

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SOVEREIGN BANK, F.S.B. : CIVIL ACTION
: :
v. : :
: :
CHICAGO TITLE INSURANCE : :
COMPANY., et al. : NO. 00-596
: :

MEMORANDUM AND ORDER

J. M. KELLY, J.

SEPTEMBER, 2000

Presently before the Court is a Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404(a) (1994) filed by the Defendant, Chicago Title Insurance Company ("Chicago Title"). The Plaintiff, Sovereign Bank, F.S.B. ("Sovereign"), filed suit in this Court for breach of contract, bad faith and violation of the New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8-1 et seq. (West 1989 & Supp. 1996). Chicago Title now seeks to have this matter transferred to the United States District Court for the District of New Jersey. For the following reasons, Chicago Title's motion is denied.

I. BACKGROUND

This case involves the alleged breach of contract resulting from Defendants' alleged failure to defend a mortgage held by Sovereign. In September 1988, Princeton-New York Investors, Inc. ("PNY") purchased an improved parcel of land in Sussex County, New Jersey. PNY obtained a \$6,000,000.00 mortgage from First

Fidelity Bank, N.A. ("First Fidelity"), which received a first mortgage lien on the property. Chicago Title and Old Republic National Title Insurance Co. ("Old Republic") issued a lender's title policy to First Fidelity on September 15, 1988, which insured the mortgage on the property as a first mortgage lien.

PNY filed for bankruptcy protection on April 12, 1994. The mortgage originally held by First Fidelity was subsequently assigned to AHC, Inc. and then to First DeWitt Savings Bank, a predecessor to Sovereign. As a result, PNY owned property in Sussex County, New Jersey, subject to a mortgage held by Sovereign. Chicago Title and Old Republic insured the mortgage.

On October 6, 1995, the appointed bankruptcy Trustee filed an adversary proceeding seeking to discharge the mortgage now held by Sovereign. The Trustee apparently believed PNY had already satisfied the mortgage because, in 1990, PNY had sold portions of the property and paid \$4,000,000.00 of the proceeds to First Fidelity. Chicago Title claims that PNY paid that amount in order to satisfy the mortgage. Sovereign asserts, however, that PNY paid the \$4,000,000.00 in satisfaction of other loans not secured by the mortgage.

In any event, the Trustee sold the property and used the proceeds to pay real estate taxes and redeem tax sales certificates. After the sale, \$2,000,000.00 remained subject to the mortgage. Although Sovereign informed Chicago Title and Old

Republic of the Trustee's continued attempts to discharge Sovereign's mortgage, Chicago Title and Old Republic apparently refused to defend the mortgage.

Sovereign subsequently settled with the Trustee, receiving \$1,100,000 from him. As part of the settlement, the Trustee acknowledged the validity of Sovereign's mortgage. Sovereign seeks damages to compensate it for the difference between the amount to which it was entitled under the mortgage and the amount actually recovered from the settlement with the trustee.

II. STANDARD OF REVIEW

Section 1404(a) provides: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." Although the district court is vested with wide discretion in making the transfer decision, the burden of establishing the need for the transfer rests with the movant. Solomon v. Continental American Life Ins. Co., 472 F.2d 1043, 1045 (3d Cir. 1973); Shutte v. Armco Steel Corp., 431 F.2d 22 (3d Cir. 1970). First, the movant must demonstrate that venue would be proper in the proposed transferee district, meaning that the Plaintiff could have brought this action there originally. Solomon, 472 F.2d at 1045. Second, transferring venue must be appropriate in light of a number of factors, including the

plaintiff's choice of forum; the relative ease of access to sources of proof; the availability of compulsory process to secure the attendance of unwilling witnesses; the costs of obtaining the attendance of willing witnesses; the possibility of viewing the premises, if appropriate; any practical problems that make the trial of a case easy, expedient, and inexpensive; and, finally, the public interest. See Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508-09 (1947); Rowles v. Hammermill Paper Co., 689 F. Supp. 494, 495 (E.D. Pa. 1988). The United States Supreme Court appropriately placed the plaintiff's choice of forum at the beginning of this list, for "the Plaintiff's choice of venue should not be lightly disturbed." Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995); Shutte, 431 F.2d at 25 (calling Plaintiff's choice of forum "paramount consideration").

III. DISCUSSION

Chicago Title and Sovereign agree that this case could have been brought in the District of New Jersey. Although this Court may therefore transfer venue to the District of New Jersey pursuant to § 1404(a), Chicago Title points to no reason compelling enough to justify doing so. None of the factors enunciated in Gulf Oil weigh in favor of disturbing Sovereign's choice of forum. First, conducting a trial in the Eastern

District of Pennsylvania will not deny any party access to evidence. Transporting documentary evidence from New Jersey to the Eastern District of Pennsylvania, if indeed no such evidence can be found in this district, is not unduly burdensome. Second, while many of the key witnesses work or are domiciled in New Jersey, they all appear to be subject to the compulsory process afforded this Court by Federal Rule of Civil Procedure 45. Any witness not subject to this Court's compulsory process will not be deterred from willingly cooperating because the cost of traveling is not unreasonable. Finally, transferring this matter to the District of New Jersey would not make the trial any easier, more expedient or inexpensive. This Court should not transfer this matter merely because one of the Plaintiff's claims rests on New Jersey law. Indeed, federal courts are often called upon to apply the law of other states.

Chicago Title can point to no factor that strongly favors disturbing Sovereign's choice of venue. Accordingly, Chicago Title's Motion to Transfer Venue is denied and this action shall remain venued in the Eastern District of Pennsylvania.

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ORDER

AND NOW, this day of September, 2000, in consideration of the Motion to Transfer Venue filed by the Defendant, Chicago Title Insurance Company (Doc. No. 21), and the response of the Plaintiff, Sovereign Bank, F.S.B., thereto, it is ORDERED that Defendant's Motion to Transfer Venue is DENIED.

BY THE COURT:

JAMES MCGIRR KELLY, J.