

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

FLORENCE KARAHUTA,)	
)	Civil Action
Plaintiff)	No. 06-CV-04902
)	
vs.)	
)	
BOARDWALK REGENCY CORPORATION)	
trading as CAESARS ATLANTIC CITY;)	
and CAESARS ATLANTIC CITY,)	
)	
Defendants)	

* * *

APPEARANCES:

GARY DEVITO, ESQUIRE
On behalf of Plaintiff

STEVEN B. KANTROWITZ, ESQUIRE
On behalf of Defendants

* * *

M E M O R A N D U M

JAMES KNOLL GARDNER,
United States District Judge

This matter is before the court on Defendant, Boardwalk Regency Corporation's, Motion for Change of Venue, which motion was filed April 4, 2007. Plaintiff Florence Karahuta's Motion in Opposition to Change in Venue was filed April 17, 2007.¹ Defendant Boardwalk Regency Corporation's Motion to Amend Previous Motion for Change of Venue, which motion was filed on

¹ As noted in footnote 1 to the accompanying Order, plaintiff's motion in opposition is actually a responsive brief to defendant's motion for change of venue. Therefore, I considered it as a response to defendant's motion for change of venue instead of as a separate motion.

May 7, 2007, was granted by me on June 15, 2007.² For the following reasons, I deny defendant's motion to transfer this matter to the United States District Court for the District of New Jersey.

Specifically, I conclude that numerous factors weigh in favor of retaining jurisdiction of this action in the United States District Court for the Eastern District of Pennsylvania. In making this determination, I exercise the discretion granted to me pursuant to 28 U.S.C. § 1404.

JURISDICTION AND VENUE

Jurisdiction in this case is based upon diversity of citizenship pursuant to 28 U.S.C. § 1332. Venue is proper in accordance with 28 U.S.C. § 1441 because the case was removed from the Court of Common Pleas of Philadelphia County, Pennsylvania, which is located within this judicial district.³

PROCEDURAL HISTORY

On October 6, 2006 plaintiff Florence Karahuta filed a Complaint in the Court of Common Pleas of Philadelphia County,

² Defendant's motion for change of venue initially sought to transfer this action to the United States District Court for the Middle District of Pennsylvania. By my Order granting defendant's motion to amend dated June 15, 2007, defendant's motion for change of venue was deemed to seek transfer to the United States District Court for the District of New Jersey.

³ Both parties have alleged that venue is proper under 28 U.S.C. § 1391. However, because this is a removal action, 28 U.S.C. § 1391 does not apply. Polizzi v. Cowles Magazines, Inc., 345 U.S. 663, 665, 73 S.Ct. 900, 902, 97 L.Ed. 1331, 1334-1335 (1953).

Pennsylvania. Plaintiff's Complaint alleges negligence on the part of defendant Boardwalk Regency Corporation.

Specifically, plaintiff, an 83-year-old woman, avers that on April 12, 2005 she was a business invitee at the defendant's gambling casino. According to the Complaint, plaintiff tripped on the feet of an employee of defendant who was lying under a slot machine with his feet extended into the aisle while he was working on the slot machine. Plaintiff claims that she fell and suffered severe physical injuries including a torn rotator cuff. She underwent surgery to repair the injury and may be required to undergo additional surgery.

On November 6, 2006 defendant Boardwalk Regency Corporation filed a Notice of Removal asserting diversity of citizenship and an amount in controversy in excess of \$75,000.00.⁴ On April 4, 2007 defendant filed the within motion to change venue to the United States District Court for the Middle District of Pennsylvania. On April 17, 2007, plaintiff filed a response in opposition to defendant's motion.

On May 5, 2007, defendant filed its motion to amend its previous change of venue motion.⁵ Plaintiff filed her response to defendant's motion to amend on May 21, 2007. Pursuant to 28 U.S.C. § 1404, defendant's motion to amend requested that this

⁴ 28 U.S.C. § 1332.

⁵ See Footnote 2, above.

action be transferred to the United States District Court for the District of New Jersey. On June 15, 2007, I granted defendant's request to amend the motion.

STANDARD OF REVIEW

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. 28 U.S.C. § 1404(a). Section 1404(a) applies to cases where venue would be proper in both the original and requested locations. Jumara v. State Farm Insurance Company, 55 F.3d 873, 878 (3d Cir. 1995).

Concerning removal actions, 29 U.S.C. § 1441 provides that "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court embracing the place where such action is pending."

The moving party bears the burden of establishing that a transfer would be favorable. "[U]nless the balance of convenience of the parties is *strongly* in favor of the defendant, the plaintiff's choice of forum should prevail." While it is within the district court's discretion to grant a request for transfer of venue, such requests are not to be liberally granted. Shutte v. Armco Steel Corporation, 431 F.2d 22, 25 (3d Cir. 1970) (emphasis added).

Courts are required to weigh several relevant private and public factors in considering whether to grant a motion to transfer. The private factors include: (1) plaintiff's choice of forum; (2) defendant's preference; (3) whether the claim arose elsewhere; (4) the convenience of the parties as indicated by their relative physical and financial conditions; (5) convenience of witnesses, only to the extent that they may be unavailable for trial in one of the fora; and (6) the location of books and records, only to the extent that they could not be produced in one of the fora. Jumara, 55 F.3d at 879.

The public factors include: (1) enforceability of the judgment; (2) practical considerations which could make the trial easy, expeditious, or inexpensive; (3) relative administrative difficulties in the two fora resulting from court congestion; (4) local interests in deciding local controversies at home; (5) public policies of the fora; and (6) the familiarity of the trial judge with the applicable state law in diversity cases. Jumara at 879-880.

DISCUSSION

Private Factors

Of the private factors outlined in Jumara, the plaintiff's choice of forum is to be given the greatest weight. However, the deference given to plaintiff's choice is to be reduced when the facts giving rise to the action occurred in

another district. See, Cameli v. WNEP-16 The News Station, 134 F.Supp.2d 403, 405 (E.D.Pa. 2001). The incident giving rise to this action occurred in the District of New Jersey. Therefore, plaintiff's choice of forum in the Eastern District of Pennsylvania is "a factor worthy of consideration, but not a paramount one." Id.

Overall, the private interest factors are equally balanced. The factor of defendant's preference obviously weighs in favor of transferring the action to the District of New Jersey as does the factor of whether the claim arose elsewhere. The convenience of the parties weighs toward remaining in the Eastern District.

Plaintiff resides in the Middle District of Pennsylvania, and contends that the Eastern District of Pennsylvania is a less burdensome forum for her than the District of New Jersey. Also, plaintiff's counsel is located in the Eastern District. Defendant has a place of business in Philadelphia, within the Eastern District. Accordingly, defendant will not be inconvenienced by having the action remain here. Thus, it appears that hearing this action in the Eastern District of Pennsylvania is convenient for both parties.

The next private factor, the convenience of witnesses, is more problematic. The action took place in Atlantic City, New Jersey, and both parties aver that several potential witnesses

are located there. Defendant claims that a transfer of this action is far more convenient for such witnesses. Plaintiff argues that it is not burdensome for witnesses to travel less than 65 miles from Atlantic City to Philadelphia.

However, witnesses may have to travel well over 100 miles to Allentown, Pennsylvania, to appear before this court. It should also be noted that the District of New Jersey includes courts which are a considerable distance from Atlantic City. It is not clear, then, that allowing the case to remain in the Eastern District of Pennsylvania will be a greater inconvenience for witnesses.

The location-of-books-and-records factor weighs against a transfer. Defendant has a place of business in Philadelphia and thus likely maintains records there. Defendant contends that plaintiff's need to access medical records located in the Middle District of Pennsylvania is an important consideration.⁶ The Eastern District would be a more convenient location to obtain such records than the District of New Jersey. Therefore, this factor militates against a transfer of venue.

Overall, I find that plaintiff's choice of forum weighs slightly against transfer; the convenience of parties and location of records weigh against transfer; defendant's

⁶ As noted above, defendant's motion to amend sought to incorporate all arguments from its Motion for Change of Venue into its amended motion to transfer. Therefore, the argument that the location of plaintiff's records in the Middle District should be considered remains viable.

preference and the location of the events giving rise to the claim weigh in favor of transfer; and the convenience of witnesses is a neutral factor.

Public Factors

The public factors strongly support retaining this action in the Eastern District of Pennsylvania. The factors of the enforceability of the action, public policies in each forum, and administrative difficulties are largely inapplicable to this analysis. The local interest factor weighs in favor of transfer, as the events giving rise to this action took place within the District of New Jersey. The Eastern District, on the other hand, has little connection with the matter other than the fact that defendants maintain a place of business in Philadelphia. Neither party has briefed these factors.

The practical considerations factor weighs heavily against transfer. This case has progressed well in the Eastern District of Pennsylvania. Two settlement conferences have been held. Plaintiff has been deposed. A status conference has been held and I have entered a Rule 16 Status Conference Order setting deadlines for discovery, expert reports, dispositive motions, and motions in limine. I have attached the case for trial on February 25, 2008.

It would not be in the interest of the prompt and efficient administration of justice to remove the case from this

established track to begin anew in the District of New Jersey. Nor would this be an efficient use of judicial resources.

Defendant chose to seek a transfer of this case to New Jersey long after much work had been done to resolve this action within the Eastern District of Pennsylvania. This fact alone suggests that it would not be in the "interest of justice", as set forth in 28 U.S.C. § 1404(a), to transfer this matter.

Section 1404(a) grants a judge discretion to transfer the venue of an action when it is in "the interest of justice" to do so. Here, it clearly would not be in the interest of justice because time and resources have already been expended in the Eastern District of Pennsylvania.

The familiarity of the trial judge with applicable law is a neutral factor. Neither party has briefed the issue of whether choice of law principles require the application of New Jersey or Pennsylvania law. Plaintiff's claims are grounded in principles of tort law. The common law elements of negligence are the same in both Pennsylvania and New Jersey.⁷ In the absence of contrary authority, this factor does not lend itself for or against transfer.

⁷ The elements of negligence under New Jersey law include: (1) duty of care, (2) breach of duty, (3) proximate cause, and (4) actual damages. See, e.g., Wartsila NSD North America, Inc. v. Hill International, Inc., 342 F.Supp.2d 267, 278 (D.N.J. 2004). Similarly, under Pennsylvania law, the four traditional elements of negligence are: (1) duty or obligation, (2) breach of duty, (3) causal connection between the conduct and injury, and (4) actual loss or damage. In re TMI, 67 F.3d 1103, 1117 (3d Cir. 1995).

In sum, the public interest factors weigh against transfer. Three of the six public interest factors are irrelevant to this discussion. Familiarity of the trial judge is a neutral factor. Local interest weights in favor of transfer. Moreover, practical considerations weigh heavily against transfer.

Considering the totality of these factors, I conclude that transfer to the District of New Jersey would not be appropriate in this case. Because deference to plaintiff's choice of forum is reduced, the private factors are well balanced. However, the public interest or "interest of justice" factors, especially the practical considerations factor, weigh strongly against transfer.

Defendant's motion initially sought to transfer this action to the Middle District of Pennsylvania, stating that doing so would be more convenient to the plaintiff and her medical providers. After plaintiff stated in response that she would prefer the action to be heard in the Eastern District, defendant amended its motion to seek a transfer to the District of New Jersey for the convenience of witnesses. The inconsistency of defendant's arguments suggests that its motion may be motivated by considerations of forum shopping, which should be discouraged.

CONCLUSION

For the foregoing reasons, I deny Defendant Boardwalk Regency Corporation's Motion for Change of Venue.

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

FLORENCE KARAHUTA,)	
)	Civil Action
Plaintiff)	No. 06-CV-04902
)	
vs.)	
)	
BOARDWALK REGENCY CORPORATION)	
trading as CAESARS ATLANTIC CITY;)	
and CAESARS ATLANTIC CITY,)	
)	
Defendants)	

O R D E R

NOW, this 7th day of August, 2007, upon consideration of Defendant Boardwalk Regency Corporation's Motion for Change of Venue, which motion was filed on April 4, 2007; upon consideration of Plaintiff Florence Karahuta's Motion in Opposition to Change in Venue, which opposition was filed on April 17, 2007;⁸ upon consideration of Defendant Boardwalk Regency Corporation's Motion to Amend Previous Motion for Change of Venue, which motion was filed on May 5, 2007;⁹ upon consideration of Plaintiff Florence Karahuta's Response to

⁸ Plaintiff's motion in opposition is actually a responsive brief to defendant's motion for change of venue. Therefore, I considered it as a response to defendant's motion for change of venue instead of as a separate motion.

⁹ By separate Order dated June 15, 2007 I granted Defendant Boardwalk Regency Corporation's Motion to Amend Previous Motion for Change of Venue. I reference it here because the motion to amend incorporated the arguments contained in Defendant Boardwalk Regency Corporation's Motion for Change of Venue and provided some argument in support of a transfer of this matter to the United States District Court for the District of New Jersey.

Defendant's Motion to Amend its Motion to Change Venue,
which response was filed on May 21, 2007; upon consideration of
the briefs of the parties; and for the reasons expressed in the
accompanying Memorandum,

IT IS ORDERED that defendant's motion for change of
venue, as amended, is denied.

BY THE COURT:

/s/ JAMES KNOLL GARDNER —
James Knoll Gardner
United States District Judge