

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

DE LAGE LANDEN FINANCIAL	:	CIVIL ACTION
SERVICES, INC.	:	
	:	
v.	:	
	:	
CARDSERVICE INTERNATIONAL,	:	
INC.	:	NO. 00-2355

M E M O R A N D U M

WALDMAN, J.

October 25, 2000

This is a breach of contract action. Subject matter jurisdiction is predicated on diversity of citizenship. Plaintiff is seeking to recover payments allegedly due under a lease assigned to it. Presently before the court is defendant's Motion to Transfer Venue to the United States District Court for the Central District of California pursuant to 28 U.S.C. § 1404(a).

Plaintiff is a Michigan corporation headquartered in Berwyn, Pennsylvania. It is the assignee of a lease agreement for photocopiers entered between the defendant and International Business Equipment, Inc. ("IBE").¹ Defendant and the IBE are both California corporations with their principle places of business in California. The lease agreement between defendant and IBE (the "Agreement") contains a Pennsylvania choice of law

¹Plaintiff and defendant appear to dispute whether there were three serial agreements between IBE and defendant or one agreement which was superseded by later agreements. This disagreement does not implicate any of the pertinent transfer considerations and is immaterial to the resolution of the instant motion.

provision and a clause by which defendant consents to personal jurisdiction in the state courts of Pennsylvania or the U.S. District Court for the Eastern District of Pennsylvania.

The choice of law provision includes language that "this] Agreement has been made in Berwyn, Pennsylvania." It appears that the Agreement was actually negotiated and executed in California. The Agreement provided that monthly lease payments would be sent to an address in Pennsylvania which appears to be that of plaintiff and its predecessor.² Defendant sent at least 13 payments to that address. The Agreement expressly provides for an assignment by IBE of its rights under the Agreement to an assignee who "will not be subject to any claims, defenses or set-offs that [defendant] may have against [IBE]."

Defendant is the plaintiff in a subsequently filed California state court suit against plaintiff, IBE and others asserting claims, including breach of contract and fraud, related to the formation and enforcement of the Agreement. Plaintiff has since filed an action in this district against IBE for its alleged failure to honor a guarantee of payments due from defendant under the assigned equipment lease agreement. Also pending in a California state court is an earlier filed suit by plaintiff against another allegedly defaulting California lessee

²It appears that plaintiff or its predecessor financed IBE's purchase of the leased equipment, and that the choice of law and forum provision was placed in the Agreement for its benefit.

which has joined and filed cross-claims against IBE, including claims for fraud and breach of contractual obligations.

A district court may transfer a civil action to another district in which it might have been brought if the transfer is for the convenience of parties and witnesses, and in the interests of justice. See 28 U.S.C. § 1404(a); Coffey v. Van Dorn Iron Works, 796 F.2d 217, 219-20 (7th Cir. 1986); Shutte v. Armco Steel Corp., 431 F.2d 22, 24 (3d Cir. 1970), cert. denied, 401 U.S. 910 (1971); Supco Automotive Parts, Inc. v. Triangle Auto Spring Co., 538 F. Supp. 1187, 1191 (E.D. Pa. 1982).

The Central District of California is a district in which this action might have been brought. Defendant resides and routinely conducts business in that district. A substantial part of the events or omissions giving rise to plaintiff's claim occurred there.

The relevant private and public interest considerations in deciding a § 1404(a) motion include the plaintiff's choice of venue; the defendant's preference; where the claim arose; the relative physical and financial condition of the parties; the extent to which witnesses may be unavailable for trial in one of the fora; the extent to which records or other documentary evidence could not be produced in one of the fora; the enforceability of any judgment; practical considerations that could make the trial easy, expeditious or inexpensive; the relative administrative difficulty in the two fora resulting from

court congestion; the local interest in deciding local controversies at home; the public policies of the fora; and, the familiarity of the trial judge with the applicable state law in diversity cases. See Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995). The moving party bears the burden of showing that a balancing of the pertinent factors weighs in favor of transfer. See Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 29 (1988); Jumara, 55 F.3d at 879.

A plaintiff's choice of forum is generally entitled to great weight and "should not lightly be disturbed." Jumara, 55 F.3d at 879. The deference given to a plaintiff's choice of forum is reduced, however, where none of the key events or omissions underlying the claim occurred in the forum selected. See Lindley v. Caterpillar, Inc., 93 F. Supp. 2d 615, 617 (E.D. Pa. 2000); Matt v. Baxter Healthcare Corp., 74 F. Supp. 2d 467, 469-70 (E.D. Pa. 1999); Cain v. De Donatis, 683 F. Supp. 510, 512 (E.D. Pa. 1988); Schmidt v. Leader Dogs for the Blind, Inc., 544 F. Supp. 42, 47 (E.D. Pa. 1982).

A forum selection clause is also normally entitled to substantial consideration in the decision of whether to transfer a case. Jumara, 55 F.3d at 880; Shore Slurry Seal, Inc. v. CMI Corp., 964 F. Supp. 152, 156 (D.N.J. 1997). Neither plaintiff's choice of forum nor a forum selection clause is dispositive, however, or there would be no need to consider any other factor

and § 1404(a) would be meaningless. See Jumara, 55 F.3d at 880.³

While plaintiff is a corporate citizen of Pennsylvania, virtually none of the events underlying this action occurred here. This suit essentially involves obligations under a contract between two California corporations, negotiated and executed in California and allegedly breached by defendant in California.⁴ While the assignment gives plaintiff standing to sue, it is defendant's alleged breach of its obligation under the Agreement which gives rise to the claim and it is the Agreement that plaintiff alleges defendant has breached.⁵ The claim for

³Courts accord more weight to exclusive forum selection provisions, which at a minimum may preclude a signatory from arguing its own inconvenience, than to permissive forum selection clauses by which a party merely consents to personal jurisdiction and venue in a court which may otherwise lack them. See Stewart, 487 U.S. at 29; Plum Tree, Inc. v. Stockment, 488 F.2d 754, 758 n.7 (3d Cir. 1973). See also SBKL Service Corp. v. IIII Prospect Partners, L.P., 105 F.3d 578, 582 (10th Cir. 1997); Docksider, Ltd. v. Sea Technology, Ltd., 875 F.2d 762, 764 (9th Cir. 1989); National Union Fire Ins. Co. v. Landry, 677 F. Supp. 704, 708 (S.D.N.Y. 1987).

⁴Contrary to plaintiff's suggestion, it would be defendant's failure to remit payment which occurred in California and not the non-receipt of payment by plaintiff in the forum which constitutes the breach giving rise to this action. See Cottman Transmission Systems, Inc. v. Martino, 36 F.3d 291, 295 (3d Cir. 1994).

⁵Defendant questions the existence of an assignment. It states that it was never advised of any assignment and notes that plaintiff has not submitted a copy of one. Plaintiff has averred that IBE assigned its rights under the Agreement to plaintiff and there is no requirement that an actual copy be appended to the pleadings. For purposes of this motion, the court assumes the existence of a valid assignment. Should it appear after initial discovery that there was no such assignment, of course, the case may be subject to summary judgment and plaintiff to Rule 11 sanctions.

lease payments arose in California.⁶

There has been no showing about the relative financial condition of the parties from which it appears that litigation in one forum would be inordinately more or less onerous than in the other.⁷ There has been no suggestion that a judgment obtained in either forum would be unenforceable. One material non-party witness has been identified over whom there would be compulsory process only in the Central District of California and who may be unwilling voluntarily to appear for trial here. He is Howard Karjala, a former IBE employee with primary responsibility for negotiating the Agreement on IBE's behalf. It appears that he may be a critical witness in this litigation, as well as the pending California cases. If necessary, however, his testimony could be secured in California and presented by videotape. See Fed. R. Civ. P. 30(a)(1) & 32(a)(3).

⁶Plaintiff has asserted that "venue is proper in Pennsylvania pursuant to [28 U.S.C.] § 1391(a)(2)" and suggests that defendant "objects to venue pursuant to 28 U.S.C. § 1391(a)." There is no venue in this district pursuant to § 1391(a). Defendant does not reside here, a substantial portion of the conduct giving rise to the claim did not occur here and there is another district in which the action may otherwise be brought. Defendant, however, has not objected to venue. It has moved pursuant to § 1404(a) and not § 1406(a), and has never filed a motion pursuant to Fed. R. Civ. P. 12(b)(3). Venue is proper in this district pursuant to 28 U.S.C. § 1391(c) because defendant is a corporation which consented to personal jurisdiction here.

⁷Defendant has described itself as a "leader" in the "financial transaction processing industry" and thus presumably is not financially disadvantaged."

It appears that a trial would be easier and more efficient for each party in its respective home forum.⁸ The "local interest" in Philadelphia and Los Angeles in the determination and enforcement of the contractual rights and obligations of their respective area businesses would appear to be equivalent. The public policies of both fora favor performance of valid contractual obligations and would be equally served by a resolution of this controversy in either forum.⁹ This court may be somewhat more conversant with Pennsylvania law than its colleagues in Los Angeles, but federal judges routinely apply the law of various jurisdictions and basic contract law

⁸Defendant stresses the pendency of the earlier California case initiated by plaintiff against another lessee to argue that plaintiff cannot now reasonably maintain that it would be unduly inconvenienced if required to litigate the instant case in California. Defendant, however, has argued only that it is more convenient to litigate in its chosen forum and equally inconvenient for each party to litigate in the other party's forum of choice. Also, plaintiff has asserted a replevin claim in the California suit to obtain possession of equipment physically located in Sherman Oaks, California.

⁹Defendant correctly notes that the validity and enforceability of the lease agreement in question in this case may be effectively determined by rulings in the California action in which defendant is the plaintiff and that there is an "integral relationship" between the two actions. That California action, however, is pending in a state court and there is no available mechanism to consolidate these two actions upon any transfer. As both Cardservice and IBE are California citizens, the state court action is not removable.

principles do not vary widely among the states.¹⁰

Accepting that the forum selection provision is merely permissive and discounting somewhat plaintiff's choice of forum because the pertinent events and omissions occurred elsewhere, defendant has not made a convincing showing that the balance of other factors outweighs that choice. Accordingly, defendant's motion will be denied. An appropriate order will be entered.

¹⁰For purposes of resolving the instant motion, the court assumes that the dispute is governed by Pennsylvania law. A federal court sitting in Pennsylvania will enforce a contractual choice of law provision where there is a reasonable relationship between the parties or the underlying transaction and the state whose law is selected. See In re Allegheny Int'l., 954 F.2d 167, 178 (3d Cir. 1992); American Air Filter Co., Inc. v. McNichol, 527 F.2d 1297, 1299 n.4 (3d Cir. 1975); Novus Franchising, Inc. v. Taylor, 795 F. Supp. 122, 126 (M.D. Pa. 1992); Smith v. Commonwealth Nat'l. Bank, 384 Pa. Super. 65, 557 A.2d 775, 777 (1989), alloc. denied, 524 Pa. 610, 569 A.2d 1362 (1990). Defendant claims that it was unaware of any assignment, but does not deny that the underlying transaction contemplated transmission of regular lease payments to some party in Pennsylvania.

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O R D E R

AND NOW, this day of October, 2000, upon
consideration defendant's Motion to Transfer Venue (Doc. #4),
Plaintiff's response and the parties' respective reply and sur-
reply, consistent with the accompanying memorandum, **IT IS HEREBY**
ORDERED that the motion is **DENIED**.

BY THE COURT:

JAY C. WALDMAN, J.