

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JOHN CRAIG FIRST, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
vs.)	NO. CIV-20-1104-HE
)	
AGCO CORPORATION, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

This case arises out of the purchase of a pre-owned combine and header by plaintiff John Craig First. He, his wife, and their limited liability company assert various claims against Rolling Plains Implement Company, Inc. (“Rolling Plains”), the seller. Also sued are AGCO Corporation, for which Rolling Plains is alleged to be an authorized dealer, and several others AGCO-related entities.

Although multiple claims on various theories are asserted, the central thrust of plaintiffs’ case is that defendants, or some of them, misrepresented the number of hours the combine engine had been operated and that defendants had “rolled back” the number of hours shown on the machine’s hour meter. Plaintiffs, who are custom harvesters, allege that they experienced breakdowns of the equipment and eventually took it to a repair facility in North Dakota, that the facility had previously serviced the same equipment, and that the prior service history established that the hours on the engine substantially exceeded what was represented by defendants at the time of purchase by Mr. First.

Plaintiffs filed this case in the District Court of Oklahoma County, State of Oklahoma. Defendants removed the case to this court on the basis of diversity jurisdiction. There has been no challenge to the propriety of the removal.

All defendants have filed motions to dismiss. For the most part, the motions contend that plaintiff's petition fails to state a claim against the particular moving defendant. However, the motion of Rolling Plains also seeks dismissal based on lack of personal jurisdiction over it and based on improper venue. That motion is therefore addressed first.

The Rolling Plains motion objects both to personal jurisdiction and venue but devotes virtually all of its argument to the issue of venue. However, on the assumption that Rolling Plains has said enough to at least raise the issue, the burden is on plaintiff to show the existence of jurisdiction. XMission, L.C. v. Fluent LLC, 955 F.3d 833, 839 (10th Cir. 2020). The court concludes that plaintiff has made a sufficient prima facie showing of personal jurisdiction for this court to address other issues in the case. It has submitted an affidavit to the effect that Rolling Plains, which is located in Vernon, Texas, some 20 or so miles from Tillman County, Oklahoma, routinely conducts business in Tillman County, including repairing and servicing combines and other equipment. This is sufficient to make a prima facie showing that Rolling Plains, although a Texas corporation, has purposefully directed activities at residents of the State of Oklahoma, and has availed itself of the opportunity of doing business there, such that the exercise of personal jurisdiction over it is consistent with notions of fair play and substantial justice. *Id.* at 840-41.

As to venue, Rolling Plains contends that venue is not proper in Oklahoma when tested against the requirements of 28 U.S.C. § 1391.¹ “Whether venue is ‘wrong’ or ‘improper’ depends exclusively on whether the court in which the case was brought satisfies the requirements of federal venue laws.” Atlantic Marine Const. Co., Inc. v. U.S. Dist. Court for Western Dist. of Texas, 571 U.S. 49, 55 (2013). Section 1391(a) provides, in pertinent part, that venue is proper in:

- (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;
- (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated;

...

Here, it appears undisputed that none of the defendants are residents of Oklahoma. So far as appears from the parties’ submissions, the “events or omissions” upon which plaintiffs rely for their claims all occurred in Texas. That is where the seller was located. That is apparently where the purchase contract and related financing documents were negotiated and signed. That is apparently where any representations as to the purchase were made by defendants. Plaintiff does not suggest that venue is proper based on where a “substantial part of the property”, presumably the combine, is located. Indeed, plaintiff makes no real effort to justify venue in the Western District of Oklahoma at all, but argues

¹ For reasons not clear to the court, Rolling Plains (and to a lesser extent plaintiff) also discuss the Oklahoma and Texas venue statutes. The question here is not what county the case should have been filed in in state court. Rather, the question is whether, the case having been removed to federal court, venue is proper in the Western District of Oklahoma.

instead that, rather than dismissing the case, the court should transfer it to the U. S. District Court for the Northern District of Texas. Under these circumstances, the court concludes Rolling Plains' objection to venue should prevail but that, rather than dismissing the case, the interests of justice warrant transferring it to the Northern District of Texas. 28 U.S.C. § 1406(a).

Having concluded that a case should be transferred to another district, the court would ordinarily decline to rule on other pending motions and leave them for disposition in the transferee district. However, as the remaining pending motions in this case go largely to the sufficiency of the pleadings, which the court has reviewed, and the disposition of those motions may advance the prompt disposition of the case, the court concludes they should be addressed now.

Various of the motions to dismiss correctly argue that the petition does not state a claim in favor of plaintiffs Lacey First and First Farms and Trucking LLC. The allegations indicate the purchase contract was entered into by John First as the purchaser. They state no basis for a conclusion that Lacey First or the LLC had any interest in it, nor do they give any indication that representations about it, fraudulent or otherwise, were given to those plaintiffs. The motions will therefore be granted as to the purported claims of those plaintiffs.

Various defendants also argue that the fraud claims are insufficiently pleaded. *See* Fed.R.Civ.P. 9(b). The petition makes various conclusory references to representations made by "the defendants." "[W]here fraud is alleged against multiple defendants, blanket allegations of fraud couched in language such as 'by the defendants' are insufficient,

Instead, the specifics of the alleged fraudulent activity of each defendant must be set forth.” Lillard v. Stockton, 267 F.Supp.3d 1081, (N.D. Okla. 2003) (citation omitted). A plaintiff must “set forth the time, place, and contents of the false representation, the identity of the party making the false statements and the consequences thereof.” Jensen v. America’s Wholesale Lender, 425 Fed. Appx. 761, 763 (10th Cir. 2011). It does not avoid the need for reasonable specificity as to fraud claims to assert a “civil conspiracy” theory. “To the extent the civil conspiracy claim is based on acts that are alleged unlawful because they constitute fraud, . . . the fraudulent acts must be pled under the standard of Rule 9(b).” In re Quest Comms. Intern., Inc. Sec. Litig., 387 F.Supp.2d 1130, 1153 (D. Colo. 2005). Specifically, a “civil conspiracy consists of a combination of two or more persons to do an unlawful act, or to do a lawful act by unlawful means.” Brock v. Thompson, 948 P.2d 279, 294 (Okla. 1997). More than conclusory references to a civil conspiracy is required. Further, to the extent that plaintiffs assert misrepresentations by a defendant other than the assertions of falsified hours, those must be pleaded with reasonable specificity as well.

For these reasons,² the court concludes the various motions to dismiss [Doc. Nos. 17, 21, 22, 23, 24 and 25] should be and are **GRANTED** and plaintiffs’ claims are dismissed. As some or all of the pleading deficiencies are remediable by amendment, plaintiffs are granted leave to file an amended complaint within 21 days. Further, pursuant

² *The court concludes it is unnecessary to address any other issues potentially raised by the motions to dismiss, as an amended complaint conforming to federal pleading standards may resolve some or all of them.*

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