

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

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| SOVEREIGN BANK, | : | CIVIL ACTION |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | |
| | : | |
| BJ'S WHOLESALE CLUB, INC., et al. | : | |
| | : | |
| Defendants. | : | No. 05-431 |

MEMORANDUM AND ORDER

Stengel, J.

April 26, 2005

Sovereign Bank filed this case against BJ's Wholesale Club, Inc. and Fifth Third Bank on January 10, 2005 in the Berks County Court of Common Pleas. On January 21, 2005, this case was removed to this court. Defendants now move to transfer this case to the United States District Court for the Middle District of Pennsylvania, where a related case is pending. For the reasons discussed below, I will grant defendants' motion.

I. BACKGROUND

A. The Instant Litigation

Visa U.S.A., Inc. is a membership association that has created a payment system in which individuals, businesses, and other entities can pay for goods and services without using cash or checks. Visa has developed extensive by-laws, operating regulations, and other programs to ensure the consistency, reliability, and security of the payment system. Visa recognizes several types of members, including "issuing members" and "acquiring members," who must comply with Visa's operating regulations. Issuing members enter into contractual relationships with cardholders for the issuance of Visa cards. Acquiring members enter into contractual

relationships with merchants. Merchants, in turn, provide the Visa payment system to cardholders who can use their Visa cards to pay for goods and services. Sovereign is an issuing member, Fifth Bank is an acquiring member, and BJ's is a merchant.

To process a transaction under the operating regulations, a merchant may obtain the information contained in the magnetic stripe on the back of the Visa card by swiping the card through a magnetic stripe terminal. The magnetic stripe terminal reads the account information contained on the magnetic stripe, forwards that information through the Visa network, and requests authorization from the issuing member to charge the account associated with the card. The issuing member reviews the cardholder information, and, if the card is valid and there is sufficient available credit, the issuing member will authorize the transaction. Upon receiving confirmation that the transaction has been authorized, the merchant completes the transaction with the cardholder. Once the transaction has been authorized, the operating regulations provide that a merchant must not store or retain the cardholder information.

Sovereign alleges that its cardholders purchased goods and services from BJ's using Visa cards. Pl.'s Compl., at 6. According to Sovereign, after it authorized cardholders' transactions, BJ's retained the cardholder information instead of deleting it as required by the operating regulations. Id. Third parties subsequently obtained the cardholder information that BJ's had saved and stored, purchasing goods and services by using the account information contained in the magnetic stripe data without authorization from the cardholders. Id. at 6-7. Sovereign debited its cardholders' accounts for the amounts of the fraudulent purchases and paid the amounts of the fraudulent transactions. Id. at 7. Sovereign states that it incurred substantial damages by reimbursing the cardholders for the fraudulent transactions. Id. Moreover,

Sovereign states that it suffered other damages, such as: (1) the expenses associated with issuing new cards to its cardholders; (2) the amount of fees and commissions from the transactions its cardholders would have made during the period while the cards were being replaced; and (3) loss of goodwill. Id.

Sovereign claims that BJ's was negligent in failing to delete, erase, and/or safeguard the cardholder information, and Fifth Third was negligent in failing to ensure that BJ's delete, erase, and/or safeguard the information. Id. at 7-9. Sovereign contends that BJ's breached the merchant agreement by failing to delete or erase the information, and Fifth Third breached the member agreement by failing to ensure that BJ's delete or erase the information. Id. at 10-12. Sovereign seeks compensatory damages, attorneys' fees, and costs. Id. at 8-9, 11-12. Sovereign also requests that this court order that BJ's indemnify it for the losses incurred as a result of BJ's failure to delete, erase, or safeguard the information and that Fifth Third indemnify it for the losses incurred as a result of Fifth Third's failure to ensure that BJ's delete, erase, or safeguard the information. Id. at 12-14.

B. The Case Pending in the Middle District of Pennsylvania

On August 4, 2004, Pennsylvania State Employees Credit Union ("PSECU"), an issuing member of Visa U.S.A., filed a complaint in the United States District Court for the Middle District of Pennsylvania against BJ's and Fifth Third. As in this case, PSECU alleges that BJ's retained and failed to secure Visa card magnetic stripe information after the authorization of transactions. PSECU's Compl., at 7. Unauthorized third parties then obtained the information from BJ's records for fraudulent purposes. Id. at 7-8. In order to mitigate damages, PSECU states that it had to cancel the Visa cards that were used for purchases at BJ's and reissue cards

with new account numbers and magnetic stripe information. Id. at 8. PSECU claims that BJ's breached the merchant agreement by retaining and failing to secure the magnetic stripe information and Fifth Third breached the member agreement by failing to ensure that BJ's secure the information. Id. at 9-11. PSECU also contends that BJ's was negligent in retaining and failing to secure the magnetic stripe information and Fifth Third was negligent in failing to ensure that BJ's delete and secure the information. PSECU seeks reimbursement for the costs of cancellation and reissuance of Visa cards, plus interest and other costs. Id. at 10-11, 13, 15.

C. Defendants' Motion to Transfer

On March 3, 2005, defendants filed a motion to transfer this action to the United States District Court for the Middle District of Pennsylvania. Defendants contend that the essential questions of liability in this case and the PSECU case are virtually identical and that transfer of this case followed by consolidation of this case with the PSECU action would promote judicial economy. According to defendants, transfer and consolidation would avoid the burden and expense of having the same witnesses appear for multiple depositions during which the same facts and issues will be explored. Defendants also argue that many of the documents that will be produced by them in the PSECU case would be produced again in this case; thus, transfer and subsequent consolidation would avoid needless duplication of effort. Defendants further argue that the overlap of witnesses, documents, and issues, could result in conflicting rulings if this action and the PSECU action were to proceed separately.

II. DISCUSSION

Defendants request that this court transfer this case pursuant to 28 U.S.C. § 1404(a). Section 1404(a) provides: "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.” In considering a motion to transfer, a court must first determine that the transferee district is a district where the action “might have been brought.” Ginsey Industries, Inc. v. I.T.K. Plastics, Inc., 545 F.Supp. 78, 80 (E.D.Pa. 1982). The parties in this case do not dispute that jurisdiction is proper in the Middle District of Pennsylvania. Accordingly, this court must determine whether transfer would serve the convenience of the parties and witnesses and the interest of justice.

Under Section 1404(a), courts have wide discretion “to adjudicate motions for transfer according to an ‘individualized, case-by-case consideration of convenience and fairness.’” Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 29 (1988). In deciding whether a transfer is appropriate, courts consider a variety of public and private interests. Schiller-Pfeiffer, Inc. v. Country Home Products, Inc., No. Civ. A. 04-1444, 2004 WL 2755585, at *8 (E.D.Pa. Dec. 1, 2004).¹

“To permit a situation in which two cases involving precisely the same issues are simultaneously pending in different District Courts leads to the wastefulness of time, energy and money that § 1404 was designed to prevent.” Continental Grain Co. v. Barge FBL-585, 364 U.S. 19, 26 (1960). Thus, the presence of a related case in the proposed transferee forum is a strong

¹ Private interests include: the plaintiff’s forum preference as manifested in the original choice; the defendant’s preference; whether the claim arose elsewhere; the convenience of the parties as indicated by their relative physical and financial condition; the convenience of the witnesses, to the extent that they may be unavailable for trial in one of the fora; and the location of books and records, to the extent that they could not be produced in the alternative forum. Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995). Public interests include: the enforceability of the judgment; practical considerations that could make the trial easy, expeditious, or inexpensive; the relative administrative difficulty in the two fora resulting from court congestion; the local interest in deciding local controversies at home; the public policies of the fora; and the familiarity of the trial judge with the applicable state law in diversity cases. Id. at 879-80.

reason to grant a motion to transfer. Schiller-Pfeiffer, 2004 WL 2755585, at *8. “Indeed, this consideration--of a related case in the transferee forum--is sufficient to tilt the balance in favor of transfer even when the convenience of parties and witnesses would favor a denial of a transfer motion.” Southampton Sports Zone, Inc. v. Pro batter Sports, LLC, No. Civ. A. 03-3185, 2003 WL 22358439, at *5 (E.D.Pa. Sept. 10, 2003).

The defendants in this case, BJ’s and Fifth Third, are the same defendants in the case pending in the Middle District of Pennsylvania. Both cases arise from the same set of facts and occurrences, i.e., the alleged failure of BJ’s to delete and safeguard Visa cardholder information and Fifth Third’s alleged failure to ensure that BJ’s deleted and safeguard the information. Moreover, both cases involve the same legal issues: breach of contract and negligence. Furthermore, the plaintiffs in both cases seek similar relief, such as compensation for the costs of reissuance of Visa cards. It would appear that significant economies of time and effort can be achieved if this action and the PSECU action were consolidated in a single district. Transferring this action will benefit the parties because

the two actions could be consolidated before one judge thereby promoting judicial efficiency, pretrial discovery could be conducted in a more orderly manner, witnesses could be saved the time and expense of appearing at trial in more than one court, duplicative litigation involving the filing of records in both courts could be avoided eliminating unnecessary expense[,] and the possibility of inconsistent results could be avoided.

Schiller-Pfeiffer, 2004 WL 2755585, at *9. Accordingly, defendants’ motion to transfer is granted. An appropriate order follows.

AND NOW, this 26th day of April, 2005, upon consideration of defendants' motion to transfer (Doc. # 11), and replies thereto, it is hereby ORDERED that said motion is GRANTED. It is FURTHER ORDERED that this case is TRANSFERRED to the United States District Court for the Middle District of Pennsylvania.

/s/
LAWRENCE F. STENGEL, J.