

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

Qing Ding LIU,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
CARGO TRANSPORTERS, INC.,	:	NO. 02-CV-8621
MICHAEL VERNON SPANGLER,	:	
GREATER ASIAN, LLC and MING HUI WU,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this day of April 2003, upon consideration of (1) Defendant Cargo Transporters, Inc.'s Motion to Transfer, (2) Plaintiff's Response in Opposition to Defendant's Motion to Transfer, and (3) Defendant's Response thereto, it is hereby **ORDERED** and decreed that:

- 1) Venue in the instant matter would be proper in the Middle District of Pennsylvania. 28 U.S.C. § 1404(a)(provides for the transfer of a case where both the original and the requested venue are proper).

- 2) The Court having (i) made a case-specific application of the Section 1404 (a) balancing test and (ii) considered the private and public factors relevant to the determination of whether the interests of justice and the balance of convenience will be served by transferring this matter to the Middle District of Pennsylvania,

finds that the balance of interests weighs in favor of keeping the matter in the Plaintiff's chosen forum. Jumara v. State Farm Insurance Company, 55 F.3d 873, 879 (3d. Cir. 1995); Remick v. Manfredy, et al., 138 F. Supp. 2d 652, 655-656 (E.D. Pa. 2001). 28 U.S.C.S. § 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.").

- 3) Defendant's reliance on the "first filed" rule in support of its argument that the instant matter should be transferred because Cargo Transporters v. Asian Food Services and Ming Hui Wu (No. 3: CV 02-1136), filed on July 1, 2001 and currently pending in the Middle District of Pennsylvania, arises out of the same facts, transactions and occurrences as the instant matter, is inapposite. Captain Sheriff Saudi v. Acomarit Martitimes Services, S.A., 2003 U.S. Dist. LEXIS 1479, at n. 3 (the first filed rule as articulated in EEOC v. University of Pennsylvania does not apply when the parties to the two actions are not the same); E.E.O.C. v. University of Pennsylvania, 850 F.2d 969, 971 (3d Cir. 1988)(Absent special circumstances, in the interest of justice and in accordance with the "first filed" rule, trial judges should exercise their discretion by enjoining the subsequent prosecution of cases involving the *same parties* and same issues in different federal district courts.). Defendant has failed to cite any authority to address Plaintiff's argument that Plaintiff Qing Ding Liu is not a party to the action pending in the Middle District of Pennsylvania.

- 4) Defendant has failed to meet its burden of establishing that the Plaintiff's choice of forum should be disturbed and this matter transferred to the Middle District of Pennsylvania. Meisenhelder v. Sunbury Transport, Ltd., 2002 U.S. Dist. LEXIS, at 7 (E.D. Pa.) (“A plaintiff's choice of forum should not be disturbed unless the defendant can show that such forum would cause oppressive inconveniences. This is a heavy burden on the defendant, and the balance of interests must weigh strongly in defendant's favor.”)(citing Am. Argo v. United States Fid. & Guar. Co., 590 F. Supp. 1002, 1004 (E.D. Pa. 1984)).

Accordingly, Defendant's Motion to Transfer this matter to the Middle District of Pennsylvania is **DENIED**.

BY THE COURT:

Legrome D. Davis