UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STRATEGIC LEARNING, INC.,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	
	:	
THOMAS WENTZ AND CORPORATE	:	
PERFORMANCE SYSTEMS,	:	
Defendants	:	No. 04-4341

Gene E.K. Pratter, J. Memorandum and Order February 1st, 2005

Defendants Thomas Wentz and Corporate Performance Systems move to dismiss the complaint in this case pursuant to Federal Rules of Civil Procedure 12(b)(3) and 12(b)(6), or in the alternative, to transfer the case to the Middle District of Pennsylvania. Oral argument on the motion was held on January 25, 2005. For the reasons discussed below, the motion to dismiss is granted in part and denied in part, and the motion to transfer venue is granted.

FACTS AND PROCEDURAL BACKGROUND

The plaintiff in this case is Strategic Learning, Inc. ("SLI"), a business consulting company located in Malvern, Pennsylvania. SLI's business includes interpreting and analyzing strategic initiatives for businesses, and providing training and development programs to achieve those initiatives. The defendants are Thomas Wentz and Corporate Performance Systems ("CPS"), a company allegedly owned by Mr. Wentz (collectively, the "Defendants").

In October of 1999, SLI entered into a contract with Wilson Learning Corporation

("Wilson"), pursuant to which SLI was to sell a certain volume of Wilson services and products.[1] SLI alleges that at or about the same time, the Defendants entered into an identical contract with Wilson. The events leading up to the present dispute began in December of 1999, when SLI began "investing capital to develop a new business relationship with York International ("York")," a company located in York, Pennsylvania. The nature of this investment was a project to develop a "diagnostic and implementation plan for developing 'Sales Effectiveness'" at York. SLI alleges that in July of 2001, its efforts to develop a relationship with York began to bear fruit when SLI was invited to present a pilot program to York.

The pilot program that SLI was to provide included a product called the "Counselor Salesperson." The product required a facilitator to conduct the training session. SLI alleges that in July of 2001, it contacted Mr. Wentz to determine if he was interested in and available to serve as a facilitator for the pilot program. SLI further alleges that it reached an agreement with Mr. Wentz to act as a facilitator for the York program from August 21 through August 23, 2001, the terms of which required SLI to pay Mr. Wentz a per diem fee in exchange for (1) facilitating the Counselor Salesperson product at York; (2) assisting SLI in procuring more business from York; (3) not competing with SLI for York's business; (4) not using proprietary information provided by SLI for Mr. Wentz' own purposes; and (5) including certain intellectual property in which Mr. Wentz claimed an interest in the presentation materials.[2]

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[1] According to the Complaint, Wilson is a corporation located in Eden Prairie, Minnesota.

[2] In its Opposition Memo, SLI states that the agreement between it and Mr. Wentz was initiated and negotiated "either telephonically or electronically" out of SLI's offices in Malvern, and that the Defendants submitted their invoice to SLI at its Malvern office. (Opposition Memo at 2 -3). There does not appear to be a formally executed written agreement with Mr. Wentz.

SLI asserts that after Mr. Wentz had performed as a facilitator, York expressed concerns with respect to the way that the counseling session had been conducted, and that "in or around October of 2001," York advised SLI that it was delaying the implementation of the program for the rest of the year. Despite this apparent setback, SLI continued to communicate with York and, in February of 2002, approached York to discuss a second pilot effort for the Counselor Salesperson Program. According to SLI, York agreed to run a second program from April 8 through April 11 of 2002. SLI claims that Mr. Wentz, who was again retained to act as a facilitator, demanded to be paid additional funds for "specific intellectual property" that he was providing. SLI agreed to make these extra payments. Despite some alleged health problems suffered by Mr. Wentz, he apparently continued to act as a facilitator for the pilot program through the spring of 2002. SLI asserts that it continued to develop its relationship with York throughout the spring and summer of 2002, and that in July or August of 2002, York agreed to expand the implementation of the program.

SLI asserts that about the same time, it began to have difficulty with its relationship with Mr. Wentz, in that he began inquiring how much SLI was charging for the pilot program, and that he indicated that York was requesting that SLI discount the program. SLI alleges that Mr. Wentz began to bill York directly for his facilitation fee and lied to York about not receiving his payment from SLI, causing York to (1) refuse to pay SLI for part of its fees and (2) contact Wilson to request that Wilson intervene with SLI on Mr. Wentz' behalf. SLI further alleges that as a result of this intervention, Wilson did intervene and temporarily took control of the York account and notified SLI that it was not entitled to full payment for the goods sold to York. SLI alleges that the Defendants, either by force or intimidation, induced both Wilson and York to

breach their contracts with SLI.

SLI filed suit against Mr. Wentz and CPS on September 14, 2004. The complaint contains seven counts, including: (1) tortious interference/intimidation relating to York International; (2) tortious interference/intimidation relating to Wilson; (3) breach of fiduciary duty; (4) breach of contract (with respect to Mr. Wentz only); (5) breach of implied covenant of good faith and fair dealing (with respect to Mr. Wentz only); (6) promissory estoppel (with respect to Mr. Wentz only); and (7) libel and slander. The Defendants have moved to dismiss the complaint or, in the alternative, to transfer venue to the Middle District of Pennsylvania. (Docket Nos. 7, 8).[3]

DISCUSSION

A. Motion to Dismiss - Standard of Review

When deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court may look only to the facts alleged in the complaint and its attachments. Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1251, 1261 (3d Cir. 1994). The Court must accept as true all well-pleaded allegations in the complaint and view them in the light most favorable to the plaintiff. Angelastro v. Prudential-Bache Sec., Inc., 764 F.2d 939, 944 (3d Cir. 1985). A Rule 12(b)(6) motion will be granted only when it is certain that no relief could be granted under any set of facts that could be proved by the plaintiff. Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988).

[3] Despite the implication of the title of the motion, the Defendants appear to move for dismissal of only portions of the complaint. The Defendants specifically argue that counts one, two, three, six and seven should be dismissed, and that the Plaintiff should not be permitted to recover attorneys' fees for these counts. Thus, the Defendants do not present any grounds on which the fourth and fifth counts should be dismissed.

B. Venue in the Eastern District of Pennsylvania

The Defendants first argue that venue is improper in this district because none of the events giving rise to the claim occurred in this district. Pursuant to 28 U.S.C. § 1391(a), where subject matter jurisdiction is founded solely on the diversity of the parties, venue for a federal action is appropriate only 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 is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought." Under Section 1391(a)(2), proper venue may lie in more than one federal district in a given case. BABN Technologies Corp. v. Bruno, 25 F. Supp. 2d 593, 597 (E.D. Pa. 1998).

In this case, Defendants both reside in Ohio and venue would therefore be appropriate there.[4] Venue in the Eastern District of Pennsylvania is appropriate only if the Court finds that a "substantial part of the events" giving rise to the cause of action occurred in this district. As was evident at oral argument, the parties vigorously disagree as to where the events that comprise a "substantial part of the events" occurred. The Defendants argue that all of their actions giving rise to the allegations occurred either in Ohio or in York, Pennsylvania. SLI counter-argues that the negotiations with respect to the parties' obligations under the contract were negotiated by telephone and email correspondence that was sent to SLI's headquarters in Malvern and were

[4] Because venue would be appropriate in Ohio, there is obviously another forum in which the case could have been brought and the third prong of Section 1391(a)(2) does not apply.

sufficiently substantial to warrant bringing the action in this Court.

To determine whether a substantial part of the events giving rise to a cause of action occurred within a specific district, the Court of Appeals for the Third Circuit has advised that the focus should be on the location of the events or omissions giving rise to the claim, and not the defendant's contacts within the district. Cottman Transmission Systems, Inc. v. Martino, 36 F.3d 291, 294 (3d Cir. 1994). Whether a particular event is a substantial part of an action will be determined by considering the nature of the claim being asserted. Id. at 295. Where there are multiple claims presented in a case, a court must consider whether venue is proper for each claim. Lackawanna Chapter of the Railway & Locomotive Historical Society, Inc. v. St. Louis County, Missouri, No. 02-0994, 2004 WL 503447, at * 3 (M.D. Pa. March 12, 2004).

Where the cause of action is a breach of contract, some courts have held that the place where the contract was executed, payments were received, and telephonic conferences conducted will weigh in favor of looking to the particular district where execution of the contract occurred as an appropriate venue for the action. See, e.g., Nowicki v. United Timber Co., No. 99-257, 1999 WL 619648 (E.D. Pa. Aug. 12, 1999)(venue appropriate in district where amended contract was negotiated and executed); Sacody Technologies, Inc. v. Avant Inc., 862 F. Supp. 1152, 1157 (S.D.N.Y. 1994) (noting that venue requirements may be satisfied "by a communication transmitted to or from the district in which the cause of action was filed, given a sufficient relationship between the communication and the cause of action"). Other courts, however, have noted that the appropriate venue for a breach of contract action is where the contract was to be performed, and not necessarily where the contract was executed. See Lackawanna Chapter of the Railway & Locomotive Historical Society, Inc. v. St. Louis County, Missouri, No. 02-0994, 2004

WL 503447 (M.D. Pa. March 12, 2004).

In the present case, venue in the Eastern District of Pennsylvania may be appropriate for SLI's breach of contract and breach of fiduciary duty claims. The Court acknowledges that the Defendants' actual obligation was to be performed in York, Pennsylvania, which lies within the Middle District of Pennsylvania. However, SLI's obligation to pay the Defendants arose in Malvern, Pennsylvania – a fact that the Defendants concede by virtue of the fact that they submitted their invoice to SLI's Malvern office and received payments from there. Because the negotiations that formed the agreement and at least part of its performance occurred in the Eastern District of Pennsylvania, venue for the breach of contract claim can be appropriate in this district. Because the alleged fiduciary duty between the Defendants and SLI arose from the agreement, venue for SLI's breach of fiduciary duty claim is likewise proper in this district. The Court notes, however, that as the Defendants suggest, these specific claims could also have been brought in the Middle District of Pennsylvania, inasmuch as the breach of the contract allegedly occurred either at the York site or by telephone between Mr. Wentz and York and/or Wilson.

Consideration of proper venue with respect to SLI's claims for tortious interference leads to a somewhat different conclusion. SLI asserts that Mr. Wentz intentionally and with malice interfered in its relationship with both Wilson and York by providing each of these companies allegedly false information that caused them either to adversely alter or to terminate altogether their agreements with SLI. Neither Wilson nor York is located in the Eastern District of Pennsylvania. Because none of the actions that give rise to the claim of tortious interference with a contractual relation occurred in the Eastern District of Pennsylvania, venue for these claims is

not appropriate here.[5]

If a case is filed in a district where venue is not proper, the district court in which the action was filed "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. In this case, the Court is presented with the difficulty of having some, but not all, of the claims brought in an inappropriate venue. Because some of the claims in this action are appropriately placed, the Court finds that it would not be in the interest of justice to dismiss either the case or the claims that should not have been brought in this venue.[6] Rather, the Court believes it should consider whether transfer of the entire case to the Middle District of Pennsylvania would be appropriate, particularly because the breach of contract and breach of fiduciary duty claims could have been brought there.

As a general rule to which this Court subscribes, a plaintiff's choice of venue "should not be lightly disturbed." Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995). When considering a motion to transfer venue, courts throughout the Third Circuit and elsewhere have

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[5] The same logic applies to SLI's claims for defamation and libel. However, as SLI has consented to withdraw those claims without prejudice, there is no need to consider them at this juncture.

[6] After hearing oral argument on the motion to dismiss the claims, the Court concludes that, considering all allegations in the complaint as true, and excepting the defamation and libel claim which SLI has agreed to withdraw without prejudice and SLI's claim for attorney fees with respect to Counts I, II, III and VII of the Complaint, SLI did not fail to state a claim for which relief can be granted. The Court notes that under Pennsylvania law, see Mosaica Academy Charter School v. Pennsylvania, 813 A.2d 813, 822 (Pa. 2002) (stating no costs for legal fees available unless there is "express statutory authorization, a clear agreement of the parties or some other established exception"); Nicholls v. Zoning Board of Adjustment of Jermyn, 471 A.2d 584, 586 (Pa. Commw. Ct. 1984) (finding costs appropriate only where they fall into statutory exception), SLI is not entitled to collect attorneys' fees incurred with respect to this action, and the motion to dismiss will be granted to the extent that these fees are requested.

considered various private and public interests protected by the federal venue statue. Id. The private interests include: (a) the plaintiff's preference of forum; (b) the defendant's preference; (c) whether the claim arose outside of the chosen forum; (d) the convenience of the parties "as indicated by their relative physical and financial condition"; (e) to the extent that they might be unavailable for trial in one of the fora, the convenience of the witnesses; and (f) the location of necessary books and records. Id. The public interests include: (a) the enforceability of the judgment; (b) practical considerations that could make the trial "easy, expeditious or inexpensive"; (c) the relative administrative difficulty in the two fora resulting from court congestion; (d) local interest in deciding local controversies at home; and (e) in diversity cases, the familiarity of the trial judge with the applicable state law. Id. at 879-80.

In considering the private interests with respect to a venue transfer of the case, the Court acknowledges that SLI's preferred forum is the present one, while the Defendants prefer the Middle District of Pennsylvania. However, the geographic distance between this district and the Middle District of Pennsylvania is not so great as to impose significant difficulty upon SLI. Moreover, neither of the parties indicated that a transfer of venue would create substantial hardship with respect to witnesses or the location of books and records relevant to the dispute.

The public interests in considering a venue transfer also weigh in favor of transferring this case. There is no reason to believe that a judgment in the Middle District of Pennsylvania would be more or less difficult to pursue or enforce than one in this district, particularly because of the geographic proximity of SLI to either district. Also, there is obviously no concern with respect to the familiarity of a federal court within the Middle District of Pennsylvania with Pennsylvania law. Practical considerations, such as the administrative difficulty or expense for

the parties does not present a significant obstacle, as the Court is not aware that the Middle District of Pennsylvania court is significantly congested, and it is unlikely that relocating the case to the Middle District would cost SLI significantly more resources to pursue its claims. Finally, while SLI might argue that its interest in deciding local cases in a local venue weighs in favor of maintaining some of its claims here, the Court believes that the localities are not sufficiently different so as to introduce prejudice against SLI in the Middle District of Pennsylvania. Certainly, the Court sees no benefit to either party or either court in carving up the case to be tried in pieces in more than one court.

For the above stated reasons, the Court finds that transfer of the remainder of this case to the Middle District of Pennsylvania is proper. An appropriate Order follows.

/S/_____
Gene E.K. Pratter,
United States District Judge

February 1, 2005

UNITED STATES DISTRICT COURT
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THOMAS WENTZ AND CORPORATE	:	
PERFORMANCE SYSTEMS,	:	
Defendants	:	No. 04-4341

O R D E R

AND NOW, this 1st day of February, 2005, upon consideration of the Defendants' Motion to Dismiss the Complaint or, in the Alternative to Transfer Venue of the Case to the Middle District of Pennsylvania (Docket Nos. 7, 8), the Plaintiff's response thereto (Docket No. 12), the Defendants' Reply (Docket No. 13), and after oral argument on the motion, it is hereby ORDERED that the motion is DENIED in part and GRANTED in part, as follows:

1. Pursuant to the Plaintiff's agreement in its Response to the motion and at oral argument, Count VII of the Complaint is DISMISSED without prejudice.

2. The Defendants' motion to dismiss the Plaintiff's request for attorneys' fees with respect to Counts I, II, III and VII of the Complaint is GRANTED.

2. The Defendants' motion to dismiss the remaining counts of the Complaint is DENIED.

3. Pursuant to 28 U.S.C. § 1406, the Clerk of the Court shall transfer the matter to the United States District Court for the Middle District of Pennsylvania for disposition of the remaining claims of the Complaint.

BY THE COURT:

/S/_____
GENE E.K. PRATTER, U.S.D.J.