

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

ED KASHI	:	CIVIL ACTION
	:	
v.	:	NO. 17-1993
	:	
PEARSON EDUCATION, INC.	:	

ORDER-MEMORANDUM

AND NOW, this 31st day of October 2017, upon considering Defendant’s Motion to transfer venue (ECF Doc. No. 13), Plaintiff’s Opposition (ECF Doc. No. 20), Defendant’s Reply (ECF Doc. No. 21), following oral argument and finding venue in this case brought by a New Jersey citizen against a Delaware and New York citizen is more appropriate in the District where Plaintiff resides and the only nexus to this District is one of Plaintiff’s co-counsel has an office in this District, it is **ORDERED** Defendant’s Motion (ECF Doc. No. 13) is **GRANTED in part** and the Clerk of Court shall forthwith **transfer** this matter to the Clerk of Court for the United States District Court for the District of New Jersey under 28 U.S.C. §1404 and **close** this case in this District.

Analysis

Plaintiff Ed Kashi is a professional photographer residing in northern New Jersey.¹ Mr. Kashi sues Pearson Education, Inc. for infringing the copyright on his photographs. Pearson is a Delaware corporation which publishes, sells and distributes textbooks from its principal place of business in New York, New York.² No party is a Pennsylvania citizen.

¹ Complaint at ¶ 2 (ECF Doc. No. 1).

² *Id.* at ¶ 3.

Mr. Kashi signed licensing agreements with stock photo agencies Corbis Corporation and IPN granting them limited rights to sublicense Mr. Kashi's photographs to third parties in exchange for a percentage of negotiated fees.³ Corbis and IPN are not parties to this action.

In turn, Corbis signed licensing and pricing agreements with Pearson governing the use of photographs including those owned by Mr. Kashi. The 2007 licensing agreement between Pearson and Corbis, and not signed by Mr. Kashi, defines the choice of law and their choice for the forum to resolve disputes under their agreement:

Choice of Law/Jurisdiction/Attorneys' Fees: Any dispute regarding this Agreement shall be governed by the laws of the State of New York, and by Titles 15, 17 and 35 of the U.S.C., as amended, and the parties agree to accept the exclusive jurisdiction of the state and federal courts located in New York, New York; regardless of conflicts of laws.⁴

Mr. Kashi alleges Pearson infringed on his copyrights by publishing his Photographs outside the distribution area, in publications without permission beyond specified time limits, and otherwise made unlicensed use of his Photographs.⁵ He does not allege, and we have no basis to find, he appointed Pearson as his implied or actual agent.

Pearson moves to transfer this action to the Southern District of New York under 28 U.S.C. § 1404(a).⁶ Although it concedes Mr. Kashi did not sign the Pearson-Corbis licensing agreement, Pearson argues Mr. Kashi is bound by the forum selection clause in the agreement because (1) he is a third-party beneficiary of the agreement; (2) his claims arise from the agreement; and (3) the existence of a forum selection clause was foreseeable.

³ *Id.* at ¶¶ 6-8.

⁴ *See* Declaration of Elaine Soares-Ferreira at ¶¶ 9-10 (ECF Doc. No. 13-2).

⁵ *Id.* at ¶¶ 12-14.

⁶ ECF Doc. No. 13-1.

Mr. Kashi disagrees, arguing (1) Pearson is collaterally estopped from re-litigating the enforceability of the forum selection clause;⁷ (2) he is not a third-party beneficiary of the Corbis-Pearson agreements; (3) the forum selection clause is not foreseeable; (4) his claims arise under copyright law, not contract; and (4) because only some of his claims involve photos under licenses to Corbis, *Atlantic Marine*⁸ does not apply. Mr. Kashi argues his case must remain in this District under a Section 1404(a) analysis informed by *Jumara v. State Farm Ins. Co.*⁹ but if we find transfer to be warranted under 28 U.S.C. § 1404, he requests transfer to the District of New Jersey.

A. Mr. Kashi is not bound by the forum selection clause in the Pearson-Corbis agreement.

If Mr. Kashi is bound by a valid forum selection clause in the Pearson-Corbis agreement, we are directed by the Supreme Court’s decision in *Atlantic Marine* to transfer this matter to the Southern District of New York “unless extraordinary circumstances unrelated to the convenience of the parties clearly disfavor a transfer.”¹⁰

We begin our analysis by reviewing recent thoughtful opinions from our colleagues addressing proper venue when facing New York forum selection clauses identical to the one signed by Pearson and Corbis in agreements creating defenses for the publishers. For example, photographer Bob Krist, a Pennsylvania resident, brought copyright infringement claims against

⁷ Because we find Mr. Kashi is not a third-party beneficiary of, or closely related to, the Pearson-Corbis contract, we need not address his collateral estoppel argument.

⁸ *Atlantic Marine Constr. Co. v. U.S. Dist. Court for the W. D. of Tex.*, --- U.S. ---, 134 S.Ct. 568, 187 L.Ed. 2d 487 (2013).

⁹ 55 F.3d 873 (3d Cir. 1995).

¹⁰ *Atlantic Marine*, 134 S.Ct. at 575.

Pearson,¹¹ Scholastic, Inc.,¹² and McGraw-Hill School Education Holdings, LLC¹³ in this District. In each case, the defendant publishers moved to dismiss or transfer the action under Section 1404 based on a forum selection clause identical to the clause here. Judge McHugh and Judge Rufe denied the motions to transfer, refusing to enforce the forum selection clause against Mr. Krist. Judge McHugh found Mr. Krist did not assert rights under the Pearson-Corbis contracts and instead sought relief under copyright law; did not sign the Pearson-Corbis agreement with the forum selection clause; and did not enter into an agency relationship with Corbis.¹⁴ With the forum selection clause inapplicable, Judge McHugh denied Pearson's motion to transfer under Section 1404(a) and the *Jumara* factors.¹⁵

Judge Rufe, relying on Judge McHugh's decision and Judge Robreno's decision in *Steinmetz v. McGraw-Hill Global Educ. Holdings, LLC*,¹⁶ similarly found the forum selection clause did not apply to Mr. Krist because the clauses did not govern his copyright claims; Mr.

¹¹ *Krist v. Pearson Educ., Inc.*, No. 16-6178 (McHugh, J.)

¹² *Krist v. Scholastic*, No. 16-6251 (Rufe, J.)

¹³ *Krist v. McGraw-Hill School Educ. Holdings, LLC*, No. 16-6248 (Davis, J.)

¹⁴ *Krist v. Pearson Educ., Inc.*, No. 16-6178, 2017 WL 1344396, at *2-*4 (E.D. Pa. Apr. 12, 2017). Judge McHugh later reconsidered to allow the parties to present evidence of a principal-agent relationship through discovery as he found venue. *Id.*, ECF Doc. No. 20.

¹⁵ 2017 WL 1344396 at *4.

¹⁶ 220 F.Supp. 3d 596 (E.D. Pa. 2016). Plaintiff photographer George Steinmetz brought copyright infringement claims against McGraw-Hill. Judge Robreno, considering the same forum selection clause, found it did not apply to Mr. Steinmetz. Judge Robreno reasoned Mr. Steinmetz is not a party to the agreement between Corbis and McGraw-Hill; Corbis was not Steinmetz's agent; the language of the clause limits its applicability to "[a]ny dispute regarding this Agreement;" and Mr. Steinmetz's copyright infringement claims do not depend on the existence or terms of the Corbis – Mc-Graw Hill agreements. *Id.* at 603-606.

Krist was not a party to the agreements; and Corbis was not Mr. Krist's agent.¹⁷ Judge Rufe denied Scholastic's motion to transfer under Section 1404(a) after applying the *Jumara* factors.

In another case brought by Mr. Kashi against McGraw-Hill, Judge Beetlestone considered the identical forum selection clause and found it did not apply to him.¹⁸ Like Judge McHugh and Judge Rufe, Judge Beetlestone found Mr. Kashi is not a signatory to the McGraw-Hill – Corbis agreements and his claims do not depend on those agreements.¹⁹ Judge Beetlestone, analyzing section 1404(a) and the *Jumara* factors, denied McGraw-Hill's motion to transfer the action to the Southern District of New York.

As a comparison, Judge Davis granted publisher McGraw-Hill's motion under *Atlantic Marine* to transfer Mr. Krist's action to the Southern District of New York, finding the forum selection clause applied because Mr. Krist is an intended beneficiary of the McGraw-Hill – Corbis agreements and his claims depended on the agreements.²⁰ In *Keller v. McGraw-Hill Global Educ. Holdings, LLC*,²¹ Judge Slomsky found the forum selection clause in a Corbis – McGraw-Hill agreement binding on the plaintiff photographer from the Middle District of Pennsylvania after finding an agency relationship between the photographer and Corbis.²² Mr.

¹⁷ *Krist v. Scholastic*, No. 16-6251, --- F.Supp. 3d ---, 2017 WL 2349004, at *3-*4 (E.D. Pa. May 30, 2017).

¹⁸ *Kashi v. McGraw-Hill Global Educ. Holdings, LLC*, No. 17-1818.

¹⁹ *Id.* at ECF Doc. No. 19.

²⁰ *Krist v. McGraw-Hill School Educ. Holdings, LLC*, No. 16-6248, ECF Doc. No. 22. Mr. Krist filed a motion for reconsideration from Judge Davis's order now currently pending before Judge Rufe after reassignment to her. *See* ECF Doc. No. 23.

²¹ No. 16-1778, 2016 WL 4035613 (E.D. Pa. July 28, 2016).

²² *Keller v. McGraw-Hill Global Educ. Holdings, LLC*, No. 16-1778, 2016 WL 4035613, *6 (E.D. Pa. July 28, 2016).

Kashi does not plead agency and we lack a basis to find agency as a matter of law at this preliminary stage.²³

Not surprisingly, Pearson now urges us to follow Judge Davis's analysis in *Krist v. McGraw-Hill* and find the licenses issued by Corbis on Kashi's behalf make him a third-party beneficiary to the Pearson-Corbis agreements. Pearson contends Judge McHugh's and Judge Rufe's decisions are based on "two erroneous premises": (1) a license is only a defense to copyright infringement and (2) forum selection clauses do not bind third-party beneficiaries.²⁴

We disagree with Pearson's arguments and, following the well-reasoned decisions of Judges McHugh, Rufe, Beetlestone, and Robreno, find Mr. Kashi is not bound by the forum selection clause in the Pearson-Corbis agreement. In this Circuit, non-signatories may be bound by a forum selection clause if the party is a third-party beneficiary²⁵ of the contract or "is closely

²³ We make no finding binding upon the transferee judge as to whether discovery will show a principal-agent relationship.

²⁴ ECF Doc. No. 13-1 at n. 6.

²⁵ Pennsylvania, as well as New York, applies the Restatement (Second) of Contracts §302 to determine whether third-party beneficiary. Section 302 provides:

(1) Unless otherwise agreed between promisor and promisee, a beneficiary of a promise is an intended beneficiary if recognition of a right to performance in the beneficiary is appropriate to effectuate the intention of the parties and either

(a) the performance of the promise will satisfy an obligation of the promisee to pay money to the beneficiary; or

(b) the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.

(2) An incidental beneficiary is a beneficiary who is not an intended beneficiary.

Estate of Agnew v. Ross, 152 A.3d 247, 253 n.10 (Pa. 2017); *Septembertide Publ'g, B.V. v. Stein and Day, Inc.*, 884 F.2d 675, 679 (2nd Cir. 1989).

related to the contractual relationship or dispute such that it is foreseeable that the party will be bound.”²⁶ As Judge McHugh found, cases applying the third-party beneficiary and “closely related” to non-signing parties arise where “defendants who allegedly either interfered with . . . or made misrepresentations to induce entering into . . . contracts with forum selection clauses.”²⁷ We also distinguish this case because Mr. Kashi is not arguing he is a third-party beneficiary of the Pearson-Corbis agreement; rather, Pearson is using its agreement with Corbis defensively to compel Mr. Kashi to litigate in the Southern District of New York.²⁸ We also find no basis to find Pearson is Mr. Kashi’s agent, as the court found in *Keller*. We recognize the facial attractiveness of characterizing Mr. Kashi as a third-party beneficiary even though he does not

²⁶ *AAMCO Transmissions, Inc. v. Romano*, 42 F.Supp.3d 700, 708 (E.D.Pa.,2014) (“In the Third Circuit, a non-signatory party may enforce a forum selection clause in a contract if the party is a third-party beneficiary of the contract or is closely related to the contractual relationship or dispute such that it is foreseeable that the party will be bound.”) (quoting *D’Elia v. Grand Caribbean Co., Ltd.*, No. 09–1707, 2010 WL 1372027, at *3 (D.N.J. Mar. 30, 2010)).

²⁷ *Krist*, --- F.3d at ---, 2017 WL 1344396 at* 3.

²⁸ Like Judge McHugh, we find cases cited by Pearson distinguishable. In two cases, the plaintiff photographers brought copyright and breach of contract claims seeking to recover under the contract containing the forum selection clause against the defendant publishing company. See *Jon Feingersh Photography, Inc. v. Houghton Mifflin Harcourt Pub. Co.*, No. 13-2378, 2014 WL 716723 (E.D. Pa. Feb. 25, 2014); *Lefkowitz v. John Wiley & Sons, Inc.*, No. 13-1662, 2013 WL 4079923 (E.D. Pa. Aug. 13, 2013); and *Lefkowitz v. McGraw-Hill Co., Inc.*, No. 13-1661, 2013 WL 3061549 (E.D. Pa. June 19, 2013). In *Gordon v. Houghton Mifflin Harcourt Pub. Co.* No. 14-4703, 2015 WL 3871788 (E.D. Pa. June 23, 2015) plaintiff photographer licensed his photographs directly to Houghton Mifflin through invoices containing a forum selection clause; there were no third-party beneficiary issues. The two cases from the District of New Jersey found the plaintiff photographers bound by the forum selection clause between Corbis and Scholastic based on an agency relationship between the plaintiffs and Corbis; no agency relationship is alleged here. See *Steinmetz v. Scholastic, Inc.*, 16-3583, 2017 WL 4082681 (D.N.J. Sept. 15, 2017) and *Yamashita v. Scholastic, Inc.*, No. 16-3839, 2016 WL 6897781 (D.N.J. Nov. 21, 2016).

seek this status. But we find no basis to leap and characterize him as such, nor find Pearson is his authorized agent absent a pleading of agency or proof.

B. Section 1404 transfer to the District of New Jersey is warranted.

Mr. Kashi requests, should we find transfer is warranted, to transfer to the District of New Jersey. Under 28 U.S.C. § 1404(a), a district court “[f]or the convenience of parties and witnesses, in the interest of justice, . . . may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties consented.” District courts have discretion to “adjudicate motions for transfer according to an individualized, case-by-case consideration of convenience and fairness.”²⁹ We employ a two part analysis in applying section 1404(a); we first ask whether venue is proper in both the original and proposed transferee districts and, if so, we apply the private and public interest *Jumara* 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.”³⁰ The burden of establishing the need for transfer rests with the moving party.³¹

1. Venue is proper in this District, the District of New Jersey, and Southern District of New York.

In copyright actions, venue is proper “in the district in which the defendant or his agent resides or may be found.”³² Mr. Kashi alleges Pearson sells and distributes textbooks in this District making venue proper here under Section 1400(a). Pearson does not challenge venue as

²⁹ *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)).

³⁰ *Jumara*, 55 F.3d at 879.

³¹ *Id.*

³² 28 U.S.C. § 1400(a).

improper in this District. Mr. Kashi also could have sued Pearson in his home District of New Jersey because “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” there³³ or in the Southern District of New York where Pearson is located.³⁴

2. *Jumara*'s private and public interest factors weigh in favor of transfer.

Mr. Kashi from North Jersey, who lives much closer to the Newark or Trenton vicinages in the District of New Jersey, chose to sue a New York publisher in Philadelphia. This District has no connection to this case. The only possible connection is one member of Mr. Kashi's two-member lawyer team has an office in this District. His other lawyer works from Colorado. Under Mr. Kashi's venue theory, he could bring this case from his New Jersey residence against a New York publisher in either Pennsylvania or Colorado even though these Districts have no factual connection to the dispute. We decline to define a convenient forum based solely on the office location of the lawyers bringing or defending the case when there is no other nexus.

In *Jumara*, our court of appeals offered a non-exclusive list of private and public interest factors to determine whether to transfer venue. These factors do not include the office locations of the plaintiff's lawyers. The private interest 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—but only to the extent that the witnesses may actually be unavailable for trial in one of the fora; and (6) the location of books and records

³³ 28 U.S.C. § 1391(b)(2).

³⁴ *Id.* at § 1391(b)(1).

(similarly limited to the extent that the files could not be produced in the alternative forum).³⁵ The public interest factors 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; (5) the public policies of the fora; and (6) the familiarity of the trial judge with the applicable state law in diversity cases.³⁶

Identifying a possible venue issue when Mr. Kashi first filed his complaint, we issued a rule to show cause why we should not transfer this matter under Section 1404 to the Southern District of New York or the District of New Jersey.³⁷ Applying the *Jumara* factors, Mr. Kashi argued the private factors weigh against transfer because: (1) his choice of forum should not be disturbed; (2) convenience of the witnesses does not require transfer; (3) location of documents weighs against transfer because document production will be by electronic means; and (4) financial condition of the parties weigh against transfer because Mr. Kashi will incur costs in court and counsel fees if we transfer the matter out of this District.³⁸

Mr. Kashi argued *Jumara's* public interest factors weigh against transfer because our Court is less congested than the district courts of the Southern District of New York and New Jersey, cases move faster here than in those Districts, and the remaining public factors are neutral.³⁹ In response to Pearson's motion to transfer, Mr. Kashi makes essentially the same

³⁵ *Jumara*, 55 F.3d at 879.

³⁶ *Id.* at 879-80.

³⁷ ECF Doc. No. 3.

³⁸ *Id.*

³⁹ ECF Doc. No. 4.

arguments against transfer.⁴⁰ If we find transfer from this District warranted under Section 1404, Mr. Kashi requests we transfer the action to his home District of New Jersey.

Applying *Jumara's* factors, this case must be transferred to the District of New Jersey where Mr. Kashi resides and allegedly suffers the loss. The first factor considers his forum preference. Mr. Kashi argues his choice of forum should be given “paramount consideration,” but recognizes his choice will receive less deference because this District is not his home forum.⁴¹ Although he recognizes his choice will receive less deference, Mr. Kashi argues his forum choice in this District should not be disturbed simply because Pearson would prefer to litigate in the Southern District of New York where it is located.

The fourth factor considers the convenience of the parties relative to their physical and financial condition. Mr. Kashi asserts he is an individual with far less resources than Pearson, a large publishing company and transfer to Manhattan will require travel by his counsel creating financial burden.⁴² As to factors five and six, Mr. Kashi argues the convenience of the parties and witnesses weigh in favor of remaining in this District, contending Pearson has not indicated its witnesses are unavailable for trial here. Mr. Kashi contends the documents relevant to the litigation are maintained electronically and in the possession of his counsel located in this District and Pearson’s records are likely stored electronically either in New Jersey or Illinois and

⁴⁰ ECF Doc. No. 20.

⁴¹ See *McMahon v. Arsenberger Trucking Co.*, No. 17-1242, 2017 WL 3740643, at *4 (E.D. Pa. Aug. 29, 2017) (citing *Mullen v. Norfolk S. Ry. Co.*, No. 13-6348, 2014 WL 1370119, *9 (E.D. Pa. Apr. 8, 2014)).

⁴² Mr. Kashi does not address the third factor, “whether the claim arose elsewhere.”

records of Corbis, a licensee, are maintained in Seattle, Washington.⁴³ Mr. Kashi asserts these private factors weigh against transfer.

Pearson does not offer its analysis of the private interest factors, arguing under *Atlantic Marine* we need not consider private interest factors when a forum selection clause applies. Pearson argues generally a transfer to the Southern District of New York will not inconvenience Mr. Kashi who resides only twenty miles from New York City. Pearson does not contest Mr. Kashi's alternative request of transfer to the District of New Jersey.

We find the private interest factors weigh in favor of transfer to the District of New Jersey. Mr. Kashi is located in northern New Jersey and Pearson in Manhattan. Mr. Kashi and Pearson are much closer to either the Newark or Trenton vicinages than our Court. If we start considering the convenience to lawyers, Mr. Kashi's local counsel in Bucks County also works much closer to Trenton than he does to our Courthouse. Pearson's argument Mr. Kashi's residence in northern New Jersey is only twenty miles from the federal courthouse in lower Manhattan is equally applicable to Pearson's New York City office in geographic relation to the federal courthouses in Newark or Trenton. At oral argument on the motion to transfer, both parties agreed the relevant documents are largely electronic and available in any district. The only connection to this District is Mr. Kashi's preference to litigate in this District where his local co-counsel is located. This is insufficient to retain venue here.⁴⁴

⁴³ Counsel for Mr. Kashi submitted a declaration attesting Corbis's licensing documents are maintained in Seattle and invoices Corbis sent to Pearson list employee addresses in Boston, Upper Saddle River, New Jersey and Glenview, Illinois. *See* ECF Doc. No. 20-2 at ¶¶ 3, 8-9. None in Pennsylvania.

⁴⁴ *Mullen v. Norfolk S. Ry.*, 2014 WL 1370119, at *9 (citing *Standard Knitting, Ltd. v. Outside Design, Inc.*, 00-2288, 2000 WL 804434, *4 (E.D. Pa. June 23, 2000)).

There are no other private factors weighing in favor of this District. The witnesses are not in this District; the documents are not in this District; and money allegedly owed to Mr. Kashi is not in this District. Mr. Kashi does not address where the claim arose; we suspect because it arose either in New Jersey or New York or Illinois, but there is no basis to find a claim arising in this District. We are particularly baffled by how Mr. Kashi will incur additional fees and costs if the matter is transferred to his home district close to his residence and possibly (upon request) to the Trenton vicinage within twenty miles of his local counsel's office. Again, to the extent we ever consider the convenience of local counsel's travel to the courtrooms, Mr. Kashi's local counsel also is lucky to work so close to at least two high speed rail stations in Trenton and Hamilton which daily transport neighbors to Newark in less time than it may take him to get to our Courthouse. Mr. Kashi's only articulated, and now apparent, private interest is in avoiding the District Court in New York which he fears favors the publishers in these copyright infringement cases. His arguments practically define forum shopping. Exhibiting good judgment, his local counsel asks for the District of New Jersey as an alternative venue upon transfer.

Turning to the public interest factors possibly disputed (practical considerations that could make the trial easy, expeditious, or inexpensive; the relative administrative difficulty in the two fora resulting from court congestion; and, the local interest in deciding local controversies at home), Mr. Kashi argues the third factor - court congestion - weighs in favor of venue in this District, submitting statistics showing median time for civil cases from filing to disposition is longer in the Southern District of New York than in this District.⁴⁵ Mr. Kashi's response to our show cause order submitted additional statistics for the District of New Jersey.⁴⁶ As of December

⁴⁵ ECF Doc. No. 20-8.

⁴⁶ ECF Doc. No. 4-4.

31, 2016, there is a difference of 2.5 months between this District and the District of New Jersey in the time from filing to disposition and 18.5 months between this District and the District of New Jersey in the time from filing to trial.⁴⁷ As of June 30, 2017, the difference between this District and the District of New Jersey in the time from filing to disposition and filing to trial decreased to 1.8 months and 14.5 month, respectively. These statistics do not account for the loss of two of our active District Court judges with significant dockets since then. On balance, and mindful statistics can be used for varied purposes, this factor narrowly weighs against transfer. We hesitate to send more work to the busy judges in the District of New Jersey, but find they, at a minimum, will be addressing a claim from a New Jersey citizen. By contrast, we will be allocating our limited resources to resolve a dispute entirely outside this District.

Mr. Kashi argues the fourth public factor weighs against transfer; Pearson does business in this District and alleges it sold books infringing on his copyright in this District creating a local stake in the outcome of the dispute. While this may be true, it is also true of New Jersey and New York where Pearson maintains an office and also sells its textbooks.⁴⁸ On the sixth public factor, Mr. Kashi asserts we are capable of applying federal copyright law. He is correct, as he also would be with the judges in any district.

Pearson argues two public interest factors weigh in favor of transfer to the Southern District of New York: questions of New York law are “highly likely to be relevant” to the interpretation of the licenses implicated in Mr. Kashi’s copyright claims; and there are stronger

⁴⁷ Id.

⁴⁸ See ECF Doc. No. 13-4 showing Corbis invoice to Pearson in Upper Saddle River, New Jersey; ECF Doc. No. 13-3 Corbin letter agreement with Pearson applying to “all Pearson Education imprints published in North America . . .”

local ties to New York than Pennsylvania. Pearson asserts the remaining public interest factors are neutral. We disagree with Pearson. For the reasons already discussed, we find New Jersey has a stronger interest in this litigation, and while a New York district court may have more experience with New York common law, even if applicable to this copyright case, a New Jersey district court will ably apply and interpret New York law to the extent it may apply to the defenses.

On balance, we find the private and public interest factors weigh in favor of transfer to the District of New Jersey.⁴⁹



KEARNEY, J.

⁴⁹ We are not reaching a different result than our colleague Judge Beetlestone did under Section 1404 in *Kashi v. McGraw-Hill Global Educ. Holdings, LLC* denying McGraw-Hill's motion to transfer. As did Judge Beetlestone, we agree the publisher did not show a basis for a New York forum when sued by Mr. Kashi. We are not aware of the facts concerning McGraw-Hill's business model and proximity to New Jersey. We are also not aware of whether Mr. Kashi suggested an alternative forum in New Jersey. We do not suggest we would reach a different result than reached by Judge Beetlestone did in *McGraw-Hill*. Our decision today, as in all Section 1404 decisions, is fact centered and, following extensive briefing and vigorous oral argument, we find the balance of *Jumara* factors in this case against Pearson warrant transfer to the District of New Jersey.