

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

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<b>BONNIE CRUICKSHANK WALLACE;</b>	:	
<b>THE WALLACE FAMILY TRUST;</b>	:	
<b>HOLLY HALL PUBLICATIONS, INC.,</b>	:	
<b>Plaintiffs</b>	:	<b>CIVIL ACTION</b>
	:	<b>NO. 06-3974</b>
<b>v.</b>	:	
	:	
<b>MERCANTILE COUNTY BANK;</b>	:	
<b>RAYMOND HAMM, JR.; GEBHARDT &amp;</b>	:	
<b>SMITH, LLP,</b>	:	
<b>Defendants</b>	:	

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**DuBOIS, J.**

**NOVEMBER 9, 2006**

**MEMORANDUM**

**I. INTRODUCTION**

On May 24, 2006, plaintiffs initiated the instant proceedings in the Court of Common Pleas of Chester County, Pennsylvania. In the Complaint, plaintiffs allege abuse of process; wrongful use of civil proceedings; defamation of creditworthiness; denial of due process in violation of 42 U.S.C. § 1983; civil conspiracy; and civil rights conspiracy in violation of 42 U.S.C. § 1985. The gravamen of plaintiffs' Complaint is that defendants filed and pursued a lawsuit against plaintiffs in the Circuit Court for Cecil County, Maryland ("the Maryland Court") in 2000 "for the purpose of harassing, intimidating and coercing Plaintiffs so as to extract releases [from suit] to which [defendants] were not entitled." Complaint at ¶ 86.

On September 5, 2006, defendants removed plaintiffs' Complaint to this Court on the basis of federal question jurisdiction and diversity of citizenship. 28 U.S.C. § 1441(a).

Defendants filed a Motion to Dismiss or Transfer the case to the District of Maryland, pursuant

to 28 U.S.C. § 1406(a). Alternatively, defendants move to transfer the case to the District of Maryland pursuant to 28 U.S.C. § 1404(a). For the reasons that follow, defendants' alternative Motion to Transfer pursuant to § 1404(a) is granted and this case is transferred to the District of Maryland.

## **II. FACTUAL BACKGROUND**

The Court of Special Appeals of Maryland has summarized the factual background of this case on more than one occasion. See Great Christian Books, Inc., et al. v. County Banking and Trust Co., No. 1813 (Md. App. Mar. 21, 2006), cert. denied, 393 Md. 245, 900 A.2d 751 (Md. 2006); Cruikshank-Wallace v. County Banking and Trust Co., 165 Md. App. 300, 885 A.2d 403 (Md. App. 2005), cert. denied, 391 Md. 114, 892 A.2d 477 (Md. 2006); Holly Hall Publications, Inc., et al. v. County Banking and Trust Company, 147 Md. App. 251, 807 A.2d 1201 (Md. App. 2002), cert. denied, 371 Md. 614, 810 A.2d 961 (Md. 2002).

The case arises out of loans made by defendant, Mercantile County Bank ("County Bank") to Great Christian Books, Inc., a mail-order retailer of Christian books and Bibles, between 1995 and 1998. Complaint at ¶ 9. William Wallace, husband of plaintiff Bonnie Wallace ("Wallace"), was one of several guarantors of the County Bank loans. Complaint at ¶ 13. In 1998, County Bank sued William Wallace and Great Christian Books in the Maryland Court for defaulting on the loans. Id. at ¶ 12-13. On February 24, 2000, County Bank filed a second lawsuit in the Maryland Court against plaintiffs for allegedly receiving fraudulent conveyances from William Wallace. Id. at ¶ 22, 24.<sup>1</sup>

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<sup>1</sup> County Bank voluntarily dismissed the Maryland lawsuit against The Wallace Family Trust shortly after filing suit. Id. at ¶ 28.

Plaintiff Wallace moved from Maryland to Pennsylvania in December of 2000. Ans. Pl. Def. Mot. Dismiss or Transfer, at 16. On September 10, 2001, County Bank obtained a default judgment (“the first judgment”) from the Maryland Court against plaintiffs Wallace and Holly Hall Publication, Inc. (“Holly Hall”). Complaint at ¶ 30. On the basis of this judgment, defendants obtained Maryland Writs of Garnishment against Wallace in the amount of \$742,518, and served the Writs on garnishees, including The Peoples Bank of Oxford in Chester County, Pennsylvania. *Id.* at ¶ 33. Defendants subsequently transferred the judgment of the Maryland Court to the Court of Common Pleas of Chester County. *Id.* at ¶ 42. Plaintiffs appealed the first judgment to the Court of Special Appeals of Maryland.

On April 23, 2002, the Court of Special Appeals remanded the September 10, 2001 default judgment to the Maryland Court for a final order. *Id.* at ¶ 48.<sup>2</sup> Thereafter, on April 26, 2002, the Maryland Court entered a second default judgment in favor of County Bank (“the second judgment”) in the amount of \$742,518 against Wallace and \$722,805 against Holly Hall. *Id.* at ¶ 49. Following the second judgment, defendants again obtained Maryland Writs of Garnishment against Wallace, and served the Writs on garnishees, including The Peoples Bank of Oxford. *Id.* at ¶ 50. In addition, defendants obtained a Writ of Execution to the Sheriff of Chester County, and served the Writ on Wallace’s attorney, Edward M. Foley, Esq. *Id.* at ¶ 53.<sup>3</sup> Plaintiffs appealed the second judgment to the Court of Special Appeals.

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<sup>2</sup> The remand was based on the determination that the first judgment did not resolve two counts of County Bank’s Complaint and was therefore not a final judgment under Maryland law. Complaint at ¶ 48.

<sup>3</sup> Defendants transferred the second judgment to the Court of Common Pleas of Chester County, Pennsylvania on June 4, 2002. Complaint at ¶ 51.

On September 26, 2002, the Court of Special Appeals vacated the second default judgment. *Id.* at ¶ 64; Holly Hall Publications, Inc., et al. v. County Banking and Trust Company, 147 Md. App. 251, 807 A.2d 1201 (Md. App. 2002), cert. denied, 371 Md. 614, 810 A.2d 961 (Md. 2002). Defendants then engaged in discovery, which included fourteen depositions and document production “in three states and the District of Columbia.” Complaint at ¶ 68. Following discovery, the parties filed cross-motions for summary judgment in the Maryland Court.

On May 24, 2004, the Maryland Court ruled on the motions for summary judgment, and granted County Bank yet another judgment against Wallace, this time in the amount of \$22,805 (“the third judgment”). *Id.* at ¶ 83; Mot. Dismiss or Transfer, at 13. At the same time, the Maryland Court granted partial summary judgment in favor of Wallace on several counts. Complaint at ¶ 81.<sup>4</sup> Upon motion of County Bank, the Maryland Court dismissed the remainder of the litigation on August 3, 2004. County Bank’s motion to dismiss the balance of the case stated that “County Bank, prior to the hearing on the motions for summary judgment, offered on at least two occasions to dismiss this suit against Bonnie Wallace and to release its judgment against William Wallace in exchange for releases by them.” *Id.* at ¶ 84-85.

Plaintiffs’ Complaint alleges that during the pendency of the Maryland lawsuit, defendants made threats to Wallace, William Wallace, and Wallace’s attorney, Foley. Specifically, plaintiffs claim that defendants threatened Wallace with the immediate sheriff’s sale

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<sup>4</sup> Defendants transferred the third judgment to the Court of Common Pleas of Chester County. *Id.* at ¶ 90. This judgment was affirmed on appeal. Cruickshank-Wallace v. County Banking and Trust Co., 165 Md. App. 300, 885 A.2d 403 (Md. App. 2005), cert. denied, 391 Md. 114, 892 A.2d 477 (Md. 2006).

of her home; garnishment of assets; the subpoena of her invalid mother; and another lawsuit for fraud. *Id.* at ¶¶ 43, 44, 47, 54, 61-62.

### **III. THE LEGAL STANDARD**

The question before this Court is whether this case should be dismissed for improper venue under 28 U.S.C. § 1406(a) or transferred to the District of Maryland pursuant to 28 U.S.C. §§ 1406(a) or 1404(a). Defendants rely on two venue statutes in their Motion to Dismiss or Transfer. The first, 28 U.S.C. § 1406(a), permits a court to dismiss or transfer a case for improper venue. The statute states: “The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.” 28 U.S.C. § 1406(a). The second statute, 28 U.S.C. § 1404(a), permits transfer but not dismissal on venue grounds. This statute states: “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). *See also Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 878 (3d Cir. 1995) (distinguishing § 1406(a) from § 1404(a)).

The requirements for venue in cases based upon diversity of citizenship or federal question jurisdiction are set forth in the general venue statute, 28 U.S.C. § 1391.<sup>5</sup> However, the Supreme Court has ruled that § 1391 does not apply to cases which have been properly removed to federal court. *Polizzi v. Cowles Magazines, Inc.*, 345 U.S. 663, 665 (1953). Instead venue in

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<sup>5</sup> 28 U.S.C. § 1391(a) (b) provides that venue is proper in “(1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.”

removed actions is governed by the removal statute, 28 U.S.C. § 1441. Polizzi, 345 U.S. at 665.

Pursuant to § 1441(a), a case may be removed from state court only “to the district court of the United States for the district and division embracing the place where such action is pending.” If a case is properly removed pursuant to § 1441(a), venue is properly laid, and the removed action may not be challenged under § 1391. Polizzi, 345 U.S. at 665. Thus, § 1406(a), which governs improper venue, does not apply to a properly removed action. See Hollis v. Florida State University, 259 F.3d 1295, 1299 (11th Cir. 2001); Thorlabs, Inc. v. Townsend Communications LLC., 2004 WL 1630488, \*2 n.1 (D.N.J. June 30, 2004); Connors v. UUU Productions, Inc., 2004 WL 834726, \*5 (E.D. Pa. Mar. 15, 2004); Imundo v. Pocono Palace, Inc., 2002 WL 31006143, \*3 (D.N.J. Aug. 14, 2002); Gallant v. Trustees of Columbia in the City of New York, 111 F. Supp. 2d 638, 645 (E.D. Pa. 2000).<sup>6</sup> Notwithstanding the inapplicability of § 1406(a), a party in a properly removed action may seek a change of venue pursuant to § 1404(a). See Hollis, 259 F.3d at 1300; Thorlabs, Inc., 2004 WL 1630488 at \*2 n.1; Connors, 2004 WL 834726 at \*5.

Before removal, this case was pending in the Court of Common Pleas of Chester County, Pennsylvania. Thus, venue is properly laid in this Court pursuant to § 1441(a), and § 1406 is inapplicable. The Court must therefore consider whether transfer is warranted pursuant to § 1404(a).

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<sup>6</sup> Defendants cite Superior Precast, Inc. v. Safeco Ins. Co. of America, 71 F. Supp. 2d 438 (E.D. Pa. 1999) for the proposition that § 1391 applies to this case. Although the Court acknowledges that this contrary authority exists, the Court concludes that under Polizzi, the better view is that “§ 1391 has no application” to a properly removed action. Polizzi, 345 U.S. at 665.

#### **IV. DISCUSSION**

Pursuant to § 1404(a) a court may transfer a case: (1) to a district where the case could have been brought; and (2) where the convenience of parties and witnesses, and the interest of justice weigh in favor of the transfer. With regard to the first requirement, the Court concludes that this case could have been brought in the District of Maryland because all defendants are citizens of that state. See 28 U.S.C. § 1391(a)(1).<sup>7</sup> With regard to the second requirement of § 1404(a), defendants have the burden of establishing that, based on private and public interests, 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. While the Court finds several of the relevant interests to be neutral, two factors weigh heavily in defendants’ favor and warrant transferring the case to the District of Maryland: (1) plaintiffs’ claims arose in Maryland; and (2) the District of Maryland has an interest “in deciding local controversies at home.” Jumara, 55 F.3d at 879.

The Third Circuit has set out a number a number of public and private interests protected by § 1404(a). Jumara, 55 F.3d at 879. “Private interests” include plaintiff’s forum preference as manifested in the original choice; defendant’s preference; whether the claim arose elsewhere; the convenience of the parties as indicated by their relative physical and financial condition; the convenience of the witnesses; and the location of books and records. Jumara, 55 F.3d at 879. “Public interests” include the enforceability of the judgment; practical considerations that could

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<sup>7</sup> Defendant Hamm is a citizen of Maryland; defendant County Bank is bank chartered under Maryland law with its principal place of business in Maryland; defendant Gebhardt & Smith, LLP is a Maryland limited liability partnership, all of whose partners are citizens of Maryland. Complaint at ¶ 4-6; Notice of Removal at ¶ 8.

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. Jumara, 55 F.3d at 879-80.

#### **A. Plaintiffs' Claims Arose Elsewhere**

Although plaintiffs acknowledge that the Maryland lawsuit is central to this case, plaintiffs argue that the lawsuit is merely a “background” event for venue purposes. Ans. Pl. Def. Mot. Dismiss or Transfer at 29. Plaintiffs further argue that a substantial portion of the events giving rise to the Complaint occurred in Pennsylvania.<sup>8</sup> Plaintiffs' Complaint, however, belies the argument that plaintiffs' claims arose in this District.

Counts I, II, III and IV of plaintiffs' Complaint allege that defendants improperly filed and pursued a lawsuit in the Maryland Court. Specifically, plaintiffs complain that defendants initiated and/or continued the Maryland lawsuit in order to extract releases from plaintiffs and William Wallace, harass plaintiffs, and accumulate legal fees. Complaint at ¶¶ 93-94, 100-101, 106, 113. Plaintiffs further complain that defendants refused to withdraw the Maryland lawsuit despite the fact that defendants' claims were frivolous and/or lacked probable cause. Id. at ¶¶ 105, 107, 112, 114. As evidence that the Maryland lawsuit lacked merit, plaintiffs cite to orders of the Maryland Court itself. Id. at ¶¶ 114-115.

Counts VII and VIII of plaintiffs' Complaint similarly allege unlawful behavior in the District of Maryland. In these two Counts plaintiffs aver civil conspiracy. The alleged

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<sup>8</sup> These events include garnishment and attachment of Wallace's assets; threats against Wallace, William Wallace, and Foley; and the recording of default judgments in the Court of Common Pleas of Chester County. Ans. Pl. Def. Mot. Dismiss or Transfer at 26-27.

conspirators, i.e. defendants, are a Maryland citizen, a bank chartered under Maryland law, and a Maryland limited liability partnership whose members reside in Maryland. Although a liberal reading of these Counts suggests that defendants committed some acts in Pennsylvania, the Court cannot conclude on the basis of the record that plaintiff's claims arose anywhere but Maryland.

Indeed only Count V of plaintiffs' Complaint, in which plaintiffs claim defamation of creditworthiness, specifically alleges activity in Pennsylvania. In Count V, plaintiffs complain that defendants transferred three judgments from the Maryland Court to the Chester County Court of Common Pleas. *Id.* at ¶ 119. Yet the foundation for this Count is again the Maryland litigation. Specifically, plaintiffs aver that the transferred judgments were void when transferred because "[t]he underlying judgments were wrongfully entered in Maryland." *Id.* at ¶ 122.

#### **B. The Local Interest in Deciding Local Controversies at Home**

The state of Maryland has a far greater interest in the outcome of this case than does the commonwealth of Pennsylvania. Plaintiffs allege that defendants wrongfully initiated and continued a lawsuit in the Maryland state courts. Moreover, plaintiffs' Complaint avers unlawful activity by, *inter alia*, County Bank, a bank chartered under Maryland law with its principal place of business in Maryland, and Gebhardt & Smith, LLP, a Maryland limited liability partnership, whose partners are citizens of Maryland.

The state of Maryland has a strong interest in ensuring that litigation in the Maryland state courts proceeds on lawful grounds. Furthermore, the state of Maryland has an interest in ensuring that business entities organized under Maryland law do not improperly utilize Maryland courts. See Bolick Distributors Corp. v. Armstrong Holdings, Inc., 2003 WL 2150058, \*8 (E.D. Pa. May 16, 2003). Thus, this factor weighs heavily in favor of transfer.

### **C. Plaintiffs' Choice of Forum**

Plaintiffs' choice of forum ordinarily receives substantial weight in a § 1404(a) analysis. Jumara, 55 F.3d at 879; Lamusta v. Lawson Mardon Wheaton, Inc., 2000 WL 274013, \*2 (E.D. Pa. Mar. 10, 2000). However, plaintiffs' choice of forum is afforded less deference "where that forum has 'little connection with the operative facts of the lawsuit.'" Bolick Distributors Corp., 2003 WL 2150058 at \*6 (quoting Liggett Group Inc. v. R.J. Reynolds Tobacco Co., 102 F. Supp. 2d 518, 530 (D.N.J. 2000)). Conversely, "[w]hen the central facts of a lawsuit occur outside of the chosen forum, plaintiff's choice of forum is accorded less weight." Thorlabs, Inc., 2004 WL 1630488 at \*3.

Thus, while plaintiffs' preference for this Court merits deference, this deference is necessarily 'diluted' because the operative facts occurred outside of the Eastern District of Pennsylvania. Bolick Distributors Corp., 2003 WL 2150058 at \*6 (citation omitted). Although plaintiffs complain of some activity in Pennsylvania, this activity is tangential to plaintiffs' Complaint, which rests squarely on the allegation that defendants wrongfully prosecuted a lawsuit in Maryland state courts. Under these circumstances, plaintiffs' choice of forum weighs against transfer, but is not controlling. See Lamusta, 2000 WL 274013 at \*2 ("A plaintiff's choice is not conclusive, of course, or the courts would not employ a multi-factor test and § 1404(a) would be rendered meaningless.").

### **D. Other Factors**

The other factors to be considered in deciding a motion to transfer venue are largely

neutral. The convenience of the parties in this case does not weigh in favor or against transfer.<sup>9</sup> The convenience of witnesses and the location of books and records are relevant to § 1404(a) only to the extent that the witnesses or documents could not be produced in one forum. Jumara, 55 F.3d at 879. In this case, there is no suggestion that any witnesses or documents will be unavailable in either this Court or in the District of Maryland. Thus, these factors do not favor either forum. Similarly, on the current record there is no difference between this Court and the District of Maryland with regard to the enforceability of the judgment; practical considerations; the relative administrative difficulty of hearing this case; the public policies of the fora; or the familiarity of the trial judges with the applicable state law.

## **V. CONCLUSION**

For the foregoing reasons, based on the relevant Jumara factors, the Court grants defendants' Motion to Transfer pursuant to 28 U.S.C. § 1404(a) and transfers this matter to the District of Maryland.

An appropriate Order follows.

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<sup>9</sup> Although plaintiffs' convenience favors the Eastern District of Pennsylvania, the convenience of defendants Hamm and Gebhardt & Smith, LLP favors the District of Maryland. The convenience of defendant County Bank favors neither court. See Ans. Pl. Def. Mot. Dismiss or Transfer at 33 (observing that Elkton, Maryland, the location of County Bank, is ten miles closer to this Court than to the District of Maryland, Baltimore Division).

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<b>HOLLY HALL PUBLICATIONS, INC.,</b>	:	
<b>Plaintiffs</b>	:	<b>CIVIL ACTION</b>
	:	<b>NO. 06-3974</b>
<b>v.</b>	:	
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<b>MERCANTILE COUNTY BANK;</b>	:	
<b>RAYMOND HAMM, JR.; GEBHARDT &amp;</b>	:	
<b>SMITH, LLP,</b>	:	
<b>Defendants</b>	:	

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**ORDER**

**AND NOW** this 9th day of November, 2006, upon consideration of the Motion to Dismiss or Transfer (Doc. No. 5, filed October 6, 2006) and Answer of the Plaintiffs to the Defendants' Motion to Dismiss or Transfer (Doc. No. 12, filed October 30, 2006), for the reasons stated in the attached Memorandum, **IT IS ORDERED** as follows:

1. Defendant's Motion to Dismiss or Transfer pursuant to 28 U.S.C. § 1406(a) is **DENIED**;
2. Defendant's alternative Motion to Transfer pursuant to 28 U.S.C. § 1404(a) is **GRANTED**. The Clerk of the United States District Court for the Eastern District of Pennsylvania shall **TRANSFER** the case to the United States District Court for the District of Maryland.

**BY THE COURT:**

/s/ Honorable Jan E. DuBois  
**JAN E. DUBOIS, J.**