

CAUSE NO. 2019-33415

ABEL AND NANCY VERA, ET AL.,

Plaintiffs,

v.

**FIGURE FOUR PARTNERS, LTD., PSWA, INC.,
and REBEL CONTRACTORS, INC.,**

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

234th JUDICIAL DISTRICT

DEFENDANTS' MOTION TO CONSOLIDATE

Defendants Figure Four Partners, LTD (“Figure Four”) and PSWA, Inc. (“PSWA”) file this Motion to Consolidate pursuant to Texas Rule of Civil Procedure 174(a) and Harris County District Courts Civil Division Local Rule 3.2.3(a).¹ In support thereof, Defendants respectfully show the Court as follows:

SUMMARY

This is the first of three identical lawsuits filed by Plaintiffs’ counsel within a span of 10 days. Each lawsuit alleges verbatim the same 34 paragraphs of facts, claims, and causes of action against the same defendants. As a result, and in the interest of judicial economy, the second and third lawsuits should be consolidated into this cause number and all lawsuits should proceed in this Court.

EXHIBITS

Exhibit A: Plaintiffs’ Original Petition;

Exhibit B: The May 17, 2019 Original Petition in cause number 2019-34366, pending in the 11th Judicial District Court, Harris County, Texas; and

¹ This Motion to Consolidate is filed subject to, and without waiving, Defendants’ motions to transfer venue filed in each case identified herein.

Exhibit C: The May 24, 2019 Original Petition in cause number 2019-36139, pending in the 164th Judicial District Court, Harris County, Texas.

FACTUAL AND PROCEDURAL BACKGROUND

A. Elm Grove Flooded on May 7, 2019.

On May 7, 2019, heavy rains inundated the Houston area, flooding much of the city. The pervasive flooding of numerous neighborhoods, schools, and freeways garnered the attention of local and national media.² The Kingwood area specifically “was hit by some of the region’s worst weather.”³ This was exacerbated by the fact that the ground in Kingwood was already saturated due to flooding the prior week in the same location.⁴ According to the Harris County Flood Control District, “[h]omes start flooding in certain areas when over four inches of rainfall (sic) in an hour.”⁵ The Kingwood subdivision of Elm Grove perhaps received the worst of it.

Elm Grove Village (Elm Grove) consists of more than 1400 single-family homes on the northern edge of Kingwood, bordered by the Montgomery County line to the north. Much of Elm Grove lies within a 100-year floodplain. Unsurprisingly, Elm Grove’s infrastructure could

² See KHOU 11, *Latest Headlines Broadcast*, (May 7, 2019, 8:09 PM), <https://www.khou.com/video/news/latest-headlines-khou-11-news-5-pm-tuesday-may-7-2019/285-6bd22833-d9e3-420a-82bf-94020d054f93>; KHOU 11, *Top Headlines at 10 p.m.* (May 7, 2019, 10:53 PM), <https://www.khou.com/video/news/khou-11-top-headlines-at-10-pm-may-7-2019/285-8332757b-0a56-4af1-a351-faa36db9ec04>; Ian Livingston, *A torrent flooded areas near Houston Tuesday. More excessive rain is forecast through Saturday*, (May 8, 2019), https://www.washingtonpost.com/weather/2019/05/08/torrent-flooded-areas-near-houston-tuesday-more-excessive-rain-is-forecast-through-saturday/?utm_term=.d55ac6f0fe89.

³ Cory McCord, Brandon Walker, & Syan Rhodes, *Kingwood: Flooding causes sinkhole; multiple school closures* (May 7, 2019, 6:43 PM), <https://www.click2houston.com/weather/kingwood-area-hit-hard-as-thunderstorms-move-through>.

⁴ Ian Livingston, *A torrent flooded areas near Houston Tuesday. More excessive rain is forecast through Saturday*, (May 8, 2019), https://www.washingtonpost.com/weather/2019/05/08/torrent-flooded-areas-near-houston-tuesday-more-excessive-rain-is-forecast-through-saturday/?utm_term=.d55ac6f0fe89

⁵ *Id.*

not keep up with the historical rainfall on May 7. Many homes in Elm Grove apparently flooded—the bulk of which lie in the 100-year flood plain.

B. Lawyers seek a scapegoat.

Within just days of the event, Plaintiffs’ attorney, Jason Webster, held a town hall meeting with Elm Grove and other local residents. Without the benefit of science or data, Mr. Webster and others at the meeting chose to blame the construction of a new subdivision, Woodridge Village, immediately to the north of Elm Grove. Mr. Webster encouraged homeowners to retain him to file a lawsuit against the entities involved in the development and construction of Woodridge Village. As knee-jerk reactions and suggestions outpaced (and substantially ignored) the data, the unfortunate reality of what occurred in Elm Grove was missed by many: homes inside a 100-year floodplain were flooded by a 100-year event.

C. Webster files three identical lawsuits.

On May 14, 2019, Webster filed this lawsuit against Figure Four, PSWA, and Rebel Contractors, Inc (“Rebel”) (collectively, “Defendants”) on behalf of certain plaintiffs (the “First Lawsuit”). A copy of the Original Petition in the First Lawsuit is attached as Exhibit A.

On May 17, 2019, Webster filed a second lawsuit on behalf of additional plaintiffs against the Defendants in cause no. 2019-34366, pending in the 11th District Court, Harris County, Texas (the “Second Lawsuit”). A copy of the Original Petition in the Second Lawsuit is attached as Exhibit B.

On May 24, 2019, Webster filed a third lawsuit on behalf of additional plaintiffs against Defendants in cause no. 2019-36139, pending in the 164th District Court, Harris County, Texas (the “Third Lawsuit”). A copy of the Original Petition in the Third Lawsuit is attached as Exhibit C.

The three lawsuits are identical. As explained herein, the cases should be consolidated so as not to waste judicial resources and ensure consistent outcomes. Therefore, Defendants request the Court consolidate the three lawsuits.

ARGUMENT AND AUTHORITIES

A. This Court is the proper forum for the motion to consolidate.

A motion to consolidate cases must be heard “in the court where the first filed case is pending.” HARRIS CNTY. (TEX.) CIV. DIST. CT. LOC. R. 3.2.3(a); *see also* TEX. GOV’T CODE ANN. § 74.093 (Vernon 1988); TEX. R. OF CIV. P. 330(e). “In Harris County, any case may be consolidated and transferred from one civil district court to another ... the motion shall be heard in the court where the lowest numbered case is pending.” *George v. Phillips Petroleum Co.*, 976 S.W.2d 363, 364 n.3 (Tex. App.—Houston [14th Dist.] 1998, no pet.). This lawsuit was the first-filed and bears the lowest cause number. As a result, this is the only proper Court to consider this motion to consolidate.

B. Consolidation is proper.

A trial court may consolidate actions involving common questions of law or fact, and has broad discretion to do so. *See* TEX. R. CIV. P. 174(a); *Santa Fe Drilling Co. of S. Am. v. O’Neill*, 774 S.W.2d 423, 424 (Tex. App.—Houston [14th Dist.] 1989, orig. proceeding); *see also Cherokee Water Co. v. Forderhause*, 641 S.W.2d 522, 525 (Tex. 1982). The purpose of consolidation is to “further convenience and avoid prejudice” so as to promote justice. *Womack v. Berry*, 291 S.W.2d 677, 683 (Tex. 1956). A trial court may consolidate cases that “relate to substantially the same transaction, occurrence, subject matter, or question.” *In re Gulf Coast Bus. Dev. Corp.*, 247 S.W.3d 787, 794 (Tex. App.—Dallas 2008, orig. proceeding) (internal citations omitted).

Consolidation is appropriate when the actions are “so related that the evidence presented will be material, relevant, and admissible in each case.” *Id.* The “central and primary requirement” for consolidation is that there must exist “common issues of law or fact” in the cases to be consolidated. *Id.*; see also *In re Houston Livestock Show and Rodeo, Inc.*, Cause No. 01-18-00825-CV, 2019 WL 2376120, at *5 (Tex. App.—Houston [1st Dist.] June 6, 2019, no pet. h.) (citing *In re Gulf Coast.*).

When deciding whether to consolidate matters, a court must balance the “judicial economy and convenience” that will be gained against the risk of an unfair outcome due to prejudice or jury confusion. *In re Gulf Coast*, 247 S.W.3d at 794. Prejudice may not be presumed and must be demonstrated by the complaining party. *Id.* (citing *Lone Star Ford, Inc. v. McCormick*, 838 S.W.2d 734, (Tex. App.—Houston [1st Dist.] 1992, writ denied)).

The First, Second, and Third Lawsuits are identical. The names of the plaintiffs are the only difference. See Exhibits A, B, and C. The lawsuits allege identical facts and repeat verbatim the same 34 paragraphs of alleged facts, claims, and causes of action. These lawsuits share not just “common” issues of fact and law; they are exactly the same:

- They name the same Defendants;
- They are based on same occurrence—the rainfall event occurring on May 7, 2019;
- They allege the same 34 paragraphs of facts and claims;
- They assert the same causes of action;
- They allege the same 17 acts or omissions by Defendants;
- They allege the same 11 categories of damages;
- They seek the same equitable relief; and

- The same attorneys filed the three lawsuits.

See Exhibits A, B, and C.

Given that each suit shares identical allegations, causes of action, allegedly causative occurrence, defendants, and requests for relief, the suits share “common issues of law and fact.” *In re Gulf Coast*, 247 S.W.3d at 794. Accordingly, consolidation of the Second and Third Lawsuits with the First Lawsuit would increase judicial economy and convenience for the courts, the parties and their counsel. *Id.*

C. The Consolidated Cases Proceed in This Court.

When a motion to consolidate cases is granted, “the consolidated case will be given the number of the first filed case and assigned to that court.” HARRIS CNTY. (TEX.) CIV. DIST. CT. LOC. R. 3.2.3(a). Thus, all three lawsuits should be assigned cause no. 2019-33415 and proceed in this Court.

PRAYER

For these reasons, Defendants respectfully request the Court grant this motion and consolidate cause nos. 2019-34366 and 2019-36139 with and into this case and Court for all purposes, along with any such other and further relief, at law or in equity, to which Defendants may be justly entitled.

Respectfully submitted,

GRAY REED & MCGRAW LLP

By: /s/ Gabe T. Vick

J. CARY GRAY

Texas Bar No. 08322300

cgray@grayreed.com

GABE T. VICK

Texas Bar No. 24063046

gvick@grayreed.com

BRIAN E. WATERS

Texas Bar No. 24078035

bwaters@grayreed.com

1300 Post Oak Blvd., Suite 2000

Houston, Texas 77056

Telephone: (713) 986-7000

Facsimile: (713) 986-7100

and

ANDREW K. YORK

Texas Bar No. 24051554

dyork@grayreed.com

GREG WHITE

Texas Bar No. 21329050

gwhite@grayreed.com

1601 Elm Street, Suite 4600

Dallas, Texas 75201

Telephone: (214) 954-4135

Facsimile: (214) 953-1332

ATTORNEYS FOR DEFENDANTS FIGURE
FOUR PARTNERS, LTD. and PSWA, INC.

CERTIFICATE OF CONFERENCE

Pursuant to Harris County District Courts Civil Division Local Rule 3.3.6, I hereby certify that on June 17, 2019, I conferred by telephone with Omar Chawdhary, counsel for Plaintiffs, concerning this Motion. Mr. Chawdhary stated that he opposed this motion.

/s/ Andrew K. York

ANDREW K. YORK

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was duly furnished to the following counsel of record (1) electronically through the electronic filing manager (www.efiletexas.gov), and (2) via e-mail on this 17th day of June, 2019 as follows:

Jason C. Webster
Heidi O. Vicknair
Omar R. Chawdhary
THE WEBSTER LAW FIRM
6200 Savoy Drive, Suite 150
Houston, Texas 77036
filing@thewebsterlawfirm.com

and

Kimberley M. Spurlock
SPURLOCK & ASSOCIATES, P.C.
17280 West Lake Houston Pkwy.
Humble, Texas 77346
kspurlock@spurlocklaw.com
Mccone@spurlocklaw.com

Attorneys for Plaintiffs

William J. Cozort, Jr.
Matthew R. Maddox
Sarai S. Neuman
BROTHERS ALVARADO, P.C.
Two Memorial City Plaza
820 Gessner, Suite 1075
Houston, Texas 77024
wcozort@brothers-law.com
mmaddox@brothers-law.com
sneuman@brothers-law.com

*Attorneys for Defendant
Rebel Contractors, Inc.*

/s/ Gabe T. Vick

GABE T. VICK