UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Wyndham Associates v. David C. Bintliff, A. G. McNeese Jr., L. B. Tybor, American Stock Exchange, Moroney, Beissner & Co., Inc., A. G. Becker & Co., Inc., and Goodkind, Neufeld & Co., Inc.; Maurice M. Friedman v. David C. Bintliff, the Chase Manhattan Bank, N. A., A. G. McNeese Jr., L. B. Tybor, American Stock Exchange, Moroney, Beissner & Co., Inc., A. G. Becker & Co., Inc., and Goodkind, Neufeld & Co., Inc.

398 F.2d 614 (2d Cir. 1968) · No. Nos. 457, 458; Dockets 31976, 31977 · Decided December 9, 1968

SUMMARY

The Second Circuit affirmed orders severing claims against the American Stock Exchange and Chase Manhattan Bank and transferring the remaining claims in two related securities class actions from the Southern District of New York to the Southern District of Texas. The court held that claims may be severed under Federal Rule of Civil Procedure 21 to facilitate transfer under 28 U.S.C. § 1404(a), including when venue would not otherwise be proper as to the severed defendants. The court also upheld the transfer as to Goodkind, Neufeld & Co. and declined to review its motion to dismiss because no order denying that motion had been entered.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Chief Judge Lumbard; Circuit Judge Smith; Circuit Judge Anderson
JURISDICTION	Federal
DECIDED	December 9, 1968
DOCKET	Nos. 457, 458; Dockets 31976, 31977
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs and defendant Goodkind appealed interlocutory orders severing claims against the American Stock Exchange and Chase Manhattan Bank and transferring the claims against the remaining defendants to the Southern District of Texas. The district court certified the orders under 28 U.S.C. § 1292(b), and the Second Circuit granted leave to appeal.

STANDARD OF REVIEW	Abuse of discretion for the district court's severance and transfer determinations; the appellate court lacked jurisdiction to review the motion to dismiss because no order on that motion had been entered.
PRECEDENTIAL VALUE	Published federal appellate opinion; precedential
PARTIES	Wyndham Associates and other plaintiffs, Maurice M. Friedman and other plaintiffs, Goodkind, Neufeld & Co., Inc. v. David C. Bintliff, A. G. McNeese, Jr., L. B. Tybor, American Stock Exchange, Moroney, Beissner & Co., Inc., A. G. Becker & Co., Inc., The Chase Manhattan Bank, N. A.

TOPICS

venue · civil procedure · interlocutory appeal · appellate procedure · commercial litigation

PRACTICE AREAS

civil procedure · federal securities law · venue and transfer · appellate procedure

QUESTIONS PRESENTED

1. Whether a district court may sever properly joined claims solely to facilitate transfer of the remaining claims under 28 U.S.C. § 1404(a).
2. Whether the district court abused its discretion in transferring the claims against the remaining defendants to the Southern District of Texas.
3. Whether Goodkind was subject to venue in Texas under § 27 of the Securities Exchange Act.
4. Whether the Second Circuit could review Goodkind's motion to dismiss when the district court had denied the motion in its opinion but had entered no order disposing of it.

HOLDINGS

1. A district court may sever claims against one or more defendants to permit transfer of the remaining action to a more convenient district, even when the claims were properly joined, where administration of justice would be materially advanced by severance and transfer.
2. The district court did not abuse its discretion in finding that the balance of convenience and the interests of justice favored transfer of the remaining claims to the Southern District of Texas.
3. Venue in Texas was proper as to Goodkind because acts or transactions by other defendants in Texas allegedly furthered a manipulative scheme in which Goodkind knowingly participated; alleged interstate communications could independently support venue.
4. The court could not review Goodkind's motion to dismiss because the district court had entered no order denying that motion.

KEY QUOTATIONS

> *“We believe that where the administration of justice would be materially advanced by severance and transfer, a district court may properly sever the claims against one or more defendants for the purpose of permitting the transfer of the action against the other defendants”* (398 F.2d at 617)

> *“Where certain claims are properly severed, the result is that there are then two or more separate "actions," and the district court may, pursuant to § 1404(a), transfer certain of such separate actions while retaining jurisdiction of others.”* (398 F.2d at 616)

FACTUAL BACKGROUND

The actions were class actions by Westec Corporation shareholders alleging that David Bintliff manipulated the market price of Westec stock and that various brokers, bank officers, the American Stock Exchange, and Chase Manhattan Bank aided or facilitated the scheme. Numerous related Westec stock-manipulation proceedings, including a Chapter X reorganization and other shareholder actions, were pending in the Southern District of Texas. The district court severed claims against the Exchange and Chase, whose connections to the alleged scheme or venue in Texas presented distinct issues, and transferred the remaining claims to Texas to centralize related litigation.

PROCEDURAL HISTORY

The Southern District of New York severed the claims against the American Stock Exchange and Chase Manhattan Bank, retained those claims in New York, and transferred the claims against the remaining six defendants to the Southern District of Texas, Houston Division. Goodkind's motion to sever was denied, and its claims were transferred. The Second Circuit affirmed the appealed orders but declined to review Goodkind's motion to dismiss because no order denying that motion had been entered below.

DISPOSITION

affirmed

CASES CITED

- Hoffman v. Blaski, 363 U.S. 335, 80 S. Ct. 1084, 4 L. Ed. 2d 1254 (1960)
- Bruns, Nordeman & Co. v. American National Bank & Trust Co., 394 F.2d 300 (2d Cir. 1968)
- Sporia v. Pennsylvania Greyhound Lines, 143 F.2d 105 (3d Cir. 1944)
- General Electric Credit Corp. v. James Talcott, Inc., 271 F. Supp. 699 (S.D.N.Y. 1966)
- Leesona Corp. v. Cotwool Manufacturing Corp., Judson Mills Division, 204 F. Supp. 139 (W.D.S.C.), appeal dismissed, 308 F.2d 895 (4th Cir. 1962)
- Schneider v. Sears, 265 F. Supp. 257 (S.D.N.Y. 1967)
- Cosmos Bank v. Bintliff et al., 67 Civ. 1984 (S.D.N.Y. July 20, 1967)
- Clapp v. Stearns & Co., 229 F. Supp. 305 (S.D.N.Y. 1964)
- Hooper v. Mountain States Securities Corp., 282 F.2d 195, 204-205 (5th Cir. 1960), cert. denied, 365 U.S. 814, 81 S. Ct. 695, 5 L. Ed. 2d 693 (1961)

- Matheson v. Armbrust, 284 F.2d 670 (9th Cir. 1960), cert. denied, 365 U.S. 870, 81 S. Ct. 904, 5 L. Ed. 2d 860 (1961)
- Lykes Bros. Steamship Co. v. Sugarman, 272 F.2d 679 (2d Cir. 1959)
- American Flyers Airline Corp. v. Farrell, 385 F.2d 936 (2d Cir. 1967)

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