Dang claimed $595 in reimbursements from the Clinic for services purportedly rendered by Good Vibrations Entertainment, which he allegedly did not pay for. (*Id.* at 8 ¶ 34.) On May 15, 2022, Dang further claimed $1,500 in reimbursements for services allegedly rendered by Roy Co., which Dang purportedly did not pay for. (*Id.* at 8 ¶ 35.)

Relatedly, in June 2022, Dang is alleged to have opened an online commercial bank account under the Clinic's name with "Under Technologies." (FAC at 8–9 ¶ 36.) The only payee on the account was allegedly Source Distro, founded by Dang on October 12, 2017. (*Id.*) Between June and September 2022, Dang allegedly transferred $53,072.85 from the Clinic's Under Technologies account to Source Builders, using Source Distro to conceal the flow of these funds to Source Builders. (*Id.* at 9 ¶ 37.)

Additionally, Dang transferred at least $313,585.97 of Clinic funds to a lender and prevented Plaintiffs' from accessing the account with the lender. (*Id.* at 9–10 ¶¶ 38–39.)

Dang was terminated from his position as Chief Operations Officer on October 23, 2022. (*Id.* at 6 ¶ 23.) Following his termination, Plaintiffs attempted to recover account information for their operational and bank accounts, asking that Dang provide this information; Dang refused to do so. (FAC at 10 ¶ 40.) Once Plaintiffs were otherwise able to obtain access to these accounts, Plaintiffs learned that between October 11, 2022, and October 24, 2022, Dang allegedly transferred $96,287.89 from the Clinic's checking account to Source Builders' bank account. (*Id.* at 10 ¶ 43.) Later, on November 8, 2022, Dang purportedly attempted to transfer another $5,500 from the Clinic's PayPal account to Defendant, although Soroush was able to stop this transaction. (*Id.* at 10 ¶ 45.)

On November 1, 2022, Dang cancelled Source Builders with the State Corporation Commission, using a pseudonym he had previously listed as the registered agent for Source Builders. (*Id.* at 11 ¶¶ 46–49.) According to Plaintiffs, Dang transferred the funds moved to Source Builders to Amped Investments for the purposes of funding the individual Defendants' house flipping projects. (*Id.* at 11–12 ¶¶ 50–53.)

Plaintiffs collectively pray for, *inter alia*, $476,751.03 in compensatory damages.

Dang and Source Builders filed the present Motion to Dismiss Improperly Joined Party. The moving Defendants argue that it is "impossible to ascertain what alleged claims, if any, are asserted by each individual plaintiff." (Defs.' Mot. at 1.) The moving Defendants argue that while Virginia Code § 8.01–272 permits a party to plead matters arising out of the same transaction or occurrence, the Code does not contemplate multiple parties pleading claims collectively. (*Id.* at 1–2.) To the contrary, the moving Defendants contend that the *only* mechanism through which multiple plaintiffs can be joined from the beginning of a lawsuit is under Code § 8.01–267.5, which permits six or more parties to be initially joined as plaintiffs. (*Id.* at 2.) Thus, the moving Defendants assert that by having two plaintiffs, Plaintiffs' First Amended Complaint is procedurally defunct, and they pray that the Court dismiss Soroush from this action. (*Id.*)

Plaintiffs respond that the moving Defendants' Motion to Dismiss is untimely, since their original Complaint was filed on November 22, 2022, and the parties already engaged in extensive discovery. (Pls.' Opp'n at 1–2.) Then, Plaintiffs argue that Soroush is a necessary party to these proceedings, since Soroush's claims are inextricably linked to the claims of the Clinic, and the Court cannot adequately adjudicate these matters in the absence of Soroush. (*Id.* at 2.) Otherwise, Plaintiffs assert that neither Virginia Code § 8.01–267.5 nor § 8.01–272 preclude the filing of a Complaint with two party-plaintiffs, and that the moving Defendants' reading of these statutory provisions is anathema to accepted pleading practices and principles of consolidation. (*Id.* at 2–3.)

II. ANALYSIS.

The questions presented to the Court are purely legal and sound in statutory interpretation. When interpreting a statute, the Court's primary goal is to "ascertain and give effect to legislative intent, as expressed by the language used in the statute." *Berry v. Bd. of Sup'rs of Fairfax Cnty.*, 302 Va. 114, 117–18 (2023). Words in a statute "are to be construed according to their ordinary meaning, given the context in which they are used," unless the statute provides for a specific definition. *Id.* (quoting *City of Va. Beach v. Bd. of Sup'rs*, 246 Va. 233, 236 (1993)). "When the language of a statute is unambiguous, courts are bound by the plain meaning of that language and may not assign a construction that amounts to holding that the General Assembly did not mean what it actually has stated." *Williams v. Commonwealth*, 265 Va. 268, 271 (2003).

The Court begins by interpreting the relevant statutory provisions in this matter to determine whether two or more plaintiffs, but less than six, may bring suit together in the Commonwealth. Then, the Court considers the appropriate remedy when adjudicating a challenge to a suit initiated by too many plaintiffs.

A. Plaintiffs Numbering Between Two and Five May Not Bring Suit Jointly.

Virginia Code § 8.01–272 provides that "[i]n any civil action, a party may plead as many matters . . . as he shall think necessary," and "may join a claim in tort with one in contract provided that all claims so joined arise out of the same transaction or occurrence." Code § 8.01–272 was originally enacted to overrule "the long-standing prohibition against joinder of tort and contract claims found in Virginia case law." *Powers v. Cherin*, 249 Va. 33, 37 (1995). Meanwhile, and pertinent to the present Motion, Virginia Code § 8.01–267.5 provides that "[s]ix or more parties may be joined initially as plaintiffs in a single action if their claims involve common issues of fact and arise out of the same transaction or occurrence or the same series of transactions or occurrences." The plain language of Virginia Code § 8.01–272 contemplates that a *single* party may plead claims arising out of the same transaction or occurrence. As an exception to this default rule, Virginia Code § 8.01–267.5—and the related provisions in the Multiple Claimant Litigation Act, Code §§ 8.01–267.1, *et seq.*—permits the parties to initiate litigation with six or more claimants when their claims arise out of the same transaction or occurrence and feature common issues of fact.

In interpreting the statutory scheme set forth in Title 8.01, the Court must endeavor to give effect to the whole, "so as to make all of its parts harmonize, if practicable, and give a sensible, intelligent effect to each." *Hoover v. Saunders*, 104 Va. 783, 785 (1906) ("It is not to be presumed that the Legislature intended any part of a statute to be without meaning."). While Plaintiffs contend that neither Code §§ 8.01–272 nor 8.01–267.5 preclude Plaintiff from bringing this action jointly, their reading renders Code § 8.01–267.5 meaningless. To give effect to the statutory scheme set forth by the General Assembly, the Court must presume that unless six or more claimants bring suit pursuant to the guidelines in the Multiple Claimant Litigation Act, the suit must be brought by a single plaintiff.

There is no binding authority from the Virginia Court of Appeals or Supreme Court on this precise question. Our sister circuits, however, have considered this issue, and have unanimously held that parties with separate and distinct claims against the same defendants must plead and try those matters separately. *See, e.g.*, *Neurology Servs. v. Fairfax Med. PWH, LLC*, 67 Va. Cir. 1, 13 (Fairfax 2005) (collecting circuit court opinions holding the same); *Hamrick v. Shifflett*, 55 Va. Cir. 423, 423–24 (Rockingham 2001) (holding the same and noting that early commentators on Virginia law "seem to assume that joinder of plaintiffs is not permitted in an action for damages"); *Dixon v. Robertson*, 5 Va. Cir. 544, 546 (Henrico 1979) ("In the instant case, two plaintiffs have brought suit against one defendant for two separate causes of action arising out of the same transaction or occurrence and this Court holds that this is not permissible under the law in Virginia.").

The Court agrees with our sister circuits' interpretations of the statutory scheme and concludes that Virginia observes a "one party per suit" rule. Here, Plaintiffs Clinic and Soroush improperly filed their claims jointly through one pleading, and the moving defendants challenge this procedural impropriety. The Court will now consider the appropriate remedy.

B. Severance is the Appropriate Remedy for Too Many Plaintiffs in a Lawsuit.

The moving Defendants essentially assert that Soroush is misjoined to this case. They ask that the Court drop him from the case, a common remedy for misjoinder. However, in the present case, neither plaintiff is "misjoined"—there are simply too many of them.

Misjoinder occurs "when the person or entity identified by the pleading was not the person by or against whom the action could, or was intended to be, brought." *Monroe v. Mary Wash. Healthcare*, Record No. 0051–23–2, 2024 Va. App. LEXIS 190, at *6 (Apr. 9, 2024) (quoting *Marsh v. Roanoke City*, 301 Va. 152, 155 (2022)). By this definition, the moving Defendants' theory is flawed. Here, both Plaintiffs are proper parties to bring all the claims in this action, based on the allegations put forth in the FAC. Hence, while the appropriate remedy for misjoinder is to drop the misjoined party, *see* Virginia Code § 8.01–5(A), this remedy would be inappropriate in this case. The Court has no way of determining whether one Plaintiff should be dropped over the other; this follows from the fact that neither Plaintiff has been misjoined, *per se*. Rather, procedurally, both Plaintiffs may not bring their claims jointly at the time of filing.

To the extent Defendants ask the Court to dismiss one of the two Plaintiffs in this case, dismissal is clearly not the correct remedy. Dismissal is prohibited for misjoinder. VA. CODE ANN § 8.01-5. The remedy for failure to add a necessary party is to strip the court from the power to adjudicate the case; it is not dismissal of the case. *Siska Trust v. Milestone Dev.*, 282 Va. 169, 177 (2011). Logically, if adding a wrong party does not warrant dismissal, and failure to add a necessary party does not warrant dismissal, then prematurely adding a necessary party should not warrant dismissal.

Because both plaintiffs are otherwise proper plaintiffs, severance is the appropriate remedy on these facts. "The court may, upon motion of any party, order a separate trial of any claim, counterclaim, cross-claim, or third-party claim, and of any separate issue, or of any number of such claims . . . ." VA. CODE ANN. § 8.01–281(B). The power to sever "presupposes that the claims are joinable, and the claims are joinable only if they arise out of the same transaction or occurrence." *Funny Guy, LLC v. Lecego, LLC*, 293 Va. 135, 153–56 (2017). Claims arise out of the same transaction or occurrence if "the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage." *Id.*

Here, both Plaintiffs' sets of claims are identical. The facts underlying the claims share the exact same temporal limitations, location, and origin. The Plaintiffs are motivated for the same or substantially the same reasons: to protect their business interests. These claims, since they are the same claims, would in fact form a convenient trial unit, and their treatment as a unit conforms to the parties' expectations that they would be litigated jointly. This latter point is evidenced by the fact that Plaintiffs brought their claims jointly in the first place, and by the fact the moving Defendants engaged in well over a year of litigation before even considering bringing the present Motion.

Since the Court clearly has the power to join the two Plaintiffs in the present case, it has the power to sever them, per *Funny Guy*. The Court will sever the Plaintiffs' claims into two separate cases.

C. The Court has Inherent Authority to Consolidate Cases. The Now-Severed Cases will be Consolidated.

The Court has the inherent power to "control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Primov v. Serco, Inc.*, 269 Va. 59, 66–67 (2018) (quoting *Landis v. North Am. Co.*, 229 U.S. 248, 254–55 (1936)) (discussing the authority of a court to stay proceedings). Consolidation of cases is a tool with which the Court may exercise this inherent authority. *See Allstate Ins. Co. v. Wade*, 265 Va. 383, 392 (2003) ("Trial courts have the inherent authority to consolidate claims for trial . . . ."); *see also Bavely v. Geneva Enters., Inc.*, 112 Va. Cir. 323, 330 (Fairfax 2023). The Court may consolidate (1) two separate actions for the limited purpose of discovery, *see Ellenson v. McDonald*, 96 Va. Cir. 45, 47 (Norfolk 2017); (2) two separate actions for trial, *see Bond v. Baker Roofing Co.*, 81 Va. Cir. 439, 442–49 (Norfolk 2010); or (3) two separate actions into one composite action, *see Spellman v. Sch. Bd. of Chesapeake*, 100 Va. Cir. 393, 394 (Chesapeake 2018).

In determining whether consolidation is appropriate, the factors enunciated in *Clark v. Kimnach*, 198 Va. 737 (1957), control. There, the Virginia Supreme Court provided that:

> [T]he trial court has inherent power to order that several cases pending before it be tried together where they are the same nature, arise from the same act or transaction,

> involve the same or like issues, depend substantially upon the same evidence, even though it may vary in its details in fixing responsibility, and where such a trial will not prejudice substantial rights of any party.

198 Va. at 745.

This Court previously used consolidation as a means of resolving an issue remarkably like the issues presented by the moving Defendants' Motion. In *Neurology Services, Inc., v. Fairfax Medical PWH, LLC,* a neurological practice and its owner sued their two landlords and the building manager of their commercial office space. *Neurology Servs.*, 67 Va. Cir. at 1–2. The defendants in that case demurred to the plaintiffs' complaint, arguing, *inter alia*, that the two plaintiffs improperly joined their claims in one action. *Id.* at 13. The Court noted that, ultimately, sustaining the Defendants' demurrer would only result in Plaintiffs filing separate pleadings which the Court would have discretion to consolidate. *Id.* Thus, the Court overruled the demurrer and found, *sua sponte*, that the actions presented by each of the plaintiffs would be consolidated for trial. *Id.*

Consolidation is clearly the policy of the Commonwealth. Under the necessary party doctrine, necessary parties must be haled into a lawsuit. *Garner v. Joseph*, 300 Va. 344, 349-50 (2021) ("the judgment in a suit filed in the absence of necessary parties can be set aside as void."). There is both a statute and a rule for adding necessary parties after one files and serves a lawsuit. VA. CODE ANN. § 8.01-7 (courts may add necessary parties who then relate back to commencement of the suit). VA. SUP. CT. R. 3:12 (joinder of parties, if feasible). Notably, neither of these provisions permit plaintiffs to file a lawsuit together in the first instance. Yet, both envision that the cases the plaintiffs would have filed jointly, if technically permitted to do so, will ultimately be joined for trial.

In the present case, having concluded that Plaintiffs' claims should be severed into two separate actions due to their improper pleading, the question is whether these two separate actions should be consolidated. Although the Clinic and Soroush have improperly filed their suit jointly, and the Court is severing them into two, the Court should obviously consolidate them for discovery and trial. The Clinic and Soroush assert all ten of their claims jointly, and the underlying facts giving rise to each claim are identical. To wit: both the Clinic and Soroush allege that Defendants, primarily through Dang, engaged in an elaborate scheme to defraud Plaintiffs and embezzle funds from them. Trial will consist of the same issues and will depend on substantially the same evidence. Consolidation would have been appropriate if Plaintiffs filed their cases separately. Therefore, the Court will consolidate the separate severed actions.

III. CONCLUSION.

The Court holds that Virginia observes a "one plaintiff per case" rule, absent pleading under the Multiple Claimant Litigation Act. The remedy for a violation is severance of the action between the plaintiffs, not dismissal of one of the plaintiffs—certainly not dismissal of the

plaintiff unilaterally preferred by a defendant. However, because Plaintiffs' claims are identical and based on the same facts, the Court consolidates the now-severed actions.

An appropriate Order is attached.

Kind regards,

[redacted]

David A. Oblon
Judge, Circuit Court of Fairfax County
19th Judicial Circuit of Virginia

Enclosure.

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

REJUVENATION CLINIC, LLC, *et al.*,	)	
Plaintiffs,	)	
	)	
v.	)	CL-2022-15857
	)	
THANG VAN DANG, *et al.*,	)	
Defendants.	)	
	)	

ORDER

THIS CAUSE CAME before the Court July 19, 2024, on Defendants Thang Van Dang and Source Builder and Design's Motion to Dismiss Improperly Joined Party. For the reasons stated in the Court's opinion letter dated August 5, 2024, which is incorporated herein by reference, it is hereby

ORDERED Defendants' Motion is **GRANTED IN PART AND DENIED IN PART**. It is

ORDERED this case shall be severed into two separate cases, and only Plaintiff Rejuvenation Clinic, LLC, shall remain a plaintiff in this case, CL-2022-15857. The Clerk is directed to open a new case with the style *Yalda Soroush v. Thang Van Dang, Source Builders & Design, LLC, Amped Investments, LLC, DMV Real Estate Experts, LLC, Source Distro, Inc., Creations from Scratch, LLC, Andy Merino, Pream Properties, LLC, Talithia Morris, and TLM Investments, LLC*. It is further

ORDERED this case and the newly severed case shall be consolidated for discovery and trial, with this case, CL-2022-15857, being designated the lead case. All future filings should be filed in this case. It is further

ORDERED Defendants' request to drop Yalda Soroush entirely or to dismiss her entirely is **DENIED**.

THIS CAUSE CONTINUES.

ENTERED this 5th day of August, 2024.

[redacted]

JUDGE DAVID A. OBLON

PURSUANT TO RULE 1:13 OF THE SUPREME COURT OF VIRGINIA, ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD FOR THE PARTIES IS HEREBY WAIVED IN THE DISCRETION OF THE COURT. WRITTEN ENDORSEMENT OBJECTIONS ARE DUE WITHIN 10 DAYS.