

IN AND FOR BROWARD COUNTY, FLORIDA

SANDI ADLER,
Plaintiff,

Case No.: CACE20-010660

v.

STARBOARD GROUP MANAGEMENT
COMPANY INCORPORATED
& KEVIN HOLBROOK,
Defendants.

UNOPPOSED MOTION TO SEVER AND FOR SEPARATE TRIALS

COMES NOW DEFENDANT, Kevin Holbrook, by and through the undersigned counsel and pursuant to Florida Rule of Civil Procedure Rule 1.270 hereby file this, their Joint Motion to Sever and for Separate Trials, and in support state as follows:

INTRODUCTION AND SUMMARY OF ARGUMENT

In her Complaint, Plaintiff asserts one count of civil assault against Defendant, Holbrook and one count for wrongful termination in violation of Florida's Whistleblower Act against Defendant Starboard. The parties are currently set for trial for trial period commencing March 4, 2024. Given the judicial default entered against Starboard, the parties request that the claim of assault against Holbrook be severed and tried separately to avoid prejudice, jury confusion and to ensure a fair trial.

On February 14, 2024 this Honorable Court entered a judicial default against Defendant Starboard. Therefore, at trial, the only issue to be determined with respect to Starboard is the amount of damages (if any) to be awarded to Plaintiff, which are separate and distinct to those legal and factual issues that must be determined with respect to the Plaintiff's claim of assault against Holbrook. This is especially true as the nature of the damages recoverable against

Starboard resulting from her wrongful termination (back pay, front pay, emotional distress) are different than those that could be recoverable against Holbrook (medical expenses, lost wages).

Moreover, If the assault claim against Holbrook is not severed, the jury would necessarily be informed of the automatic finding of liability against Starboard. Plaintiff's claim against Starboard is premised on her allegations that she reported alleged sexual harassment on the part of Holbrook and was terminated as a result. The allegation of sexual harassment is unrelated to the alleged threats supporting Plaintiff's claim for assault. As such, this could cause significant confusion and prejudice as set forth more fully in Defendant's Motion in Limine. Further, the determination of liability against Starboard could lead the jury to improperly conclude that Plaintiff's allegations of sexual harassment (or the reporting of sexual harassment) were determined on their merits to be true, forcing Defendant to defend against purely ancillary issues that would not otherwise be relevant or admissible.

Counsel for Defendant and Plaintiff have conferred on this matter and Plaintiff has no opposition to the relief sought in this Motion. The Parties further agree that should this Honorable Court grant Defendant's Motion, the parties would respectfully request that trial against Starboard proceed on the current docket, and trial against Holbrook be scheduled for the next available docket.

MEMORANDUM OF LAW

When the proper administration of justice makes it imperative, the trial courts, in their discretion, sever a case and bifurcate it into two. This process is governed by Florida Rule of Civil Procedure Rule 1.270(b):

“(b) Separate Trials. --The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, crossclaim, counterclaim, or third-party claim or of

any separate issue or of any number of claims, crossclaims, counterclaims, third-party claims, or issues.” Fla. R. Civ. P. 1.270

Unless “extraordinary circumstances” are found, a court should grant a party’s motion to sever in order to reduce prejudice against a defendant. *Beta Eta House Corp. v. Gregory*, 230 So. 2d 495, 500 (Fla. 1st DCA 1970).

Defendant believes he would be severely prejudiced in the event the jury is permitted to hear irrelevant evidence related to Plaintiff’s claim of wrongful termination against Starboard as it could impede the jury’s ability to fairly determine his liability. Under such circumstances, Florida Courts routinely find it proper to sever such claims and hold separate trials. *See Johansen v. Vuocolo*, 125 So. 3d 197 (Fla. 4th DCA 2013) (affirming order bifurcating negligent hiring/retention claim from malpractice claim and setting separate trials where evidence of prior misconduct, although relevant to the negligence action, would impede jury’s ability to fairly determine liability for malpractice).

When there is a risk of prejudice, the most important factor for this Honorable Court’s determination is whether separate trials could create a risk of inconsistent verdicts. *See Bethany Evangelical Covenant Church of Miami, Florida, Inc. v. Calandra*, 994 So. 2d 478, 479 (Fla. 3d DCA 2008) (stating that severance is permissible to avoid prejudice so long as there is no risk of inconsistent verdicts); *see also Clark v. Bluewater Key RV Ownership Park Prop. Owners Assoc., Inc.*, 226 So. 3d 276, 281 (Fla. 3d DCA 2017). Here, there is no such risk as the legal and factual issues that must be determined with respect to Plaintiff’s claim for assault are distinct from any issues that may be presented regarding the damages incurred by Plaintiff for her alleged wrongful termination. *See Travelers Exp., Inc. v. Acosta*, 397 So. 2d 733, 737 fn. 6 (Fla.

3d DCA 1981) (listing factors to be considered when analyzing the risks associated with severing claims).

WHEREFORE, the Defendant respectfully requests that this Honorable Court grant its Motion and allow the Plaintiff to separately try her claim for damages against Starboard on the current trial docket and proceed against Defendant Holbrook on the next available docket, and for any other relief deemed proper under the circumstances.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of February, 2024, a true and correct copy of the foregoing was filed with the Clerk of Broward County by using the Florida Courts e-Filing Portal, which will send an automatic e-mail message to the following parties registered with the e-Filing Portal system: G. Ware Cornell, Jr., Esq., Cornell & Associates, P.A., ware@warecornell.com;brittne@warecornell.com, 2645 Executive Park Drive, Weston, FL 33331, (954) 271-0554/(954) 944-1969 (F), Attorney for Plaintiff, Sandi Adler.

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