Not Reported in F.Supp.2d, 2002 WL 31521165 (S.D.Ind.)
(Cite as: 2002 WL 31521165 (S.D.Ind.))

United States District Court,
S.D. Indiana,
New Albany Division.
Judy McCRACKEN, Plaintiff,
v.
GRAND VICTORIA CASINO & RESORT, Defendant.

NA 02-143-C B/H.
Nov. 6, 2002.

Dennis M. O'Bryan, Howard M. Cohen, O'Bryan, Baun, Cohen, Kuebler, Birmingham, MI, for plaintiff.

Kimbley A. Kearney, Clausen Miller, P.C., Chicago, IL, W. Scott Miller, Jr., Stephanie R. Miller, Miller & Miller, Louisville, KY, for defendant.

ENTRY ON DEFENDANT'S MOTION TO DISMISS

SARAH EVANS BARKER, Judge.

I. *Introduction.*

***1** This case is before the court on defendant's motion to dismiss on the ground that this case duplicates another action pending before the court between the same parties and involving the same issues. For the following reasons we GRANT defendant's motion in part, but we also consolidate the two actions pursuant to Fed.R.Civ.P. 42(a) so that all issues between the two parties are combined in a single lawsuit.

II. *Discussion.*

Plaintiff Judy McCracken has filed two lawsuits in this court; both arise under the Jones Act and general maritime law and both name Grand Victoria as the defendant. The first, Docket No. NA01-188-C B/G, was filed on August 5, 2001; it alleges that Grand Victoria failed to provide Ms. McCracken a safe place to work and a seaworthy vessel, as a result of which she sustained injuries during the course of her employment. The second, Docket No. NA02-143-C B/S was filed on July 29, 2002; it styles itself a class action and alleges that Grand Victoria failed to pay Ms. McCracken maintenance and cure for the injuries she sustained. The first complaint sounds in tort; the second in contract. Both appear to arise from the same set of facts and circumstances: Ms. McCracken was allegedly injured during her employment with Grand Victoria, allegedly because of Grand Victoria's negligence, and Grand Victoria allegedly failed to pay her the benefits she was due.

For reasons not vouchsafed to us, plaintiff seeks to prosecute separate lawsuits, notwithstanding the fact that the parties to the two lawsuits are identical and the causes of action arise from the same set of operative facts. Ms. McCracken justifies her maintenance of separate actions on the ground that it is permissible for her to do so. Pl. Memo. p. 2. So it is. But permissible does not mean efficient or economical. She does not inform us why she did not simply amend NA01-188 to include the claims she believes are contained only in NA02-143, even though Grand Victoria has waived its opportunity to object to her amending her complaint after the deadline for doing so.

Meanwhile, defendant argues that NA02-143 is entirely unnecessary because all of its allegations are contained in NA01-188. Although defendant's argument is borne out by portions of the Case Management Plan filed in NA01-188, and although Grand Victoria asserts that Ms. McCracken has been pursuing discovery as if it was all one lawsuit, a plain reading of the two complaints does not appear to demonstrate this. The first lawsuit, NA01-188, is limited to a claim

for negligence, while the second, purporting to be a class action, is limited to a claim for maintenance and cure.

This does not seem to matter, however, because defendant effectively agrees to litigate all of the claims contained in both lawsuits in one consolidated cause of action. In the interest of economy to the parties and to the court, we agree with defendant's position. In the oft-cited *Ridge Gold Standard Liquors, Inc. v. Joseph E. Seagram & Sons, Inc.*, 572 F.Supp. 1210, 1212-1213 (N.D.Ill.1983), the district court observed that: "It is well recognized that a federal district court has the inherent power to administer its docket in a manner that conserves scarce judicial resources and promotes the efficient and comprehensive disposition of cases." It also noted the "irrationality of tolerating duplicative litigation," especially where two lawsuits involving the same parties and substantially the same issues were pending in the same federal district. *Id.* at 1213. This is all the more true where, as here, the two cases are pending before the same judge. In *Ridge Gold*, the court concluded that "a suit is duplicative of another suit if the claims, parties, and available relief do not significantly differ between the two actions." *Id.*

***2** *Ridge Gold* also makes clear that the presence of a class action claim in one pending suit does not make it sufficiently dissimilar to the other suit that it must be maintained separately. Where, as here, no class has been certified, the plaintiff in the two cases, Ms. McCracken, is identical. *Id.* at 1214.[FN1]

FN1. Of course, we offer no opinion as to the merits of certifying a class in this matter.

Under the *Ridge Gold* regime, the proper disposition is to dismiss the duplicative lawsuit, as Grand Victoria asks here. Although neither party expressly mentioned Fed.R.Civ.P. 42(a),[FN2] however, the standard for dismissing a duplicative lawsuit under *Ridge Gold* is sufficiently similar to the standard for consolidating actions pursuant to Rule 42(a) that we may dismiss the second-filed suit to the extent that it duplicates the first, and, to insure that all of plaintiff's claims are adjudicated, order all claims consolidated in NA01-188.

FN2. Rule 42(a) provides: "When actions involving a common question of law or fact are pending before court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." *See* Wright & Miller, *Federal Practice & Procedure: Civil* §§ 2282-2284.

We find that the two causes of action are between the same parties and arise from the same set of facts. They appear to raise common issues of fact arising from Ms. McCracken's employment with Grand Victoria and her injury during her employment. Additionally, notwithstanding her different legal theories, there appear to be common issues of fact with respect to Grand Victoria's alleged liability for negligence.

III. *Conclusion.*

Although it is not clear that the two complaints are precisely duplicative, we conclude that they are sufficiently similar to warrant proceeding in a single lawsuit in the interest of judicial economy. Absent any objection grounded in law by the plaintiff, we GRANT defendant's motion to dismiss NA02-143 to the extent that it is duplicative of NA01-188 and order any claim contained in NA02-143 that is not duplicative to be consolidated in NA01-188. Consistent with this opinion, we strongly encourage plaintiff to amend her complaint in NA01-188 to include all of the claims that are currently contained separately in the two pending cases.

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