

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

ELEANOR BOLLES : CIVIL ACTION
 :
 v. :
 :
 K MART CORPORATION : No. 01-1118

MEMORANDUM AND ORDER

J. M. KELLY, J.

JULY , 2001

Presently before the Court is a Motion to Transfer Venue filed by the Defendant, K Mart Corporation ("Kmart"), pursuant to 28 U.S.C. § 1404(a) (1994). The Plaintiff, Eleanor Bolles ("Bolles"), brought this diversity action against Kmart, alleging that she suffered severe personal injuries while shopping at a Kmart retail store. Kmart now moves to transfer venue to the United States District Court for the Northern District of New York. For the following reasons, the Defendant's Motion to Transfer Venue is granted.

I. BACKGROUND

The facts alleged in the complaint are as follows. Bolles, a resident of Montrose, Pennsylvania was injured while on the premises of Kmart's retail store in Binghamton, New York. She was injured when Kmart employees were unable to restrain and subdue Rezgar Avdel ("Avdel"), a suspected shoplifter in the store. Avdel injured Bolles when, as he attempted to evade Kmart security personnel, he ran into her and knocked her down. Bolles suffered numerous permanent internal and external injuries as a

result of the accident.

Bolles filed suit against Kmart in this Court, but did not name Avdel as a defendant. Bolles seeks judgment against Kmart in an amount in excess of \$150,000.00. Kmart filed the present motion to have this matter transferred to the Northern District of New York pursuant to 28 U.S.C. § 1404(a). Kmart claims the instant case is appropriate for transfer because the incident occurred in Binghamton, which is located in the Northern District of New York, and because all relevant witnesses and documents are located in or around Binghamton.

Binghamton is located approximately 185 miles from the location of this Court in Philadelphia, Pennsylvania. See Mapquest, <http://www.mapquest.com> (July 2, 2001) (searching driving directions from Binghamton to Philadelphia). Kmart has identified thirteen relevant witnesses who are located in or around Binghamton. These witnesses include current and former Kmart employees who were involved in the incident as well as hospital personnel who treated Bolles for her injuries.

Bolles resides in Montrose, Pennsylvania, which is located in the Middle District of Pennsylvania. Montrose is located approximately 30 miles from Binghamton and approximately 170 miles from Philadelphia. See id. (July 2, 2001) (searching driving directions from Montrose to Philadelphia and Binghamton).

II. STANDARD OF REVIEW

"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." 28 U.S.C. § 1404(a). Although district courts are vested with wide discretion in making the transfer decision, the burden of establishing the need for the transfer rests with the movant. Solomon v. Cont'l Am. 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 the action there originally. Solomon, 472 F.2d at 1045. Second, transferring venue must be appropriate in light of a number of factors, including: (1) the plaintiff's choice of forum; (2) the relative ease of access to sources of proof; (3) the availability of compulsory process to secure the attendance of unwilling witnesses; (4) the costs of obtaining the attendance of willing witnesses; (5) the possibility of viewing the premises, if appropriate; (6) any practical problems that make the trial of a case easy, expedient and inexpensive; and (7) 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). Of these numerous factors, the plaintiff's forum choice has been

identified as the "paramount consideration." Shutte, 431 F.2d at 25. The plaintiff's choice of forum will not be disturbed unless the balance of interests tilts strongly in favor of a transfer. Id.

III. DISCUSSION

A. The Propriety of Venue in the Proposed Transferee Court

Before the Court can determine whether transferring venue in this case would be preferable, it must first determine whether doing so would be possible. In other words, the Court must determine whether this case could have been brought originally in the Northern District of New York. In the instant case, subject matter jurisdiction is based solely on the parties' diversity of citizenship. Where subject matter jurisdiction is founded on diversity of citizenship, venue is proper in any district where any defendant resides or in a judicial district in which a substantial part of the events giving rise to the claim occurred. 28 U.S.C. § 1391(a). A corporation such as Kmart is deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action commenced. Id. § 1391(b). Kmart is subject to personal jurisdiction in the Northern District of New York because it transacts business there. Therefore, Kmart is deemed to reside in the Northern District of New York pursuant to 28 U.S.C. § 1391(b). Moreover,

the accident giving rise to Bolles' claim occurred in the Northern District of New York. Thus, a transfer of venue to the Northern District of New York is possible, a fact that neither party disputes.

B. Analysis of Relevant Factors

Having decided that it can transfer venue, the Court must determine whether it should. The Court must "consider all relevant factors to determine whether on balance the litigation would more conveniently proceed and the interests of justice be better served by transfer to a different forum." Jumara, 55 F.3d at 879. Bolles has chosen the Eastern District of Pennsylvania as her forum. Although a plaintiff's choice of forum "should not be lightly disturbed," id., 55 F.3d at 873, transferring venue is proper if other considerations combine to advocate doing so. The balancing of the other factors is equally as important as the plaintiff's choice of forum. Duffy v. Camelback Ski Corp., No. C.A. 92-0589, 1992 WL 151802, at *1 (E.D. Pa. July 23, 1992).

Moreover, Bolles choice of venue is given less deference because her chosen forum is not her residence and because no relevant events transpired in this District. "There are two situations where the plaintiff's choice may be accorded less deference: where no operative facts occurred in the chosen district, and where the chosen forum is not the plaintiff's

residence." Id.; see also Tranor v. Brown, 913 F. Supp. 388, 391 (E.D. Pa. 1996). It is undisputed that Bolles is a resident of Montrose, Pennsylvania, which is within the Middle District of Pennsylvania. Bolles' only connection to the Eastern District is that her daughter resides here and her attorneys are located here. In addition, it is indisputable that no events which are the subject of this litigation occurred within this District. Thus, because Bolles has no substantial connection to this District, her choice of forum is entitled to less deference than it otherwise would be.

A summation of relevant factors in this case suggests that the Court should transfer venue pursuant to 28 U.S.C. § 1404(a). Kmart has identified thirteen witnesses who have a connection with the proposed transferee district either through residence or place of employment. Bolles has named only one witness, Paul McCauley, Ph.D., who has any connection with Pennsylvania, and she has failed to even identify the precise district in which this witness is located. The transferee district is much more convenient for most, if not all, witnesses in this case because Binghamton is located approximately 185 miles from the location of this Court in Philadelphia, Pennsylvania. See Mapquest, www.mapquest.com (July 2, 2001) (searching driving directions from Binghamton to Philadelphia). The travel time of the witnesses would be reduced if this action were transferred to the

Northern District of New York. Furthermore, the cost of obtaining attendance of these witnesses and the availability of compulsory process for attendance of unwilling witnesses favor transferring this case to New York. Moreover, although it is unlikely that there will be a need to inspect Kmart's store, any physical inspection of the premises would need to take place in Binghamton.

Public interest factors also suggest that this case should be tried in New York. This matter involves a plaintiff from the Middle District of Pennsylvania and a defendant who transacts business throughout the country. The accident in dispute occurred entirely in New York. The district with the most substantial connection to this case is the Northern District of New York. Thus, a jury in the transferee district would have a much greater interest in hearing this case than a jury sitting in the Eastern District of Pennsylvania. See Duffy, 1992 WL 151802, at *2.

The Court would not grant the motion to transfer venue if the net result would be merely a shift of inconvenience from the defendant to the plaintiff. Burstein v. Applied Extrusion Technologies, Inc., 829 F. Supp. 106, 112 (D. Del. 1992). Bolles has not, however, presented any convincing evidence suggesting that a trial in the Northern District of New York would be inconvenient for her. In fact, Bolles' travel time would be

reduced or remain substantially the same if the action were transferred to New York; while Bolles' residence in Montrose is located approximately 170 miles from Philadelphia, it is only approximately 30 miles from the court in Binghamton, 105 miles from the court in Syracuse, and 170 miles from the court Albany. See Mapquest, www.mapquest.com (July 2, 2001) (searching driving directions from Montrose to Philadelphia, Binghamton, Syracuse, and Albany). Thus, even if the case were transferred to the court in the Northern District of New York furthest away from Bolles' residence, it would still require of her the same amount of travel time as a visit to this Court in Philadelphia. The fact that trial in Pennsylvania may be more convenient for Bolles' counsel is not a factor that the Court can consider. Solomon, 472 F.2d at 1047. Though Bolles is willing to litigate her claims in Philadelphia, she has not demonstrated that transferring venue to the Northern District of New York would inconvenience her.

Kmart also contends that this action should be transferred to New York so that it can join Avdel as an additional party. Avdel, the shoplifter who was involved in the accident in dispute, does not appear to be subject to the personal jurisdiction of this Court. Transferring this action to the Northern District of New York, however, would allow Kmart to join Avdel as an additional defendant. The "ability to implead a

third party defendant in the proposed transferee forum is an important consideration favoring transfer of an action." Biggers v. Borden, Inc., 475 F. Supp. 333, 388 (E.D. Pa. 1979). In this case, this factor weighs strongly in favor of a transfer.

Transfer of this action to the Northern District of New York is appropriate pursuant to 28 U.S.C. § 1404(a). Venue is proper in the transferee district and all relevant considerations weigh heavily in favor of a change of venue. Accordingly, Kmart's Motion to Transfer Venue pursuant to 28 U.S.C. § 1404(a) will be granted, and this action will be transferred to the United States District Court for the Northern District of New York.

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O R D E R

AND NOW, this day of July, 2001, in consideration of the Motion to Transfer Venue filed by the Defendant, K Mart Corporation (Doc. No. 6), and the Response thereto filed by the Plaintiff, Eleanor Bolles, it is **ORDERED** that:

1. Motion to Transfer of Venue by Defendant, K Mart Corporation, is **GRANTED**.
2. The Clerk of this Court is directed to **TRANSFER** the entire file to the Clerk of the United States District Court for the Northern District of New York, sitting in Binghamton, New York.

BY THE COURT:

JAMES MCGIRR KELLY, J.

