

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

NORMA JOLLY,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
CYNTHIA FAUCETT and	:	
LLOYD STEWART,	:	No. 06-3286
Defendants.	:	

MEMORANDUM AND ORDER

Schiller, J.

January 16, 2007

This is a diversity case stemming from a car accident that occurred in Maryland. Presently before the Court is Defendants’ motion to transfer venue to the District of Maryland pursuant to 28 U.S.C. §§ 1404(a) and 1391(a). On its own motion, the Court will also consider whether venue is proper under 28 U.S.C. § 1406(a). For the following reasons, Defendants’ motion is granted, and this case is transferred to the District of Maryland.

I. BACKGROUND

On July 25, 2006, Plaintiff Norma Jolly instituted this action against Defendants Cynthia Faucett and Lloyd Stewart. Plaintiff asserts that Defendants’ negligence or recklessness caused a car accident between the parties in July 2004. (Compl. at ¶¶ 1, 6, 15, 16, 21, 22.) The accident occurred in Chestertown, Maryland, and both Defendants are citizens of Maryland.¹ (*Id.* at ¶¶ 1, 4,

¹ There is some confusion over where Defendant Faucett resides. Defendants assert in their motion that both Faucett and Stewart reside in Church Hill, Maryland. (Defs.’ Mot. to Transfer Venue ¶¶ 2-3.) In both her Complaint and initially in her response to Defendants’ transfer motion, Plaintiff admits that Faucett resides in Maryland. (Compl. ¶¶ 1, 4); (Pl.’s Resp. to Defs.’ Mot. to Transfer Venue [hereinafter Pl.’s Resp.] ¶ 2.) But later in the response, Plaintiff

5, 6-8.) Jurisdiction is based on diversity of citizenship. (Compl. ¶ 1.) On December 12, 2006, Defendants moved for a transfer of venue to the District of Maryland based on the convenience of the parties and witnesses.

II. STANDARD OF REVIEW

There are two relevant venue statutes which address transfer of venue. *See Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879 (3d Cir. 1995). Pursuant to 28 U.S.C. § 1404(a): “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.” When venue is improper, 28 U.S.C. § 1406(a) allows a district court to transfer the case to a district where it could have been brought or to dismiss the action. An action might have been brought in a district if: (1) venue is proper in the transferee district; and (2) the transferee district can exercise jurisdiction over all defendants. *See Shutte v. Armco Steel Corp.*, 431 F.2d 22, 24 (3d Cir. 1970); *Gottlieb v. United States*, Civ. A. No. 05-3803, 2006 WL 2591069, at *2 (D.N.J. Sept. 8, 2006). The party seeking transfer bears the burden of establishing that venue is inconvenient or improper. *Shutte* 431 F.2d at 25; *General Motors Corp. v. Schneider Logistics, Inc.*, Civ. A. No. 06-2195, 2006 WL 2987785, at *2 (E.D. Pa. Oct. 17, 2006) (citing *Myers v. Am. Dental Assoc.*, 695 F.2d 716, 724-25 (3d Cir. 1981)).

states that Faucett resides in Philadelphia, Pennsylvania. (Pl.’s Resp. ¶ 6(d).) The Court holds Plaintiff to her initial admissions and assumes that Plaintiff intended to state that Santamaria Perrin, the driver of the car in which Plaintiff was a passenger, is a resident of Philadelphia, Pennsylvania. (Compl. ¶ 6.) Indeed, if Faucett is a resident of Pennsylvania, complete diversity of citizenship would not exist, and the Court would lack subject matter jurisdiction. *In re Brisco*, 448 F.3d 201, 215 (3d Cir. 2006).

Where jurisdiction is based exclusively on diversity of citizenship, 28 U.S.C. § 1391(a) provides the rule for determining proper venue. Under that section, venue may lie either: (1) in a district where any defendant resides, if all defendants reside in the same state; (2) a district where a substantial part of the events or omissions giving rise to the claim occurred, or, if no other district exists in which the action can be brought; (3) a district in which any defendant is subject to personal jurisdiction at the time the action was commenced. 28 U.S.C. § 1391(a) (2007).

III. DISCUSSION

A. Timeliness of Defendants' Motion

Plaintiff argues that Defendants' motion for transfer of venue should be denied because it was filed beyond the deadline for filing an answer and thus constitutes a waiver of the right to object to venue. (Pl.'s Resp. at ¶ 5); FED. R. CIV. P. 12(a)(1)(A). Section 1404(a) motions are not subject to time constraints, *Schwilm v. Holbrook*, 661 F.2d 12, 16 (3d Cir. 1981). Therefore, Plaintiff's waiver argument is specious.

B. Venue Analysis

1. Improper Venue under 28 U.S.C. § 1406

Defendants filed the instant motion pursuant to 28 U.S.C. § 1404(a), which applies where the current forum is proper but an alternative forum is supposedly more convenient. However, the Court's independent analysis reveals that venue is not proper in this District, and thus transfer is warranted under section 1406(a) regardless of the section 1404(a) analysis. *See Jumara*, 55 F.3d at 879; *Sandt v. Luke*, Civ. A. No. 03-4379, 2004 WL 2782233, at *2 (E.D. Pa. Nov. 4, 2004) (district court can transfer a case *sua sponte* when venue is improper). Here, venue is controlled by 28 U.S.C.

§ 1391(a) because jurisdiction is based exclusively on diversity of citizenship. Therefore, venue is proper in either: (1) a district where any defendant resides if all defendants reside in the same state; or (2) a district where a substantial part of the events or omissions giving rise to the claim took place. 28 U.S.C. § 1391(a). If no district exists that satisfies one of these two alternatives, venue is proper in any district where any defendant is subject to personal jurisdiction. *Id.*

None of the Defendants are residents of Pennsylvania, and the events or omissions giving rise to this litigation occurred outside of the Eastern District of Pennsylvania. Therefore, venue is improper in this District unless no other district exists where venue would be appropriate and at least one defendant is subject to personal jurisdiction in this forum. *See* 28 U.S.C. § 1391(a)(1)(2). Both Defendants reside in Maryland, making the District of Maryland proper under section 1391(a)(1), and a substantial part of the actions or omissions giving rise to this action occurred in Maryland, making the District of Maryland proper under section 1391(a)(2). Accordingly, because there is a district that satisfies the alternatives listed in section 1391(a), venue is improper in this District. The Court finds that the interest of justice will be served by transferring the case to the District of Maryland. *See* 28 U.S.C. § 1406(a).

2. *Transfer of Venue Under 28 U.S.C. § 1404(a)*

Assuming, *arguendo*, that venue is proper in this District, transfer to the District of Maryland is warranted pursuant to 28 U.S.C. § 1404(a) because of the convenience of the parties and witnesses and for the interest of justice. *See generally Jumara*, 55 F.3d at 879. In determining whether to grant a motion pursuant to section 1404(a), courts consider a number of private and public interest factors. *Id.* The private interest factors include: (1) plaintiff's choice of forum; (2) ease of access to sources of proof; (3) availability of compulsory process over unwilling witnesses; (4) the

possibility of the jury viewing the premises; and (5) whether the claim arose elsewhere. *Id.*; *Seghers v. Executive Risk Indemnification, Inc.*, Civ. A. No. 06-628, 2006 WL 2865494, at *6 (D.N.J. Oct. 5, 2006). The public interest factors include: (1) enforceability of the judgment; (2) practical considerations that could make the trial easy, expeditious, or inexpensive; (3) local interest in deciding local controversies at home; (4) public policies of the fora; and (4) familiarity of the trial judge with the applicable state law. *Id.*

Reviewing the public and private interest factors here, the Court concludes that transfer is proper. Not only are all Defendants from Maryland but the underlying accident that gave rise to this action occurred in that state. Maryland law will almost certainly apply, and the federal courts in Maryland are more familiar with applying the substantive law of that state. Moreover, while the Court recognizes the importance of a plaintiff's forum choice, that choice is entitled to less deference when the operative events giving rise to the claim did not occur in the district that plaintiff has selected. *LG Elecs. v. 1st Int'l Computer, Inc.*, 138 F. Supp. 2d 574, 590 (D.N.J. 2001). Finally, the Court notes that the transferee district is not so distant from the chosen forum that litigating there will result in an undue burden on Plaintiff.

Similar to section 1406(a), transfer under section 1404(a) is proper only if the target venue is a location where the action "might have been brought." 28 U.S.C. § 1404(a). As described above, the District of Maryland is such a location because both Defendants are from Maryland and the events or omissions giving rise to this action occurred in that state. *See* 28 U.S.C. § 1391(a)(1)(2). Moreover, Maryland can exercise personal jurisdiction over resident defendants.

Accordingly, the Court grants Defendants' motion to transfer this action to the District of Maryland.

IV. CONCLUSION

Because this District is not a proper venue for this action, the matter is transferred to the District of Maryland. Even assuming the Eastern District of Pennsylvania provides a proper forum, the Court transfers this case to the District of Maryland because the private and public interest factors require such a transfer. An appropriate Order follows.

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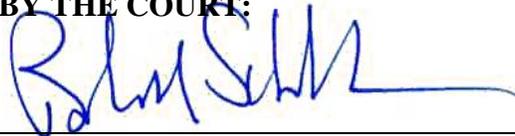
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v.	:	
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CYNTHIA FAUCETT and	:	
LLOYD STEWART,	:	No. 06-3286
Defendants.	:	

ORDER

AND NOW, this 16th day of **January, 2007**, upon consideration of Defendants' Motion to Transfer Venue, Plaintiff's response thereto, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Defendants' motion (Document No. 8) is **GRANTED**.
2. The Clerk of Court is directed to **transfer** this case to the District of Maryland.
3. Defendants' motion (Document No. 9) is **DENIED as moot** because it is a duplicate of Document No. 8.

BY THE COURT:



Berle M. Schiller, J.