

Transfer unwarranted where tests neutral

Today's case deals, in part, with a section 1404(a) motion to transfer venue from the Northern District of Illinois to the Central District of California (28 U.S.C. § 1404(a)) and the two tests used to determine when transfer is warranted: (1) the private factors test; and (2) the public factors test.

First National Bank v. El Camino Resources Ltd., 447 F.Supp.2d 902 (N.D.Ill. 2006).

U.S. District Judge Ronald A. Guzman denied transfer and, in doing so, explained the weighing process he used considering each of the private and public factors, noting which were neutral, which favored California and which favored Illinois.

First National Bank, a nationally chartered bank with its principal place of business in Illinois, sued El Camino Resources Ltd., a California corporation with its principal place of business in California, for breach of a security agreement and default of a loan. On Oct. 21, 2004, FNB loaned money to El Camino to fund an equipment lease that El Camino made as lessor to Cyberco Holdings Inc.

El Camino used John Sweeney of S&S Financial, an Illinois broker, as its agent to arrange the loan agreement with FNB. El Camino defaulted. It contended the default was the result of a scam involving fraud by Cyberco Holdings Inc., which the U.S. Department of Justice was investigating. FNB sued on the loan.

El Camino filed a motion to dismiss for lack of personal jurisdiction under Rule 12(b)(2) & (3), contending the Illinois court had no personal jurisdiction over the California corporation. The District Court, providing a detailed analysis of tests used to determine general personal jurisdiction and specific personal jurisdiction, denied El Camino's motion to dismiss, finding there was specific personal jurisdiction because Sweeney's conduct, acting as El Camino's agent in negotiating the loan, showed that El Camino purposefully availed itself of the privilege of conducting activities in Illinois, thereby invoking the benefits and protection of Illinois laws and subjecting itself to Illinois personal jurisdiction.

Next the District Court considered El Camino's motion to transfer to the Central District of California pursuant to section 1404(a).

Guzman began consideration of the motion noting the tests used to determine when transfer is appropriate.



Federal Courts

By Jay S. Judge

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"A federal district court may '[f]or the convenience of parties and witnesses, and in the interest of justice ... transfer any civil action to any other district or division where it might have been brought.' 28 U.S.C. § 1404(a)," Guzman wrote. "Transfer is appropriate when '(1) venue was proper in the transferor district, (2) venue and jurisdiction would be proper in the transferee district, and (3) the transfer will serve the convenience of the parties and the witnesses as well as the interests of justice.'"

Guzman found venue was proper in either Illinois or California.

"The court has found that it has personal jurisdiction over El Camino," he wrote. "Because El Camino's agent solicited FNB and negotiated the contract at issue while in Illinois, substantial parts of the events giving rise to the claim occurred here. Thus, venue is proper in Illinois.

"Venue is also proper in California because, in diversity cases, jurisdiction is proper in 'a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred.' 28 U.S.C. § 1391(a). El Camino is a California corporation. The substance of FNB's claim arises from El Camino's alleged breach of their security agreement. Any omission on the part of El Camino occurred in California. Clearly, FNB could have brought this action in California had they chosen to do so. Thus, for purposes of this motion, venue is also appropriate in California."

Next, noting that when venue is proper in either state, whether transfer is warranted is determined by two tests: (1) the private factors test; and (2) the public factors test:

"In determining whether the transfer will actually serve the convenience of the parties and witnesses and the

interests of justices, courts analyze the private interests of the parties and the public interests of the court. The factors relevant to considering the parties' private interests are: '(1) plaintiff's choice of forum, (2) the situs of the material events, (3) the relative ease and access to sources of proof, (4) the convenience of the parties and (5) the convenience of the witnesses.' Public interests factors include 'the court's familiarity with the applicable law, the speed at which the case will proceed to trial, and the desirability of resolving controversies in their locale.' The party seeking transfer 'has the burden of establishing, by reference to particular circumstances, that the transferee forum is clearly more convenient.' *Coffey v. Van Dorn Iron Works*, 796 F.2d 217, 220 (7th Cir. 1986)."

Guzman then began his analysis of the private factors, commencing with the plaintiff's choice of forum:

"Generally, a plaintiff's choice of forum is given substantial weight when, as here, it is the plaintiff's home forum. *Macedo v. Boeing Co.*, 693 F.2d 683, 688 (7th Cir. 1982). However, this deference is not absolute and the weight given to the plaintiff's choice of forum can vary depending upon the circumstances of each case. Thus, 'where the plaintiff's choice of forum is not the site of material events, plaintiff's choice of forum is entitled less deference.' *Heller Fin. Inc. v. Riverdale Auto Parts Inc.*, 713 F.Supp. 1125, 1129 (N.D.Ill. 1989). Therefore, to determine the appropriate amount of deference to be accorded plaintiff's choice of forum, the situs of material events must be determined."

Considering and finding the situs of material events favored California, the Court observed:

"[I]n a breach of contract case, the situs is where the business decisions causing the breach occurred....' *Hyatt Corp. v. Personal Commc'ns Indus. Ass'n*, No. 04 C 4656, 2004 WL 2931288 (N.D.Ill. Dec. 15, 2004). El Camino's business decisions with regard to its failure to comply with the provisions of the security agreement occurred in California. Because the situs of material events was in California, FNB's choice of forum is given less deference. The situs of materials events factor weighs in favor of transferring this case to California."

Next looking to the accesses of proofs consideration and finding it neutral, the court explained:

"El Camino asserts that all documents related to the transaction are located in California. While El

Camino's record may be located in California, FNB's are no doubt located here in Illinois. Any records related to this transaction that are not currently in possession of FNB at their office will be easily transferable. When documents are easily transferable, access to proof is a neutral factor. Accordingly, this factor weighs neither for nor against transfer."

Moving to the convenience of the parties consideration and finding it neutral, Guzman reasoned:

"This factor concerns the parties' 'respective residences and abilities to bear the expense of trial in a particular forum.' *Medi USA v. Jobst Inst. Inc.*, 791 F.Supp. 208, 210 (N.D.Ill. 1992). El Camino asserts that the strain of litigating this matter in another state will be greater on them than on FNB because El Camino is a small privately owned company with nine employees that transacts business solely in California, while FNB is a large, nationally chartered bank.

"FNB, on the other hand argues that it is a local bank with no employees in California. While it may be slightly more difficult for El Camino to litigate this matter in Illinois than for FNB to litigate it in California, a 'motion to transfer cannot be used simply to shift the one party's inconvenience onto another party.' *I.P. Innovation L.L.C. v. Lexmark Int'l Inc.*, 289 F.Supp.2d 952, 955 (N.D.Ill. 2003). This factor is, therefore, neutral."

The final private factors test, the convenience of the witnesses factor, was described as often the most important deciding factor:

"The convenience of the witnesses is often the most important factor in determining whether to grant a motion to transfer. More weight is afforded nonparty witnesses than witnesses within the control of the parties, as it is presumed that party witnesses will appear voluntarily. In assessing this factor, the number of witnesses located in each forum and the importance of each witness' testimony must be considered. In addition, courts may consider the 'the availability of compulsory process for the attendance of unwilling witnesses and the costs of obtaining the attendance of the witnesses.' The party seeking transfer must specify the key witnesses to be called and make a generalized statement of their testimony. The burden is on the moving party to show that the testimony of these particular witnesses is necessary to his case."

Guzman then discussed the fact that

El Camino had one nonparty California resident witness, Chiara Medicina, and FNB had one nonparty Illinois resident witness, John Sweeney, and found the factor neutral:

"While El Camino points out that Medicina is an independent contractor and is outside this court's subpoena power, the other witnesses they intend to call are simply party witnesses. Party witnesses are certainly given some weight, but no more weight is accorded El Camino's party witnesses than FNB's party witnesses. Moreover, while Sweeney was acting as El Camino's agent for the purposes of negotiating the Cyberco lease transactions with FNB, there is no indication that he is presently acting as their agent. Thus, he is also a nonparty witness, and this court can place no more weight on Medicina's inconvenience than on Sweeney's. This factor is neutral."

The court then began consideration of the public factors, beginning with the speed to trial factor, finding a slight tipping in favor of California:

"In evaluating this factor, the court looks to the Federal Court Management Statistics to determine '(1) the median months from filing to disposition and (2) the median months from filing to trial.' Accordingly, for the 12-month period ending Sept. 30, 2005, the median time from filing to disposition in civil cases was 6.9 months in the Northern District of Illinois and 7.4 months in the Central District of California. Federal Court Management Statistics (2005), [www.uscourts.gov/-cgi-bin/cmsd2005.pl]. The median time from filing to trial was 27 months in the Northern District of Illinois but only 20.5 months in California. Accordingly, this factor weighs slightly in favor of transfer."

Moving next to the second public factor, the court's familiarity with the law, Guzman found this factor to be neutral:

"Generally, in diversity cases, it is 'advantageous to have federal judges try a case who are familiar with the applicable state law.' *Coffey*, 796 F.2d at

221. However, 'where the law in question is neither complex nor unsettled, the interests of justice remain neutral between competing courts.' *Amoco Oil Co.*, 90 F.Supp.2d at 962 (noting that 'contract law is not particularly complex' and is well within the comprehension of a foreign forum.). Given that the contract entered into by FNB and El Camino provided for disputes to be governed by Illinois law, and that Illinois contract law is not particularly unsettled or complex, this factor is neutral."

Finally, the court weighed the third public factor, the interests of deciding local controversies by local courts, and found the factor was neutral as both the Illinois and California courts had an interest to protect:

"Resolving litigated controversies in their locale is a desirable goal of the federal courts.' *Doage v. Bd. of Regents*, 950 F.Supp. 258, 262 (N.D.Ill. 1997). 'Illinois has a strong interest in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state-actors.' El Camino argues that because this controversy is intimately connected with California and there are two other banks likely to sue El Camino for default due to the Cyberco loan transaction, these cases all belong in California. If, in fact, El Camino was the victim of a massive scam perpetrated by Cyberco, then California certainly has a vested interest in ensuring its corporations are protected. Illinois, however, has an equally vested interest in ensuring that its banks have a proper forum to seek recovery in the event of a default on a loan. This factor weighs neither for nor against transfer."

After weighing the private and public factors, Guzman found transfer was unwarranted and ruled:

"In sum, only two of the many factors weigh in favor of transfer: the situs of material events and the speed to trial. These factors in and of themselves are insufficient to grant the motion to transfer. Thus, the court denies the motion."