

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

TONI BANKET,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
GC AMERICA, INC.,	:	
Defendant.	:	NO. 05-576

MEMORANDUM and ORDER

OCTOBER 11, 2005

I. INTRODUCTION

Plaintiff Toni Banket asserts common law causes of action of defamation, invasion of privacy, tortious interference with employment relations, negligence, promissory estoppel, as well as a charge of employment discrimination under the Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq (“ADEA”) against Defendant GC America, Inc.

Pursuant to Fed. R. Civ. P. 12(b)(3) and 12(b)(6), GC America, Inc. (“GCA”) has filed a Motion to Dismiss the Amended Complaint for Improper Venue or in the Alternative, to Transfer Venue to the Northern District of Illinois (“Motion”). GCA additionally urged the Court to dismiss Plaintiff’s ADEA claim because the claim was untimely and because Banket failed to exhaust her administrative remedies. **Ms. Banket submitted an Opposition to GCA’s Motion (“Response”), and GCA submitted a Reply.** Oral argument on the Motion was held on September 8, 2005. At oral argument, GCA conceded that, as a result of Plaintiff’s voluntary dismissal of Defendant Karen Garitz, venue is now proper under 28 U.S.C. § 1391(a)(1) because

GCA is subject to personal jurisdiction in this district in as much as it has Pennsylvania clients, and is thus deemed to reside in this district. (Tr. 3: 8-13). In addition, GCA withdrew without prejudice its claim that the Plaintiff's ADEA claim was untimely and unripe. (Def.'s Reply at 8). Therefore, the only matter remaining before this Court is GCA's Motion to Transfer Venue under 28 U.S.C. § 1404(a).

For the reasons set forth more fully below, GCA's Motion to Transfer is denied.

II. BACKGROUND

A. Factual Background

Toni Banket, age 43, lives in Chester Springs, Chester County, Pennsylvania. (Am. Compl. at ¶¶ 1, 5). GCA is an Illinois-based dental supply corporation.

Ms. Banket apparently first learned about GCA in August 2003. (Am. Compl. at ¶ 6). At the time, she had several telephone conversations from her Chester County home with Brooke Beeson, GCA's Regional Sales Manager, who works at GCA's New York office. (*Id.* at ¶ 7). In September 2003, Ms. Banket met with Ms. Beeson in a hotel lobby in northern New Jersey to discuss potential employment opportunities working for GCA as its Pennsylvania-based sales representative. (*Id.*). The position Ms. Banket applied for involved servicing GCA's Pennsylvania-based clients, including, among others, Benco Dental Supply in Wilkes-Barre, Eastern Dental Supply in Harrisburg, and the dental schools of Temple University and the University of Pennsylvania, both in Philadelphia. (*Id.* at ¶ 8).

Ms. Banket alleges that during the interview process she explained to Ms. Beeson and others at GCA that she was currently employed by Shofu Dental Corporation ("Shofu"), a GCA

competitor, headquartered in California, and that her job with Shofu would be in jeopardy if Shofu learned of her application to GCA. (Am. Compl. at ¶ 10). Ms. Banket worked for Shofu from her home in Chester Springs, Pennsylvania, servicing Shofu's clients in Pennsylvania and surrounding states. (Id. at ¶ 11).

GCA allegedly continued its courtship of Ms. Banket in November 2003, at the New York Dental Meeting, an industry function. (Am. Compl. at ¶ 12). During that function, Ms. Banket allegedly visited with Beeson and other GCA representatives and discussed future opportunities with GCA. (Id.). During the next few months, Ms. Beeson and other representatives of GCA continued to keep in touch with Ms. Banket, explaining to her that she would be hired when the budget allowed, which would not occur until after the coming New Year. (Id. at ¶ 13).

In January 2004 GCA formally offered Ms. Banket a full-time position as its Pennsylvania sales person, conditioned upon a favorable physical evaluation, drug screening, and background investigation. (Am. Compl. at ¶ 14). At the time of the employment offer, Ms. Banket explained to GCA that she had an arrest for driving under the influence of alcohol, which had been pending before the Chester County Court of Common Pleas, and which was in the process of being expunged. (Id.). Ms. Banket alleges that GCA's agents expressed their understanding with regard to the pending D.U.I. matter and agreed that waiting for the expungement would not prevent Ms. Banket from ultimately obtaining employment with GCA. (Id.). Plaintiff accepted GCA's offer of employment in January 2004, with the understanding that she would remain employed by Shofu until the expungement of her arrest, at which time she

would terminate her employment with Shofu and immediately begin working as a salesperson for GCA. (Id. at ¶ 15).

GCA instructed Plaintiff to undergo her physical evaluation and drug screening at Concentra Medical Center (“Concentra”), in Plymouth Meeting, Pennsylvania. (Am. Compl. at ¶ 16). GCA had a contract with Concentra to perform such services. (Id.). While at Concentra, Ms. Banket filled out a form in which she indicated that she was then currently employed by Shofu. (Id. at ¶ 17). Concentra provided GCA with the medical documents relating to Ms. Banket. (Id.).

In or about February 2004, while Ms. Banket was still employed by Shofu, representatives of both Shofu and GCA attended the Chicago Mid-Winter Dental Meeting, a major meeting within the dental industry. (Am. Compl. at ¶ 18). An employee or other agent of GCA printed out a name tag for Ms. Banket, indicating that Ms. Banket was attending the meeting as an employee of GCA even though at the time of the meeting, Ms. Banket was neither an employee of GCA, nor in attendance at the meeting. (Id. at ¶19-20). While working at a GCA booth, an employee of GCA wore the GCA nametag with Ms. Banket’s name. (Id. at ¶ 21.).

Shofu employees attending the conference allegedly noticed the GCA employee with the name tag indicating that Ms. Banket was attending the conference as an employee of GCA. (Am. Compl. at ¶ 23). Apparently, as a result, on or about February 25, 2004, Shofu sent Ms. Banket a letter terminating her employment, on the sole basis that Ms. Banket had accepted an offer of employment with GCA. (Id. at ¶ 24). Plaintiff Banket thereafter contacted Ms. Beeson

about the status of her pending employment with GCA. (Am. Compl. at ¶ 47). Ms. Beeson allegedly told Ms. Banket that she had to wait to begin employment with GCA until she had her D.U.I. arrest expunged. (Id.). In May 2004, Ms. Banket told GCA that her expungement had been granted and that she was ready, willing, and able to begin working. (Id. at ¶ 50).

Apparently, GCA then told Ms. Banket that it was rescinding its offer to her in favor of another Pennsylvania-based candidate, a male individual approximately 25 years old. (Id. at ¶ 51). As a result, Ms. Banket allegedly suffered a lengthy period of unemployment during which she was forced to expend her own funds for a job search, and her reputation was “besmirched” in the dental sales industry such that she was unable to find employment in that industry. (Id. at ¶¶ 26-27).

B. Procedural History

On or about February 7, 2005, Ms. Banket brought this action against GCA and Karen Garitz ("Garitz") alleging the following common law causes of action: defamation, invasion of privacy, tortious interference with employment relations, negligence, and promissory estoppel. (Compl. at ¶¶ 17-39). Ms. Banket also brought a claim for age discrimination under the ADEA. As indicated above, Ms. Banket’s allegations with regard to Garitz have been dismissed voluntarily. (Docket No. 6). Following the dismissal of Garitz, Ms. Banket filed an Amended Complaint on May 19, 2005, alleging the causes of action against GCA only. On June 2, 2005, GCA filed a Motion to Dismiss Plaintiff’s Amended Complaint or in the Alternative to Transfer Venue. GCA argued that all of the allegations in the Amended Complaint arise from events which occurred outside of Pennsylvania, and that due to the lack of nexus to Pennsylvania, the

case should be dismissed due to improper venue under 28 U.S.C. §1406(a) or in the alternative transferred to the Northern District of Illinois pursuant to 28 U.S.C. §1404(a) in the interests of justice and convenience. As confirmed above, GCA now agrees that venue is now proper under 28 U.S.C. § 1391(a)(1). GCA also withdrew without prejudice its claim that the ADEA claim should be dismissed due to Ms. Banket's alleged failure to exhaust her administrative remedies and because it is untimely. (Def.'s Reply at 8).

Thus, the only matter currently before the Court is GCA's argument that the convenience of the parties, witnesses and the interest of justice warrant the transfer of this action to the Northern District of Illinois under 28 U.S.C. §1404(a).

III. DISCUSSION

A. Transfer of Venue

Both parties now agree that venue is proper in this Court under 28 U.S.C. § 1391. In an action based not solely on diversity, venue is proper in a judicial district where any defendant resides, if all defendants reside in the same state. 28 U.S.C. § 1391(b)(1). A corporate defendant is deemed to reside in "any judicial district in which it is subject to personal jurisdiction at the time the action is commenced." 28 U.S.C. § 1391(c). It is undisputed that GCA is subject to personal jurisdiction in Pennsylvania. See Def.'s Statement at Oral Argument, Tr. 3:10-13 ("[T]he corporate defendant has Pennsylvania clients and therefore would be subject to personal jurisdiction here . . . [and] would then be said to reside in this district.").

Therefore, the only matter before this Court is GCA's request for a § 1404(a) transfer of venue to the Northern District of Illinois.

Section 1404(a) provides that “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.” District courts have broad discretion in deciding whether to transfer a case under § 1404(a). Czubryt v. Consolidated Rail Corp., 2002 WL 442824, *1 (E.D. Pa. Feb. 21, 2002) (citing Plum Tree v. Stockment, 488 F.2d 754, 756 (3d Cir. 1973)).¹ The burden of establishing the inconvenience of the forum rests with the proponent of transfer. Siegel v. Homestore, Inc., 255 F. Supp. 2d 451, 455 (E.D. Pa. 2003).

In determining whether to transfer a case, courts must first determine whether the action “might have been brought” in the proposed transferee district. Van Dusen v. Barrack, 376 U.S. 612, 616 (1964). If this requirement is met, courts then weigh a number of private and public interest factors beyond those listed in 28 U.S.C. § 1404(a). Remick v. Manfredy, 138 F. Supp. 2d 652, 655 (E.D. Pa. 2001) (citing Jumara v. State Farm Ins. Co., 55 F.3d 873, 879-80 (3d Cir. 1995)). The private factors include “[1] plaintiff’s forum preference as manifested in the original choice; [2] the defendant’s preference; [3] whether the claim arose elsewhere; [4] the convenience of the parties as indicated by their relative physical and financial condition; [5] the convenience of the witnesses. . . ; [6] and the location of books and records.” Jumara, 55 F.3d at 879. In addition to the private factors, the public interests include: (1) the enforceability of the judgment; (2) practical considerations that could make the trial easy, expeditious 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; and (5) the familiarity of the trial judge

¹ Defendant GCA conceded at oral argument that the issue of transfer of venue under 28 U.S.C. § 1404(a) is a matter of discretion for the Court. See Tr. at 5.

with the applicable state law in diversity cases. Jumara, 55 F.3d at 879. The burden is on the moving party to demonstrate the inconvenience of the existing forum, and courts are not to lightly disturb the plaintiff's choice of venue. Id. at 879.

The threshold question of where the action "might have been brought" is answered easily. GCA is an Illinois corporation that resides in Illinois and is based in the Northern District of Illinois. Thus, it is true, as Defendant GCA contends, that this action *could* have been brought in the Northern District of Illinois. However, as discussed more fully below, this is necessarily a fact-intensive analysis, and in this instance the relevant considerations weigh in favor of denying CGA's motion and keeping the action here in this District.

1. The Private Factors

With respect to the private factors, Plaintiff Banket chose to bring this case in the Eastern District of Pennsylvania, and that choice deserves considerable deference and should not be lightly disturbed. Shutte v. Armco Steel Corp., 431 F.2d 22, 25 (3d Cir. 1970). The deference given is even greater when a plaintiff has chosen her home forum. Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255 (U.S. 1981). See also Koster v. (American) Lumbermens Mut. Cas. Co., 330 U.S. 518, 524 (1947) ("In any balancing of conveniences, a real showing of convenience by a plaintiff who has sued in his home forum will normally outweigh the inconvenience the defendant may have shown."). As Ms. Banket contends, an international corporation, such as GCA, is better suited financially to defend this litigation in this forum than she is to prosecute this litigation in another jurisdiction. Ms. Banket proffers that she is a single parent and her

finances would make it difficult, and perhaps impossible, to fund and pursue this litigation in a distant forum. (Pl.'s Resp. at 10).

As for the convenience and the availability of witnesses, many of the witnesses to the events set forth in the Amended Complaint are not located in Illinois. Concentra, the company that provided Ms. Banket's pre-employment screening, is located here in this judicial district. (Am. Compl. at ¶ 16). The younger man that GCA allegedly hired instead of Plaintiff is located in Pennsylvania. (Id. at ¶ 51). Brooke Beeson, the GCA employee who allegedly had numerous telephone conversations with Ms. Banket, works from New York. (Am. Compl. at ¶ 2). GCA expressed concern in its Motion about the inconvenience that travel to this District would pose for its employees, Def.'s Mot. at 11-12, but it could reimburse plaintiff's counsel for expenses incurred in traveling to Illinois to depose necessary witnesses. Furthermore, at oral argument, Plaintiff's counsel stated that he would be willing to arrange telephone depositions for witnesses in Illinois, and also noted that he should be able adequately to conduct discovery through interrogatories and document requests without ever having to go to Illinois. (Tr. at 4:11-13).

GCA relies upon the fact that the allegedly defamatory actions that form the basis of some of Plaintiff's claims in this matter occurred at the Chicago Mid-Winter Dental Meeting. (Def's Mot. at 10). But Ms. Banket never attended that conference. She negotiated with CGA from her home in Pennsylvania. It should not be overlooked that GCA eventually hired another Pennsylvania-based employee.

GCA relies heavily on the case Lomanno v. Black, 285 F. Supp. 2d 637 (E.D. Pa. 2003). Plaintiff Banket argues, and this Court agrees, that Lomanno is distinguishable on its facts from

the instant case. Lomanno involved motions to transfer venue under 28 U.S.C. § 1406(a) and 28 U.S.C. § 1404(a). 285 F. Supp. 2d at 640. In Lomanno, as here, the plaintiff filed suit in the Eastern District of Pennsylvania alleging, *inter alia*, claims of defamation and tortious interference with employment relations, as well as employment discrimination based on sex under Title VII. Id. at 638. In Lomanno, the court found that venue was improper in the Eastern District of Pennsylvania under 28 U.S.C. §1391 for the defamation and tortious interference claims, where none of the individual defendants resided or were subject to personal jurisdiction in Pennsylvania, and a substantial part of events giving rise to the claim did not arise in the Eastern District of Pennsylvania. Therefore, the court transferred those claims to the Eastern District of Virginia pursuant to 28 U.S.C. §1406(a). 285 F. Supp. 2d at 641-3. In analyzing the Lomanno defendants' motion to transfer venue over the plaintiff's Title VII claim under 28 U.S.C. §1404(a), the court conducted its own fact-intensive balancing test and ultimately determined that the Jumara factors weighed in favor of transfer. Id. at 648.

Of course, while Lomanno may provide persuasive authority, it is not binding on this Court. In Lomanno, the plaintiff actually traveled to Virginia, and spent at least some time working out of the defendants' Virginia offices. 285 F. Supp. 2d at 639 fn.1. In addition, the court in that case placed great reliance on the fact that at least two material witnesses resided in Virginia. Id. at 646-647. In contrast, as stated above, in this case Ms. Banket herself never actually traveled to Illinois, and many of the material witnesses in this case reside outside of Illinois, including Brooke Beeson and the young man who was allegedly hired by GCA after it withdrew its offer of employment to Banket.

Because of the relative hardship to the Plaintiff for having to litigate this case in Illinois as compared to the resources GCA has, the fact that the Plaintiff never visited Illinois and there are several material witnesses to this case located outside of Illinois, and the fact that discovery could be conducted relatively easily through the use of interrogatories and document requests, this Court finds that the private factors weigh in favor of retaining venue here in this judicial district.

2. The Public Factors.

Given how strongly the private factors weigh against transfer under the circumstances, a consideration of the relevant public factors does little to shift the balance in GCA's favor. Often, many of the public factors play little role in the balance of the convenience analysis.

Affymetrix, Inc. v. Synteni, Inc., 28 F. Supp. 2d 192, 205 (D. Del. 1998). At oral argument, Defendant conceded that congestion of the courts and enforceability of judgment are essentially irrelevant, and neither party briefed these issues. (Tr. 17:22-25). GCA argues that the public factor that weighs most in favor of transfer is that practical considerations such as the location of witnesses and documentary evidence would make the trial easier, more expeditious and inexpensive in Illinois. Many of these practical considerations were discussed above in relation to the private factor analysis. Specifically, the Court has concluded that many witnesses are located outside of Illinois, and, in addition, given the facts of this case, there is likely to be relatively little documentary evidence necessary. Relevant documents can easily be transported from Illinois to Pennsylvania.

Perhaps the most relevant public factor is the local interest in deciding local controversies at home. Although CGA points out that many of the underlying claims of this litigation arose in Illinois, and Illinois does have an interest in protecting GCA, an Illinois citizen, this Court finds that Illinois' interest is outweighed by Pennsylvania's interest in providing a forum for its citizens. "When a Pennsylvania resident is injured in the Commonwealth, Pennsylvania has a strong interest in providing a forum for their resident and in having the responsible defendants accountable for their actions in Pennsylvania." Elbeco Inc. v. Estrella de Plato, Corp., 989 F. Supp. 669, 678 (E.D. Pa. 1997). Although some of the underlying claims may have arisen in Illinois, Plaintiff Banket's alleged injury was here, in Pennsylvania.

IV. CONCLUSION

Thus, in this very fact-intensive analysis, taking into account the deference due to a plaintiff's chosen forum, especially when that choice is also the plaintiff's home forum, and the fact that courts have wide discretion in deciding motions to transfer under 28 U.S.C. § 1404(a), this Court finds that Defendant has not met its high burden of proving the inconvenience of having the action proceed here. For the above-stated reasons, Defendant CGA's Motion is denied.

An appropriate Order follows.

BY THE COURT:

/S/

GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE

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

TONI BANKET,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
GC AMERICA, INC.,	:	
Defendant.	:	NO. 05-576

ORDER

OCTOBER 11, 2005

PRATTER, DISTRICT JUDGE

AND NOW, this 11th day of October, 2005, upon consideration of Toni Banket's Amended Complaint (Docket No. 5), GC America, Inc.'s Motion and Brief in Support to Dismiss or Stay, or, in the Alternative, to Transfer the Pennsylvania Action to the Northern District of Illinois (Docket No. 7), Toni Banket's Opposition to the GC America, Inc. Motion (Docket No. 8), GC America, Inc.'s Reply to Toni Banket's Response (Docket No. 10), and arguments heard by the Court on September 8, 2005, IT IS HEREBY ORDERED that GC America, Inc.'s Motion is **DENIED**. The Court shall retain jurisdiction of the instant matter.

A Scheduling Order will follow shortly.

IT IS SO ORDERED.

BY THE COURT:

/S/ _____
GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE