

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

CIVIL ACTION

JEWISH FEDERATION OF GREATER :  
PHILADELPHIA

v.

PAUL S. WEINBERG

NO. 01-5138

ORDER AND MEMORANDUM

AND NOW, this <sup>4<sup>th</sup></sup> day of April, 2002, upon consideration of the Defendant's Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404(a) (Docket No. 10), the plaintiff's response thereto, the defendant's reply, and after oral argument, **IT IS HEREBY ORDERED** that **the** motion is GRANTED and the above action is transferred to the U.S. District Court for the Western District of Texas, for the reasons set forth below.

This case arises out of a dispute between Paul Weinberg ("Weinberg"), the general partner of the Connaught Ventures Group Limited Partnership ("CVG"), and the plaintiff, Jewish Federation of Greater Philadelphia (the "Federation"), a limited partner in CVG. CVG's assets comprise limited partnership interests in four **separate limited partnerships (the "Held Limited Partnerships")**. The Federation sued Weinberg in the Court of Common Pleas of Philadelphia County, for specific performance and breach of

other district or division where it might have been brought." 28 U.S.C. § 1404(a). The party requesting the transfer has the burden of establishing that transfer is warranted. Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995) (citations omitted).

The Court must first determine that venue is proper in the alternative fora. Because the events giving rise to the plaintiff's claims occurred in the Western District of Texas - as is more fully discussed below - and because the lone defendant resides in the District of New Mexico, the Court finds venue proper in those districts. See 28 U.S.C. § 1391(a). The plaintiff has conceded this. See Plf.'s Br. in Opp. at 8 n.2.

Next, the Court must consider private and public interests to determine in which forum the interests of justice and convenience would be best served. See Jumara, 55 F.3d at 879 (citation omitted). Private factors may include: (1) the plaintiff's choice of venue; (2) the defendant's preference; (3) where the claim arose; (4) the relative physical and financial condition of the parties; (5) the extent to which witnesses may be unavailable for trial in one of the fora; and (6) the extent to which books and records could not be produced in one of the fora. Id. (citations omitted).

fiduciary duty as the general partner of CVG, alleging that Weinberg prevented the Federation from inspecting CVG's books and records, including those specifically regarding the Held Limited Partnerships. The Federation alleges that it requires access to the requested books and records to make accurate predictions of its future income from its interest in CVG. The Federation also alleges that Weinberg breached the terms of the CVG limited partnership agreement by failing to pay the Federation its share of proceeds from a real estate sale.'

Weinberg is a citizen of New Mexico, and CVG, although a Pennsylvania limited partnership, maintains its principal office in Texas. The Federation is a Pennsylvania not-for-profit corporation with its principal place of business in Pennsylvania. Weinberg thus removed the case to this Court by notice of removal filed October 10, 2001, on the basis of diversity.

The defendant now argues that, under 28 U.S.C. § 1404(a), the Court should transfer the action to either New Mexico or Texas. Section 1404(a) states that "[f]or the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any

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<sup>1</sup> Because the proceeds have now been paid, the Court will not address this breach of contract claim. See Defendant's Brief in Support of its Motion for Transfer, Docket No. 44, at 5.

Public factors may include: (1) the enforceability of the judgment; (2) practical considerations that could make the trial easy, expedition, or inexpensive; (3) the relative administrative difficulty in the two fora resulting from court congestion; (4) the local interest in deciding local controversies at home; (5) the public policies of the fora; and (6) the familiarity of the trial judge with the applicable state law in diversity cases. Id. (citations omitted).

Upon consideration of these factors, the Court finds that transfer of this case to the United States District Court for the Western District of Texas is appropriate.

1. Plaintiff's choice of forum. Generally, a plaintiff's choice of forum "should not be lightly disturbed." See Jumara, 55 F.3d at 879. But it is not dispositive, and is entitled to less weight where, as here, few of the operative facts took place in the forum, and the defendant has indicated a strong preference for another district. See Gallant v. Trustees of Columbia Univ., 111 F. Supp.2d 638, 646-7 (E.D. Pa. 2000); 17 Moore's Federal Practice, § 111.13[1][c][iii]. This action arises out of the Federation's requests to Weinberg, via CVG's Texas office, to inspect the books and records of CVG, including CVG's records concerning the four Held Limited Partnerships. The books and records were prepared in Austin, Texas, and are held

there. It is these operative facts that are of most importance, and therefore this factor favors transfer to Texas.

2. Defendant's choice of forum. Here, the defendant has expressed a strong preference for either the District Court for the Western District of Texas or the District of New Mexico.'

3. Where the claims arose. The plaintiff's claims for specific performance and for breach of fiduciary duty arose in the Western District of Texas. The principal office of CVG was, and has always been, in Texas. See Limited Partnership Agreement, Compl. Ex. A. The plaintiff sent its letters requesting access to the books and records to Texas. The books and records are stored in Texas. Those books and records were prepared in Texas. The Federation requested the right to inspect the books and records in Texas

4. Physical and financial condition of the parties. Neither party has identified any relevant physical limitations. As to their respective financial conditions, although the Federation is a public charity, it is large and sophisticated, with fundraising revenues exceeding \$53,000,000.00 in the 1999-

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<sup>2</sup> Because the Court finds that the primary connection to New Mexico is that Weinberg resides there, it does not find New Mexico to be a more convenient venue than Pennsylvania, where the plaintiff resides. Accordingly, the Court will evaluate only as between the Eastern District of Pennsylvania and the Western District of Texas for the remainder of its analysis.

2000 year. See Jewish Federation Sept. 1, 1999 - Aug. 31, 2000 Annual Report, Def.'s Motion, Ex. F. By contrast, CVG had a net income for the year ending December 31, 2000, of \$3,257,873.00. See CVG Limited Partnership Statement of Profit and Loss, Def.'s Mot., Ex. D.

5. Availability of the witnesses. None of the defendant's witnesses are located in the Eastern District of Pennsylvania. Weinberg himself resides in New Mexico, and the two other key witnesses with knowledge of the facts giving rise to the plaintiff's allegations - CVG's acting controller and outside accountant - are both in Austin, Texas. CVG's acting controller is an employee not of CVG, but of Connaught, Inc., a management company separate from CVG that holds the books and records of the Held Limited Partnerships.<sup>3</sup> Nonetheless, the defendant believes that he could make accommodations to have her appear in Pennsylvania, but not without "some hoops to get through to get her here." Oral Arg. Tr. at 22-23. On the other hand, CVG's outside accountant could not be so compelled to appear in Pennsylvania, because he falls outside the 100 mile range of this Court's subpoena power. See Fed. R. Civ. P.

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<sup>3</sup> The defendant's counsel represented at oral argument that Paul Weinberg is also the owner of Connaught, Inc. Oral Arg. Tr. at 4.

45(b)(2).

The Federation's witnesses - its Director of Endowment and Development, and outside auditors from Arthur Andersen - all reside in Pennsylvania. But the plaintiff was prepared to incur, and has incurred, expenses to travel to Texas to view the books and records; this undercuts any argument that its witnesses will be inconvenienced or would otherwise be unavailable. Moreover, at oral argument, the plaintiff conceded that it could compel its witnesses to appear in Texas. See Oral Arg. Trans. at 21.

6. Location of the books and records. The relevant books and records in this case are all in the Western District of Texas. In weighing this factor, the Court is to focus on whether the books and records could be produced in the alternative forum. See Jumara, 55 F.3d at 879. The books and records of CVG could probably be produced in the Eastern District of Pennsylvania, because Mr. Weinberg, as the general partner of CVG, has possession, custody, or control over those books and records. There is no evidence that the books and records of the four Held Limited Partnerships could be produced in this district. They are held by Connaught, Inc., a separate non-party corporation, and they are outside the subpoena range of this district.

7. Enforceability of judgment. This factor is also neutral; judgments in either district would be entitled to full

faith and credit. See Remick v. Manfredy, 138 F. Supp.2d 652, 656 (E.D. Pa. 2001); Moore's § 111.13[1][i] & n.73.

8. Easy, expeditious, and inexpensive trial. Key witnesses - including a crucial one not subject to compulsory process here - and the majority of the evidence in this case, are located in Texas.

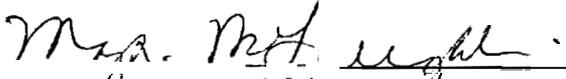
9. Relative court congestion. The plaintiff argues that the Eastern District of Pennsylvania is less congested than the Western District of Texas, with judges in the former averaging 394 **pending** cases in **the** year 2000, and in the latter averaging **430**. Additionally, the plaintiff points out that the average time from filing to disposition in the Eastern District was 7.8 months, versus 8.9 in the Western District of Texas. Not only are these **differences** minimal, but **the** mere possibility that trial will be held sooner in the original court does not justify denial of a transfer when, as here, transfer is otherwise supported by other considerations. See, e.g., Burstein v. Applied Extrusion Tech., 829 F. Supp. 106, **114** (D. Del. 1992); Moore's § 111.13[1][k].

10. Local interest and public Policies of fora. These factors are neutral; each venue has some interest in the controversy, and no party has illustrated a public policy specific to one that **overrides** any other.

11. Relative familiarity of judges with applicable state law. The defendant noted at oral argument that this case primarily involves limited partnership law. Because both Pennsylvania and Texas have adopted the Uniform Limited Partnership Act, there is unlikely to be any difficulty in applying the law. See 15 Pa. C.S. §§ 8505-8594; Tex. Rev. Civ. Stat. Ann. art. 6132a-1. Moreover, where, as here, actions do not involve complex issues of another state's law, this factor is given little weight. See, e.g., Scheidt v. Klein, 956 F.2d 963, 965 (10th Cir. 1992); Ultimate Resource, Inc. v. Goss, No. 99-1826, 2000 U.S. Dist. LEXIS 3154, \*15 (E.D. Pa. March 17, 2000); Moore's § 111.13[1] [m].

The Court finds that the balance of these factors weighs in favor of transferring this case to the Western District of Texas.

BY **THE** COURT:

  
Mary A. McLaughlin, J.

2/4/02:

. R. Fiebach, Jsg.  
. M. McLaughlin, Jsg.  
. E. Landau, Jsg.