

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:09-MD-02036-JLK

IN RE: CHECKING ACCOUNT
OVERDRAFT LITIGATION

MDL No. 2036

THIS DOCUMENT RELATES TO:
FOURTH TRANCHE ACTION

Shane Swift v. BancorpSouth, Inc.
N.D. Fla. Case No. 1:10-cv-00090-SPM
S.D. Fla. Case No. 1:10-cv-23872-JLK

SUGGESTION OF REMAND TO THE NORTHERN DISTRICT OF FLORIDA

THIS CAUSE came before the Court on the Plaintiffs' Motion for Suggestion of Remand of this Action to the Northern District of Florida. (DE # 3683). Having reviewed the Motion and Defendant's Response thereto, and considered the record of the proceedings in this action, the Court hereby enters this Suggestion of Remand and orders the Clerk to submit same to the Clerk of the Judicial Panel for Multidistrict Litigation.

BACKGROUND

On June 10, 2009, the Judicial Panel on Multidistrict Litigation ("JPML") created MDL 2036, finding that all of the actions transferred to MDL 2036 "share[d] factual questions relating to the imposition of overdraft fees by various bank defendants on their customer's checking accounts in a manner to maximize these fees." *In re Checking Account Overdraft Litig.*, 626 F. Supp. 2d 1333 (J.P.M.L. 2009). Between 2009 and 2012, numerous actions filed against more than 40 banks were transferred to this Court for coordinated pretrial proceedings. On May 18, 2010, this action was filed in the Northern District of Florida, Gainesville Division, and assigned to United States District Judge Stephan P. Mickle.

On October 18, 2010, the JPML transferred this action to this Court. (DE # 847). The JPML opined that this action involved “common questions of fact with the overdraft actions in this litigation previously transferred” and that transfer would “serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation.” (DE # 847). Following transfer, this action was placed in the Fourth Tranche. (DE # 877, 1309).

The merits of this action have proceeded on Plaintiffs’ Second Amended Complaint and BancorpSouth Bank’s Amended Answer and Defenses to Second Amended Complaint. (DE # 994,¹ 1693). Since 2010, the parties have vigorously litigated pretrial matters resulting in the numerous decisions including:

1. This Court denied BancorpSouth Bank’s motion to dismiss the Second Amended Complaint (DE # 1305);
2. This Court granted Plaintiffs’ motion for class certification (DE # 2673);
3. The U.S. Court of Appeals for the Eleventh Circuit denied BancorpSouth’s original petition for permission to appeal pursuant to Federal Rule of Civil Procedure 23(f) (DE # 3294);
4. This Court approved the implementation and completion of the class notice plan to 185,280 members of the certified class, of which 238 members timely opted out (DE # 3242, 3338, 3342, 3589);
5. This Court denied BancorpSouth’s motion to decertify the class (DE # 3455, 3540);
6. The Eleventh Circuit denied BancorpSouth’s second petition for permission to appeal pursuant to Federal Rule of Civil Procedure 23(f) (*See* 11th Cir. Case No. 13-90019-E);

¹ The Second Amended Complaint was amended by interlineation. (DE #2820, 2826).

7. This Court denied BancorpSouth's and Plaintiffs' respective motions to strike expert witnesses (DE # 3229);
8. This Court granted in part and denied in part Plaintiffs' motion for summary judgment as to certain affirmative defenses (DE # 2997, 3655, 3682);²
9. This Court denied BancorpSouth's motion for summary judgment (DE #2999, 3655, 3682);³
10. This Court granted Plaintiffs' motion in limine (DE # 2996, 3258);
11. This Court denied BancorpSouth's motion to transfer venue as premature, stating that the denial was "without prejudice to re-file after the Court has made a final determination of the issue of remand," (DE # 3000, 3195); and
12. This Court denied BancorpSouth's motion to enter suggestion of remand deeming the motion premature (DE # 3243).

ANALYSIS

Title 28 U.S.C. § 1407(a)—the statute under which this MDL proceeding was constituted—provides in relevant part:

When civil actions involving one or more common questions of fact are pending indifferent districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings. . . . *Each action so transferred shall be remanded by the panel at or before the conclusion of such pretrial proceedings to the district from which it was transferred unless it shall have been previously terminated. . . .*

(emphasis added).

The Supreme Court, in *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 40 (1998), concluded that the remand directive in §1407(a) is mandatory. Thus, once

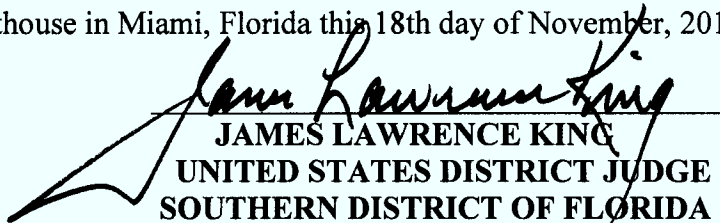
² The parties stipulated to BancorpSouth's withdrawal of certain affirmative defenses. (DE # 3667, 3668).

³ The parties stipulated to Plaintiff Shane Swift's withdrawal of his conversion claim. (DE # 3667, 3668).

“coordinated or consolidated pretrial proceedings’ have been completed in the transferee court, the transferred cases must be remanded to their original courts.” *In re Activated Carbon-Based Hunting Clothing Mktg. & Sales Practices Litig.*, 840 F. Supp. 2d 1193, 1197 (D. Minn. Jan. 10, 2012) (hereinafter, “*Hunting Clothing*”) (emphasis added) (quoting *Lexecon*, 523 U.S. at 28). Because this Court has now completed all coordinated or consolidated pretrial proceedings in this action, this action should be remanded to the transferor court, the Northern District of Florida.

The Court perceives its role under 28 U.S.C. §1407 to have been completed with the rulings on the parties’ respective summary judgment motions. Therefore, the Court **SUGGESTS** that the above-captioned case be **REMANDED** to the United States District Court for the Northern District of Florida. The Court further instructs the Clerk of this Court to transmit this **SUGGESTION OF REMAND** to the Clerk of the Judicial Panel for Multidistrict Litigation for filing in MDL No. 2036.

DONE AND ORDERED in Chambers at the James Lawrence King Federal Justice Building and United States Courthouse in Miami, Florida this 18th day of November, 2013.


JAMES LAWRENCE KING
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

cc: All Counsel of Record