

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

3-B CATTLE COMPANY, INC.,

Plaintiff,

vs.

Case No. 6:18-CV-01213-EFM-TJJ

KELVIN MORGAN and SUSAN
MORGAN,

Defendants.

MEMORANDUM AND ORDER

Before the Court are Defendants' Notice of Filing and Request to Hold Proceedings in Abeyance (Motion to Stay) (Doc. 19) and Defendants' Motion to Dismiss or in the Alternative Transfer based upon *Forum Non Conveniens* (Doc. 6). For the reasons stated below, the Court denies both motions.

I. Factual and Procedural Background

The Plaintiff, 3-B Cattle Company ("3-B"), is a corporation incorporated in Kansas. The Defendants, Kelvin and Susan Morgan, are individuals who reside and do business in Oklahoma.

In 2010, 3-B and the Morgans orally agreed that the Morgans would keep, graze, feed, and manage 3-B's cattle. In return, 3-B would pay the Morgans a per-head fee plus feed costs. In December 2016, the parties disputed the number of 3-B's cattle in the Morgans' possession. 3-B alleges that the Morgans overrepresented the number of cattle by at least 803. On July 10,

2017, the parties met in Coffeyville, Kansas, to resolve the matter. 3-B alleges that the Morgans agreed to settle the dispute by paying 3-B a lump sum of \$865,096 (the “Settlement Amount”). 3-B further alleges that the Morgans signed a statement acknowledging this Settlement Amount, paid \$10,000 of the Settlement Amount that day, and orally promised to pay the remainder within a week. The Morgans allege, however, that 3-B unlawfully coerced them into signing a dictated statement and paying the \$10,000.

The Morgans paid 3-B \$10,000 on July 10, 2017, but they paid no more of the alleged Settlement Amount within the next week or any time thereafter. On April 18, 2018, 3-B sent a demand letter to the Morgans, seeking the remainder of the alleged Settlement Amount. A month later, on May 18, 2018, the Morgans responded to the demand letter with a counteroffer. On June 20, 2018, 3-B sent another letter to the Morgans, proposing a new counteroffer, and enclosing a draft petition to be filed in the District Court of Montgomery County. In that letter, 3-B stated that the Morgans had 10 days to respond, or else 3-B would file the petition.

One day before the deadline specified in 3-B’s final offer, the Morgans filed a lawsuit against 3-B in the District Court of Nowata County, Oklahoma, seeking declaratory judgment and an accounting. 3-B subsequently removed that action to the U.S. District Court for the Northern District of Oklahoma.¹ 3-B then filed a Motion to Transfer the case to this Court. On December 19, 2018, the U.S. District Court for the Northern District of Oklahoma granted 3-B’s Motion to Transfer, holding that the Morgans anticipatorily filed the Oklahoma lawsuit in an attempt to take advantage of the “first-to-file” rule.²

¹ *Morgan v. 3-B Cattle Co., Inc.*, 2018 WL 6651529 (N.D. Okla. 2018).

² *Morgan*, 2018 WL 6651529, at *3.

As forewarned in its final demand letter, 3-B filed this action in Kansas, in the Montgomery County District Court on July 3, 2018. 3-B seeks to enforce the alleged Settlement Agreement, or alternatively assert claims for breach, fraud, fraud by silence, negligent misrepresentation, conversion, and replevin. The Morgans now have two motions pending before this Court. First, they move to dismiss this case, or in the alternative to transfer it to the U.S. District Court for the Northern District of Oklahoma under a theory of *forum non conveniens*. Second, the Morgans move to stay this case pending the outcome of the prior case in the Northern District of Oklahoma.

II. Analysis

This Court is the proper forum for the case. The Morgans argue that the Court should dismiss this case because a previously filed action was pending in the U.S. District Court for the Northern District of Oklahoma. As mentioned above, that case was transferred to this Court and consolidated into this case. As a result, the Morgans' argument and motion are moot. Likewise, the Morgans' motion to transfer this case to the Northern District of Oklahoma under a theory of *forum non conveniens* and their motion to stay this case pending the outcome of the Oklahoma case are also moot. As the Northern District of Oklahoma rightly noted, this Court has jurisdiction over the parties, and this case reflects the proper alignment of the parties in relation to the dispute, with 3-B as Plaintiff and the Morgans as Defendants.³ As such, the case shall proceed in this Court.

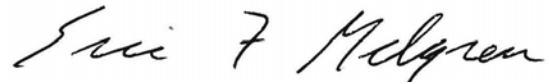
IT IS THEREFORE ORDERED that Defendants' Motion to Dismiss or in the Alternative Transfer based upon *Forum Non Conveniens* (Doc. 6) is **DENIED**

³ *Morgan*, 2018 WL 6651529, at *4.

IT IS FURTHER ORDERED that Defendants' Notice of Filing and Request to Hold Proceedings in Abeyance (Doc. 19) is **DENIED**.

IT IS SO ORDERED.

Dated this 14th day of January, 2019.

A handwritten signature in black ink that reads "Eric F. Melgren". The signature is written in a cursive, flowing style.

ERIC F. MELGREN
UNITED STATES DISTRICT JUDGE