

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

RX RETURNS, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
PDI ENTERPRISES, INC.	:	NO. 97-1855

MEMORANDUM AND ORDER

Yohn, J.

June , 1997

In this breach of contract action, defendant, a California corporation, seeks to have this case dismissed for lack of personal jurisdiction or, in the alternative, transferred to the Central District of California pursuant to 28 U.S.C. § 1404(a). Because defendant has qualified itself as a foreign corporation under the laws of Pennsylvania, this court may exercise personal jurisdiction over the defendant. Further, because the defendant has failed to meet its burden of establishing that the Central District of California would be a more convenient forum, the court will deny the motion to transfer.

BACKGROUND

Plaintiff, RX Returns, Inc. ("RX Returns") is a Pennsylvania Corporation, located in Palm, Pennsylvania, that is engaged in the business of "pharmaceutical returns." RX Returns accepts pharmaceutical products for either destruction or distribution back to the original manufacturer and also serves as a broker for the sale or donation of pharmaceutical products. Defendant, PDI Enterprises, Inc. ("PDI"), is a California corporation with its

principle place of business located in Valencia, California. PDI is a distributor of a broad range of pharmaceutical products.

According to the complaint, PDI and RX Returns had an ongoing business relationship commencing in November of 1994. In the late summer or early fall of 1996, defendant contacted RX Returns in an attempt to sell it certain Zenith/Goldline pharmaceutical products which were rapidly approaching their expiration dates. See Complaint at ¶ 8. RX Returns claims that it secured a third party buyer for the products and therefore agreed to buy \$246,168.55 worth of pharmaceuticals from the defendant. See id. at ¶ 11. PDI demanded a \$150,000 pre-payment on the pharmaceuticals which RX Returns agreed to pay. See id. On or about December 3, 1996, RX Returns wired the \$150,000 prepayment to PDI's office in California. See id. at ¶ 25.

According to the complaint, when RX Returns sent a truck to California to pick up the load of pharmaceuticals, the defendant refused to tender the product to the plaintiff. See id. at ¶ 17. PDI informed RX Returns that it owed PDI over \$91,000 from a previous transaction and that it would not go through with the present transaction until RX Returns paid for the previous transaction. See id. at ¶¶ 19-20. RX Returns denies that it owed the defendant money, and claims that the defendant breached the contract of sale by failing to deliver the Zenith/Goldline product. After discussion with the plaintiff, PDI informed RX Returns that it would refuse to go through with the sale of the pharmaceuticals, and would retain \$91,094.83 from the \$150,000

prepayment which was to be applied toward the amount RX Returns allegedly owed it.

Based on the foregoing events, plaintiff filed suit in the Eastern District of Pennsylvania alleging various contract based causes of action, as well as causes of action sounding in fraud, conversion and unjust enrichment. Plaintiff also leveled a claim based on violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961, et. seq. In response, the defendant has filed the instant motion to dismiss for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2) or, in the alternative, to transfer this action to the United States District Court for the Central District of California pursuant to 28 U.S.C. § 1404(a).

DISCUSSION

I. Personal Jurisdiction

"A district court sitting in diversity applies the law of the forum state in determining whether personal jurisdiction is proper." Vetrotex Certainteed Corp. v. Consolidated Fiber Glass Prod. Co., 75 F.3d 147, 150 (3d Cir. 1996); Fed. R. Civ. P. 4(e). Pennsylvania law divides jurisdiction into two types--general jurisdiction and specific jurisdiction. "General jurisdiction exists when the non-resident defendant is deemed 'present' in the state by virtue of its voluntary actions" within the state. Brooks v. Bacardi Rum Corp., 943 F. Supp. 559, 561 (E.D. Pa. 1996); see 42 Pa. C.S. § 5301 (1981 & Supp. 1997). Specific

jurisdiction exists when the cause of action at issue arises out of the defendant's contacts with Pennsylvania. See 42 Pa. C.S.A. § 5322 (1981 & Supp. 1997); see also Vetrotex, 75 F.3d at 151 & n.3 (discussing the distinctions between general and specific jurisdiction).

Under 42 Pa. C.S.A. § 5301(a)(2)(i), Pennsylvania courts may exercise general personal jurisdiction over corporations which have "incorporat[ed] under or qualifi[ed] as a foreign corporation under the laws of [Pennsylvania]." 42 Pa. C.S.A. § 5301(a)(2)(i). Because PDI admits that it is "qualified as a foreign corporation" under Pennsylvania law, see Def.'s Mem. at 12, there is no doubt that PDI is within the scope of Pennsylvania's long-arm statute.

Nevertheless, "[t]he Due Process Clause of the Fourteenth Amendment operates to limit the power of a State to assert in personam jurisdiction over a nonresident defendant." Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 413-14 (1984); see International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945); Burger King Corp. v. Rudzewicz, 471 U.S. 462, 471-72 (1985). But "due process is . . . not offended by the assertion of jurisdiction when the defendant has maintained continuous and substantial forum affiliations, whether or not the cause of action is related to those affiliations." Bane v. Netlink, Inc., 925 F.2d 637, 639 (3d Cir. 1991). So long as the defendant's contacts and association with the forum state are such that "he should reasonably anticipate being haled into court

there," World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980), a court's exercise of personal jurisdiction over that defendant meets constitutional muster.

Our court of appeals has flatly held that when a foreign corporation registers to do business in Pennsylvania, a court may constitutionally exercise jurisdiction over that defendant pursuant to 42 Pa. C.S.A. § 5301(a)(2)(i). See Bane, 925 F.2d at 640-41. "By registering to do business in Pennsylvania, [PDI] 'purposefully avail[ed] itself of the privilege of conducting activities within the forum state thus invoking the benefits and protections of its laws.'" Id. at 640 (quoting Burger King, 471 U.S. at 475 (quoting Hanson v. Denckla, 357 U.S. 235, 253 (1958))); see also Eagle Traffic Control, Inc. v. James Julian, Inc., 933 F. Supp. 1251, 1255 (E.D. Pa. 1996) (holding that registration to do business in Pennsylvania is a sufficient contact with the forum state, in and of itself, to exercise jurisdiction). The court therefore has no difficulty in concluding that PDI is subject to personal jurisdiction in Pennsylvania, and its motion to dismiss for lack of personal jurisdiction will be denied.

II. Transfer of Venue

28 U.S.C. § 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 division where it might have been brought." 28 U.S.C. § 1404(a). The decision

to grant a transfer pursuant to § 1404(a) lies in the discretion of the trial court. See Shutte v. ARMCO Steel Corp., 431 F.2d 22, 25 (3d Cir. 1970), cert. denied, 401 U.S. 910 (1971); Weinstein v. Friedman, 859 F. Supp. 786, 788 (E.D. Pa. 1994). While the discretion to transfer is broad, the defendant has the burden of establishing its propriety. See Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995); Tranor v. Brown, 913 F. Supp. 388, 391 (E.D. Pa. 1996). In determining whether to grant a motion to transfer, the court must "consider all relevant factors to determine whether on balance the litigation would more conveniently proceed and the interest of justice be better served by transfer to a different forum." Jumara, 55 F.3d at 879.

The Court of Appeals for the Third Circuit has recently provided the lower courts with guidance as to the factors which are relevant in such a balancing. The district court must consider both public and private interests. See Jumara, 55 F.3d at 879; see also Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508-09 (1947). The private interests to be considered include: (1) plaintiff's forum preference as manifested in the original choice; (2) defendant's preference; (3) whether the claim arose elsewhere; (4) the convenience of the parties as indicated by their relative physical and financial condition; (5) the convenience of the witnesses--but only to the extent that the witnesses may actually be unavailable for trial in one of the fora; (6) the location of books and records (similarly limited to the extent that the files could not be produced in the

alternative forum). Jumara, 55 F.3d at 879. The public interests to be considered include: (1) the enforceability of the judgment; (2) practical considerations that could make the trial easy, expeditious, or inexpensive; (3) the relative administrative difficulty in the two fora resulting from court congestion; (4) the local interest in deciding local controversies at home; (5) the public policies of the fora; and (6) the familiarity of the trial judge with the applicable state law. Id. at 879-80. Our court of appeals has admonished that "unless the balance of convenience of the parties is strongly in favor of defendant, the plaintiff's choice of forum should prevail." Shutte, 431 F.2d at 25 (emphasis in original).

A. The Private Interests

Defendant argues that this case should be transferred to the Central District of California because none of PDI's witnesses are residents of Pennsylvania. Rather, at least two of PDI's witnesses reside in California, one witness resides in Nevada, and one resides in Michigan. See Dec. of Lois Weiss at ¶ 5.¹

¹ It should also be noted that the Jumara court held that courts should consider the convenience of the witnesses "only to the extent that the witnesses may actually be unavailable for trial in one of the fora." Jumara, 55 F.3d at 879; see Wilce v. General Motors Corp., Civ. No. 96-6194, 1996 WL 724936 at *2 (E.D. Pa. Dec. 13, 1996) (court may not consider the inconvenience of witnesses unless they are actually unavailable). The defendant has not alleged that its witnesses would actually be unavailable for trial in the Eastern District of Pennsylvania. Indeed, most of the defendant's witnesses appear to be either current or former employees of PDI who would not be hostile, and indeed, would most likely be willing to testify.

But while the defendant's witnesses are primarily located on the West Coast, RX Returns' witnesses are primarily residents of Pennsylvania. Three of the witnesses identified by the plaintiff reside in Pennsylvania, while two reside in the state of Michigan. See Dec. of Deborah L. Smith at ¶ 7. While it may be costly for the defendant to transport its witnesses to Pennsylvania for trial, it would be equally costly for the plaintiff to transport its witnesses to California were the trial to be held in that state. "Transfer under 28 U.S.C. § 1404(a) is not designed to simply flip the burden of an inconvenient forum from the defendant to the plaintiff." Righttime Econometrics, Inc. v. Ashworth, Civ. No. 95-807, 1995 WL 613093 at *4 (E.D. Pa. Oct. 18, 1995); see B.J. McAdams, Inc. v. Boggs, 426 F. Supp. 1091, 1105 (E.D. Pa. 1977) (noting that the defendant may not simply shift the inconvenience to the plaintiff); Clay v. Overseas Carriers Corp., 61 F.R.D. 325, 330 (E.D. Pa. 1973) (accord). The court therefore concludes that the defendant has failed to meet its burden of showing that the convenience of the witnesses weighs so strongly in favor of a California forum that the plaintiff's choice of forum should be disturbed.²

² Similarly, it is clear that there is relevant documentation in both Pennsylvania and California. One side will be forced to copy and transport documents to a distant forum. The defendant has provided no reason why it would be more inconvenienced by bringing documentation to Pennsylvania than RX Returns would be burdened by bringing documentation to California.

Further, the court does not see how California would be a more convenient forum merely because the underlying pharmaceuticals at issue in the contract are located in

B. The Public Interests

Defendant's better argument is that the public interest would be better served by transferring this action to the Central District of California. Defendant primarily argues that California has a stronger interest in this case³ because the cause of action arose in that state and that, because California law should govern this action, the interests of justice are best served by transferring this case to a California court. The court agrees with the defendant that, depending on the nature of the case, the trial court's familiarity with the applicable law should be an important factor in determining whether to transfer a case. See Jumara, 55 F.3d at 879-80 (instructing district

California. This is not a tort case where an inspection of some object alleged to have caused damage may be necessary to the case. Nor is the quality of the goods at issue in this case. Rather, this case simply involves an interstate transaction for the transport of goods in interstate commerce, which will not require the underlying goods to be inspected or utilized in any way. It thus appears to the court that the present location of the goods is not relevant to the analysis of the convenience of the forum.

This analysis distinguishes the case of Reading Metal Craft Co. v. Hopf Drive Assoc., 694 F. Supp. 98 (E.D. Pa. 1988), which was heavily relied upon by the defendant. In that case, the subject matter of the contract was a shopping center to be built in the state of New York. Certainly, New York had a strong interest in the subject matter of that case as it involved a permanent structure being built in New York territory. California has no comparable interest in fungible pharmaceutical products that were to be shipped out of state under the terms of the contract.

³ As discussed below in the choice of law analysis, the court does not have sufficient information at this time to determine whether California has a stronger interest in this case. It appears, however, that both Pennsylvania and California have a significant interest in regulating commercial transactions such as the one involved in this case.

courts to consider "the familiarity of the trial judge with the applicable state law in diversity cases"). The court does not believe, however, that this factor weighs in favor of transfer in the instant case. First, the defendant has failed to meet its burden, for purposes of transfer, of convincing the court that California law applies to this dispute. Second, even if California law were to apply to this case, the substantive law to be applied in this case is not complex or novel and it would not be an inconvenience for this court to interpret and apply California law.

1. It is Not Clear to the Court that California Law Applies

First, it is not at all clear to the court that California law, rather than Pennsylvania law should apply to this action. As a federal court sitting in diversity, this court must apply the choice of law rules of the forum state, Pennsylvania. See Carrick v. Zurich-American Ins. Group, 14 F.3d 907, 909 (3d Cir. 1994). In determining the appropriate law to apply to a contract dispute such as this one,⁴ Pennsylvania "combines the approaches of both Restatement II (contacts establishing significant relationships) and 'interest analysis' (qualitative appraisal of the relevant States' policies with respect to the controversy).

⁴ To the extent that plaintiff also alleges causes of action sounding in tort, the choice of law analysis for those claims would be governed by the same methodology. See Melville v. American Home Assurance Co., 584 F.2d 1306, 1311-12 (3d Cir. 1978).

It takes into account both the grouping of contacts with the various concerned jurisdictions and the interests and policies that may be validity asserted by each jurisdiction." Mellville v. American Home Assurance Co., 584 F.2d 1306, 1311 (3d Cir. 1978). A court exercising this approach will first attempt to ascertain whether a false conflict exists between the policies underlying the competing laws. See Lacey v. Cessna Aircraft Co., 932 F.2d 170, 187 (3d Cir. 1991). "A false conflict exists if only one jurisdiction's governmental interests would be impaired by the application of the other jurisdiction's law. In such a situation, the court must apply the law of the state whose interests would be harmed if its law were not applied." Id. If a true conflict exists between the competing laws, the court should proceed to the Restatement's approach and determine which forum has the most "significant contacts" with the cause of action such that its law should be applied to the dispute. See Shields v. Consolidated Rail Corp., 810 F.2d 397, 399-400 (3d Cir. 1987).⁵

⁵ To the extent the plaintiff's claims arise under the Uniform Commercial Code, the choice of law question is governed by statute. Under 13 Pa. C.S.A. § 1105(a), if the parties have not agreed to the law which will govern their agreement, Pennsylvania law applies to "transactions bearing an appropriate relation" to Pennsylvania. 13 Pa. C.S.A. § 1105(a). While some courts have read this provision as authorizing the application of Pennsylvania law so long as Pennsylvania has some connection to the dispute, see Cann & Saul Steel Co. v. Silicon Tech. Corp., Civ. No. 77-1972, 1985 WL 2966 at *6 (E.D. Pa. Oct. 3, 1985) (finding an "appropriate relationship" where plaintiff was a Pennsylvania corporation and produced goods in Pennsylvania); Insurance Co. of North Am. v. United States, 561 F. Supp. 106, 111 (E.D. Pa. 1983), other courts have determined whether an

At this stage of the proceedings, the court lacks sufficient information to determine what underlying policies of California or Pennsylvania may be in conflict in this case. Cf. Lacey, 932 F.2d at 188 (court would not finally determine the applicable law without "detailed research into the policies" underlying the competing laws). Indeed, defendant has given the court no indication that there is even a conflict between the Pennsylvania and California laws which might be applied in this case. The court cannot determine, therefore, whether a "false conflict" exists such that one state's law should be applied over the other's. Even assuming a "true conflict" exists between the policies of any competing Pennsylvania and California laws, however, it is not so clear that California has a more significant relationship to this cause of action such that its law should apply.

The complaint alleges that it was PDI that solicited RX Returns to engage in the transaction in this case. See Complaint at ¶ 8. This solicitation occurred by telephone and fax to RX Return's office in Pennsylvania. Certainly, Pennsylvania has a strong interest in protecting its local corporations from

"appropriate relationship" exists by reference to Pennsylvania's common law choice of law rules. See, e.g., Atlantic Paper Box Co. v. Whitman's Chocolates, 844 F. Supp. 1038, 1041-42 (E.D. Pa. 1994). While I will assume without deciding for the remainder of this opinion that "appropriate relation" is determined by reference to common law choice of law rules, I note that a strong argument can be made that Pennsylvania law will apply under 13 Pa. C.S.A. § 1105(a) even if a much lesser showing is made than is required under the Restatement's test.

allegedly fraudulent solicitations within its borders and the court thus considers this solicitation to be a significant contact favoring Pennsylvania law. Further, at least part of the performance of the contract took place in Pennsylvania when RX Returns wired money from its accounts in Pennsylvania to PDI's California offices. While it is true that the goods were to be tendered in California, and therefore at least part of the contract's performance occurred in that state, the court cannot say on the record before it that California law is any more likely to apply to this action than Pennsylvania law.

2. Even if California Law Applies, Transfer is Inappropriate.

Even if defendant is correct that California's law should govern the dispute between these parties, the court remains unconvinced that a transfer is warranted. While the court of appeals has indicated that the court should consider which state's law will apply in assessing the transfer decision under § 1404(a), a court should consider transferring only where it may be called upon to apply novel or complex issues of another jurisdiction's law. See Van Dusen v. Barrack, 376 U.S. 612, 645-46 (1964) (noting that uncertainty in a state's law should be a factor bearing on the desirability of transfer); 15 Charles A. Wright, et al., Federal Practice and Procedure § 3854, at 466-67 (1986) (noting that the application of foreign law is given less weight when the law to be applied appears clear). There are at

least two reasons why federal courts should be much more concerned with applying the law of a distant state when that law is complex, unclear or novel.

First, it is quite burdensome on the court to learn the law of a state with which it is unfamiliar. This burden is enhanced considerably when complex or novel issues of state law arise, for federal courts sitting in diversity must predict how the state's highest court would rule on the particular issue. U.S. Underwriters Ins. Co. v. Liberty Mut. Ins., 80 F.3d 90, 93 (3d Cir. 1996). In order to accurately predict how a state's high court will rule on a novel or complex issue, the court must learn not only the black letter law of that jurisdiction, but also the nuances and policies behind the state's law. This process of becoming familiar with a foreign state's law involves considerably more research and effort than when a court applies the law of a jurisdiction with which it is familiar. Because the interests of justice are best served by the efficient administration of the court's docket, see Blonder-Tongue Labs. v. University of Ill. Found., 402 U.S. 313, 328-29 (1971) (considering the importance of judicial administration as one factor in abandoning mutuality of collateral estoppel), it is preferable for a case involving complex issues to be decided by judges familiar with the application of a state's law.

Second, the interests of preserving the integrity of our federal system may be advanced by having complex or novel state law issues decided by those federal judges who are most familiar

with the application of the state law in issue. Even when federal courts are required to interpret and predict the law of the state in which they sit, the Supreme Court has noted that federal court interpretation of murky state law issues can merely add to the confusion, especially "where the federal court has flatly disagreed with the position later taken by a state court as to state law." Burford v. Sun Oil Co., 319 U.S. 315, 327 (1943) (noting that federal court interpretations of state law can create serious confusion in the administration of state law). The mischief which can be done by an erroneous decision interpreting state law is even more likely to occur when the interpreting court is unfamiliar with the state law to be applied and, therefore, more likely to make a mistake in the application of the state's law. Thus, when complicated or novel issues of state law are involved, a court should give serious consideration to transferring the case to the court most familiar with that state's law.

This case involves no such novel or complex issues. Even if this court is required to apply California law, it certainly will not be required to predict how the California Supreme Court may rule on an important question of state law. Nor will the court's resources be significantly taxed by applying the basic tenets of California contract and tort law to the disputes at issue in this case. This is especially so in light of the fact that the Uniform Commercial Code is likely to govern at least some of the transactions at issue in this case. Because both Pennsylvania

and California have adopted the Code, any variations between Pennsylvania and California law are likely to be minute at best. Indeed, one of the driving purposes behind the code was to create certainty that a uniform law would be applied to interstate commercial transactions such as the one at issue in this case. See 1 James J. White & Robert S. Summers, Uniform Commercial Code 3 (3d ed. 1988).

The court therefore believes that, even if California law applies to this action, a transfer to the Central District of California would not be in the interests of justice as this court is capable of applying the appropriate law, be it Pennsylvania or California.⁶

⁶ Indeed, if the court is concerned with requiring a court to apply complicated law of a foreign state, the balance in this case cuts against transfer. The rule of Klaxon v. Stentor Elec. Mfg. Co., 313 U.S. 487 (1941), requires a federal court sitting in diversity to apply the choice of law rules of the forum state, while the rule of Van Dusen v. Barrack, 376 U.S. 612 (1964) requires the transferee district court to apply the choice of law rules of the transferor district court. Thus, even if this action is transferred to California, that court will be required to apply Pennsylvania choice of law rules in determining the law which governs the dispute between the parties in this case.

In deciding "the familiarity of the trial judge with the applicable state law", the court should also consider the fact that the transferee court will be required to apply the transferor's choice of law rules. See Van Dusen, 376 U.S. at 645-46; 15 Charles A. Wright, et al., Federal Practice and Procedure § 3854, at 467-68 (1986) (noting that transfer is less desirable when the forum's choice of law rules are complicated). As the above discussion no doubt illustrated, Pennsylvania's choice of law rules are quite complex and have never been fully defined by the Pennsylvania Supreme court in the context of contract disputes. Thus, if this case were transferred to California, the California court would be required to decide difficult questions of Pennsylvania conflicts law to determine which substantive law should apply to the underlying dispute. In

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Because the defendant has failed to meet its burden of showing that the public and private interests favor a transfer to the United States District Court for the Central District of California, the court will deny its motion to transfer. An appropriate order follows.

contrast, even if this court is required to apply California contract law to this dispute, this court is likely to have a much easier time applying California contract law than a California court would have applying Pennsylvania choice of law rules.

IN THE UNITED STATES DISTRICT COURT
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RX RETURNS, INC.	:	CIVIL ACTION
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v.	:	
	:	
PDI ENTERPRISES, INC.	:	NO. 97-1855

ORDER

AND NOW, this day of June, 1997, after consideration of the defendant's motion to dismiss or transfer this action to the United States District Court for the Central District of California, the plaintiff's response thereto, and the defendant's reply, IT IS HEREBY ORDERED that:

1. Defendant's motion to dismiss for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2) is DENIED.

2. Defendant's motion to transfer to the United States District Court for the Central District of California pursuant to 28 U.S.C. § 1404(a) is DENIED.

William H. Yohn, Jr., Judge