

According to the Complaint, in June, 1995, Rupert Brammer executed and delivered to Parkway Mortgage, Inc. ("Parkway") a purchase money mortgage and note for premises located at 25 Cornelia St., Brooklyn, New York (the "Brammer property"). Stewart Title Insurance Company ("Stewart") issued a mortgage policy of title insurance to Parkway covering the Brammer property. Stewart is a New York corporation with its principal place of business in New York City. On August 7, 1995, Parkway sold this mortgage and note to ContiMortgage Corporation ("Conti"). Conti is a Delaware corporation with its principal place of business in Horsham, Pennsylvania.

Brammer defaulted on the mortgage and note by failing to make payments to Conti, when due. When Conti gave notice to the Rupert Brammer who resides at the Cornelia premises of the default and advised him that the entire note was due and payable, he denied executing the mortgage and note. Conti asserts that the note was fraudulently obtained by an individual representing himself to be Rupert Brammer. As a result, Conti asserts that its mortgage lien against the Brammer property may be unenforceable.

In November, 1995, Raquel Campos ("Campos") executed and delivered to Parkway a purchase money mortgage and note for premises located at 37-50 100th St., Corona, Queens, New York (the "Campos property"). Stewart also issued a mortgage policy of title insurance to Parkway to cover this property. On

November 21, 1995, Parkway also sold this mortgage and note to Conti.

Campos defaulted on the mortgage and note by failing to make payments, when due. Conti has notified Campos of her default and has advised her that the entire amount of the note is now due and payable. Subsequently, Conti learned that this mortgage and note are under investigation by the FBI and that the real owner of the property has asserted a superior claim of ownership. The FBI has cautioned Conti not to foreclose on the Campos property because the FBI investigation is still ongoing. As a result, Conti asserts that its mortgage lien against the Campos property may be unenforceable.

On January 22, 1996, a representative of Conti wrote to Stewart to place it on notice of potential claims relating to a group of loans that Conti had purchased from Parkway. Included upon this list were the Brammer and Campos mortgages. See Affidavit of Anne E. Duffield, Vice President, Division Counsel and Corporate Secretary of ContiMortgage Corporation, Exhibit D. In response, Conti was advised that Stewart was investigating its claims. See Duffield Affidavit, Exhibit E.

Having received no further information from Stewart regarding its rights under the mortgages and notes, on November 8, 1996, Conti filed suit in this Court. In its complaint, Conti alleged that Stewart breached its contractual obligations under the title insurance policies by denying coverage to Conti. As a result, Conti seeks a declaration of its rights under the title

insurance policies, compensatory damages, punitive damages, attorneys' fees, interest and costs. Stewart responded by filing the Motion to Dismiss or, in the Alternative, to Transfer presently before the Court.

II. Motion to Transfer

Stewart seeks the transfer of this action to the District Court for the Eastern District of New York. Defendant's Motion to Transfer is made pursuant to 28 U.S.C. § 1404(a) which provides:

For the convenience of the 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.

The proposed transferee court must also be one in which venue is proper. The Eastern District of New York is an appropriate venue for this case because many events relating to this law suit occurred in that jurisdiction. See 28 U.S.C. §§ 1391(a), 1400(b).

Although the district court is vested with a wide discretion in making the transfer decision, the burden of justifying the transfer is on the moving party. Plum Tree, Inc. v. Stockment, 488 F.2d 754, 756 (3d Cir. 1973); Leonardo Da Vinci's Horse, Inc. v. O'Brien, 761 F. Supp. 1222, 1229 (E.D. Pa. 1991). The factors which the court may consider in ruling on a motion to transfer are:

1. the plaintiff's choice of forum;
2. relative ease of access to sources of proof;

3. availability of compulsory process for attendance of unwilling witnesses and cost of obtaining attendance of willing witnesses;
4. possibility of view of the premises, if appropriate;
5. all other practical problems that make trial of a case easy, expeditious and inexpensive; and
6. factors of public interest, including the relationship of the community in which the courts and jurors are required to serve to the occurrences that give rise to the litigation.

Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508-09 (1947); National Mortgage Network, Inc. v. Home Equity Centers, Inc., 683 F. Supp. 116, 119 (E.D.Pa. 1988).

The Third Circuit has stated that the plaintiff's selection of a proper forum is a "paramount consideration" and should not be "lightly disturbed." Shutte v. Armco Steel Corp., 431 F.2d 22, 25 (3d Cir. 1970). A balancing of the other choice of forum considerations is, however, equally as important as the plaintiff's initial choice of forum. Conti has chosen the Eastern District of Pennsylvania as its favored forum for the litigation of the present controversy. Although Conti is a Pennsylvania resident with its principal place of business in this state, it is evident that many of the relevant events underlying this controversy occurred in New York. When the central facts of a lawsuit occur outside the chosen forum state, a Plaintiff's selection of that forum is entitled to less deference. See National Mortg. Network, Inc. v. Home Equity Ctrs., Inc., 683 F. Supp. 116, 119 (E.D. Pa. 1988). In this case, the properties to which title is in dispute are located in New York. The contested title insurance policies were issued in

New York; and the closings at which the policies were originally issued to Parkway took place in New York. The FBI investigation of the alleged fraud in the acquisition of the mortgage of the Campos Property is also centered in New York.

Furthermore, none of the other considerations delineated by the Supreme Court in Gulf Oil suggest that the Eastern District of Pennsylvania is the more appropriate forum for the resolution of this dispute. Relevant documents and other sources of proof are likely to be located in Pennsylvania, New Jersey and New York. Accordingly, neither retaining venue in Philadelphia nor transferring the case to New York will offer substantially greater ease of access to this evidence. To the extent that it may be necessary to subpoena unwilling witnesses, compulsory process under Fed. R. Civ. P. 45(e) would be available from either in either the Eastern District of New York or this District.¹ Should a visit to either the Brammer or Campos properties be required, however, the District Court for the Eastern District of New York is far more conveniently located. Furthermore, although convenience of counsel is not controlling, see Bolton v. Tesoro Petroleum Corp., 549 F. Supp. 1312, 1314 (E.D. Pa. 1982)(citing Solomon v. Continental Am. Life Ins. Co., 472 F. 2d 1043, 1047 (3d Cir. 1973), as primary counsel for both Stewart and Conti are located in New York City and Morristown,

1. It is well established that for the purposes of Rule 45(e) that New York City is located within one hundred miles of this Courthouse in Philadelphia. See Glen Knit Industries, Ltd. v. E. F. Timme & Son, Inc., 384 F. Supp. 1176, 1178 (E.D. Pa. 1974).

New Jersey, respectively, the Eastern District of New York may well offer the more accessible forum for both parties.

Finally, there is no unique public interest in having this case tried in Pennsylvania. The communities with perhaps the most direct interest in the resolution of this dispute are located in Pennsylvania, New York and New Jersey. Conti argues that this Court should retain jurisdiction over this matter because Conti is located in this District; and Pennsylvania has an interest in ensuring the validity and enforcement of insurance policies issued in favor of its residents. Equally persuasive, however, is the argument that New York has an interest in the regulation of insurance providers located within the state, to ensure that they engage in fair business practices. Accordingly, both Pennsylvania and New York appear to have legitimate interests in the appropriate resolution of this controversy.

Because it appears that not only are the relevant properties located in New York, but also that most of the central events of this case occurred in New York, the Eastern District of New York offers the more convenient and appropriate forum for the resolution of this dispute. Accordingly, the Court will grant Defendant's Motion for Transfer under 28 U.S.C. § 1404(a) to the Eastern District of New York. Because the Eastern District of New York appears to be the most appropriate forum, that court should have the opportunity to determine the proper choice of law and to address the difficult questions of law presented by Stewart's Motion to Dismiss. Thus, Stewart's Motion to Dismiss

will remain outstanding, pending resolution by the District Court for the Eastern District of New York. An appropriate Order follows.

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

CONTIMORTGAGE CORPORATION :
CIVIL ACTION :
v. :
STEWART TITLE INSURANCE :
COMPANY : NO. 96-CV-7548

O R D E R

AND NOW, this 4th day of August, 1997, upon consideration of the Motion of Defendant, Stewart Title Insurance Company to Dismiss pursuant to Rule 12(b)(6) or, in the alternative, to Transfer under 28 U.S.C. § 1404(a) to the Eastern District of New York, Plaintiff's Answer thereto, Defendant's Reply and for the reasons stated in the foregoing Memorandum of law, it is hereby ORDERED that:

1. Defendant's Motion for Transfer is GRANTED;
2. The Clerk of the Court is directed to TRANSFER the entire file to the Clerk of the United States District Court for the Eastern District of New York.
3. Defendant's Motion to Dismiss will remain outstanding, pending resolution by the District Court for the Eastern District of New York.

BY THE COURT:

JAMES MCGIRR KELLY, J.