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

MICHAEL B. DEAN,	:	CIVIL ACTION
Plaintiff,	:	No. 04-5387
v.	:	
HANDYSOFT CORPORATION,	:	
Defendant.	:	

MEMORANDUM

ROBERT F. KELLY, Sr. J. **FEBRUARY 16, 2005**

Presently before this Court is Defendant HandySoft Corporation's Motion to Dismiss or in the Alternative to Transfer Venue. For the reasons that follow, the Motion will be denied.

I. BACKGROUND

Plaintiff Michael B. Dean ("Dean") began working for Defendant HandySoft Corporation ("HandySoft") as a Value Added Reseller ("VAR") in 2000. HandySoft, a subsidiary of a Korean company, provides software products to corporate customers. Dean's VAR agreement was negotiated in Pennsylvania and governed by Pennsylvania law. As a VAR, Dean was assigned to work with potential clients, including the Philadelphia law firm Dilworth Paxon LLP, and O2Consluting LLC of Mount Laurel, New Jersey. After working as a VAR, Dean interviewed with HandySoft for a position as a Senior Project Manager, and was offered that position working at HandySoft's headquarters in Vienna, Virginia. Dean accepted that offer in July 2002, and relocated to Virginia. Dean's wife remained in West Chester, Pennsylvania.

In October 2003, Centorcor, Inc., one of HandySoft's clients in Pennsylvania, became dissatisifed with Robert Cain, the senior project manager then assigned to its account. Centocor is a subsidiary of Johnson & Johnson located in Malvern, Pennsylvania. Cain, a white male, worked on the Centorcor account in Malvern, and also serviced an account with ING in Wilmington, Delaware. Centocor's project manager complained to HandySoft about Cain. In response to those complaints, HandySoft reassigned Cain. Cain was not fired due to the customer complaints.

In Feburary 2003, Dean relocated back to West Chester, Pennsylvania, to service Centocor's account in Malvern. HandySoft reimbursed Dean for the creation of a home office, which Dean opened in his basement. HandySoft made income tax payments to the Commonwealth of Pennsylvania for Dean during the time he worked in Pennsylvania. Additionally, Dean maintained files regarding his employment and work on the Centocor accounts, including the records relating to Pennsylvania contractors employed by HandySoft in Pennsylvania. In order to service the Centocor account, HandySoft had to engage several contractors including ML Technologies Corporation and Corridor Consulting, both Pennsylvania companies.

In August 2003, HandySoft granted Dean stock options in recognition of his excellent performance. In October 2003, Dean was fired effective immediately for alleged customer complaints. Other Handysoft employees, including Robert Cain and Michael Toland, both white, had similar complaints and were not fired. Although HandySoft regularly offered similarly-situated non-African American employees severance packages, Dean was not offered such a package.

On October 31, 2003, Dean dual-filed a charge of discrimination with the Pennsylvania Human Relations Commission ("PHRC") and the Equal Employment Opportunity Commission ("EEOC"). Dean alleged in his charge of discrimination that HandySoft unlawfully terminated his employment based upon his race. The EEOC deferred investigation on the charge of discrimination to the PHRC.

HandySoft moved to dismiss Dean's charge of discrimination before the PHRC on May 17, 2004, arguing that HandySoft was not an employer as defined by the Pennsylvania Human Relations Act because it did not employ the requisite number of employees in Pennsylvania. On July 20, 2004, the PHRC rejected HandySoft's motion to dismiss, finding that there was at least a material dispute as to whether Respondent was an employer as defined by the Act.

On November 4, 2004, Dean received his right to use letter from the EEOC. The present suit was filed on November 15, 2004, alleging a Title VII violation for race discrimination, violations of the Pennsylvania Humane Relations Act, and a violation of the Wage Payment and Collection Law. HandySoft filed the present motion on January 21, 2005, seeking dismissal of the complaint or a transfer of venue.

II. DISCUSSION

In the present motion, HandySoft argues that venue is improper in this District mandating dismissal or transfer, or that a transfer is warranted for the convenience of the parties. Additionally, HandySoft argues that the Pennsylvania Human Relations Act and the Pennsylvania Wage Payment and Collection Law do not apply to it because it has no employees in Pennsylvania. I consider each argument in turn.

A. IMPROPER VENUE

In an action with multiple claims, venue must be proper for each of the contributing claims. Phila. Musical Soc'y, Local 77 v. Am. Fed'n of Musicians of the United States & Canada, 812 F. Supp. 509, 517 (E.D. Pa. 1992). As a result, we consider the claims separately.

Venue in an action for discrimination under Title VII is statutory. The statute provides that

> [s]uch an action may be brought in any judicial district in the state in which the unalwful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice. . . .

42 U.S.C. § 2000e-5(f)(3). The venue provision for Title VII is exclusive. Bragg v. Hoffman Homes, Inc., No. 04-4984, 2005 WL 272966, at *1-2 (E.D. Pa. Feb. 3, 2005).

In the present case, HandySoft argues that Dean worked out of and reported to its Vienna, Virginia, headquarters; that all decisions relating to the termination of Dean's employment were made in and communicated from Virginia; that all records pertaining to the termination of Dean's employment are maintained in Virginia; and that but for his termination, Dean would have continued to work out of and report to HandySoft's Virginia headquarters. They argue that because all of Dean's employment activities took place in Virginia, the only possible venue would be in Virginia.

I am unable to join HandySoft in its conclusion that because Dean telecommuted to Virginia, his only place of employment was in Virginia. HandySoft has cited no case law

supporting this proposition. In fact, it has been held that venue is appropriate in both the forum in which the employment decision is made and the forum in which that decision is implemented or its effects are felt. See Passantino v. Johnson & Johnson Consumer Prods., 212 F.3d 493, 505-06 (3d Cir. 2000) (discussing the fact that allowing employees to work from home offices creates additional proper venues in Title VII actions). In this case, Dean worked from his home in West Chester, Pennsylvania, servicing HandySoft clients in Pennsylvania and New Jersey. Dean would have continued working from his home had he not been terminated. As a result, venue for the Title VII claim is proper in this District as a district in which the aggrieved person would have worked but for the alleged acts of discrimination. Lomanno v. Black, 285 F. Supp. 2d 637, 641 (E.D. Pa. 2003).

The remainder of Dean's claims are covered by the general venue statute which provides that:

> A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought 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 may be found, if there is no district in which the action may otherwise be brought.

28 U.S.C. § 1391(b). For the purposes of venue, a corporation is deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced. Id. § 1391(c). Accordingly, venue is proper under section 1391 as well. As Dean was employed in this District at the time he was discharged, venue would be proper under section 1391(b)(2). Accord Stofflet v. K.K. Fit, No. 02-2676, 2002 U.S. Dist. LEXIS 16295, at *8-9 (E.D. Pa. Aug.

21, 2002). Furthermore, as a corporate defendant, HandySoft is deemed to reside in this District because it is subject to personal jurisdiction here. Venue is also proper under section 1391(b)(1).

B. VOLUNTARY TRANSFER

HandySoft alternatively seeks a voluntary transfer of venue under 28 U.S.C. § 1404(a), which grants this Court the discretion to transfer a case to another district in which the action could have been brought for the convenience of the parties and witnesses and in the interests of justice. 28 U.S.C. § 1404(a). The decision to transfer a case is "based on an individualized, case-by-case consideration of convenience and fairness." Lommano, 285 F. Supp. 2d at 643 (quoting Dinterman v. Nationwide Mut. Ins. Co., 26 F. Supp. 2d 747, 749 (E.D. Pa. 1998)). Motions to transfer are granted sparingly, and the burden is on the moving party to show that the current forum is inconvenient. Id.

In considering a motion to transfer, courts are encouraged to "consider all relevant 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." Jumara v. State Farm Ins. Co, 55 F.3d 873, 879 (3d Cir. 1995). Several of the factors considered include: plaintiff's forum preference as manifested in the original choice, the defendant's choice of forum, whether the claim arose elsewhere, the convenience of the parties as indicated by their relative physical and financial condition, the convenience of the witnesses (only to the extent that the witnesses are unavailable in for trial in one of the fora), the location of books and records (only to the extent that files cannot be produced in one of the fora), the eventual enforceability of a final judgment, relative court congestion between the two fora, and local interests in deciding local conflicts at home. Id. at 879-80.

The balance of factors weighs against transfer. The plaintiff's choice of forum is accorded significant deference and should not be disturbed lightly. Pro Spice, Inc. v. Omni Trade Group, 173 F. Supp. 2d 336, 339 (E.D. Pa. 2001). This is a two-party case in which the parties are divided between Pennsylvania and Virginia; one party will be required to travel regardless of the ultimate venue. Although HandySoft argues that all the relevant witnesses are in Virginia, Dean argues the opposite, indicating that most of his own witnesses are in either Pennsylvania or New Jersey. All of the witnesses can be made available in either forum. Similarly, books and records are located in both states. They can be produced in either forum. The above factors are at most neutral in considering a transfer. When the deference to Dean's original choice is considered, transfer is inappropriate.

C. APPLICABILITY OF PENNSYLVANIA LAW

The Pennsylvania Human Relations Act ("PHRA"), 43 Pa. Stat. Ann. § 951 *et seq*, defines an employer as "any person employing four or more persons within the Commonwealth." HandySoft argues that it is not covered by the PHRA because it does not employ the requisite number of people here. However, the term person

> includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees in bankruptcy or receivers. It also includes, but is not limited to, any owner, lessor, assignor, builder, manager, broker, salesman, agent, employe, independent contractor, lending institution and the Commonwealth of Pennsylvania, and all political subdivisions, authorities, boards and commissions thereof.

Id. As a result, in addition to himself, Dean is entitled to rely upon any contractors hired by HandySoft to service its clients here in Pennsylvania. Dean has indicated that HandySoft used several contractors in Pennsylvania, thus demonstrating that the PHRA applies to HandySoft.

The Pennsylvania Wage Payment and Collection Law ("WPCL"), 43 Pa. Stat. Ann. § 260.1 *et seq*, requires only one employee in the Commonwealth. As HandySoft has not shown that Dean's telecommuting made him solely a Virginia employee, the WPCL applies to HandySoft as well.

III. CONCLUSION

As venue is proper in this District, and the balance of the factors does not favor it, a transfer of venue will not be granted. Furthermore, it has not been shown that the Pennsylvania Human Relations Act and Wage Payment and Collection Law are not applicable to the Defendant. The present motion will, therefore, be denied.

An appropriate Order follows.

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ORDER

AND NOW, this 16th day of February, 2005, upon consideration of Defendant HandySoft Corporation's Motion to Dismiss or in the Alternative to Transfer Venue (Doc. No. 5), the Response in opposition, and the Reply thereto, it is hereby **ORDERED** that the Motion is **DENIED**.

BY THE COURT:

/s/ Robert F. Kelly
Robert F. Kelly Sr. J.