

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

C. DELORES TUCKER and WILLIAM :
TUCKER, her husband, :
 :
 : CIVIL ACTION
 :
 Plaintiffs, :
 :
 : NO. 98-4288
 :
 v. :
 :
 :
 INTERSCOPE RECORDS, INC., a California :
 corporation, as managing general partner of :
 :
 INTERSCOPE RECORDS, a California :
 :
 general partnership: DEATH ROW RECORDS, :
 :
 INC., a California corporation; and CHARLES :
 :
 ORTNER, and his law firm, PAUL, :
 :
 HASTINGS, JANOFSKY & WALKER LLP, :
 :
 a limited liability partnership, :
 :
 :
 Defendants. :
 :
 :

MEMORANDUM

Buckwalter, J.

February 17, 1999

Defendants, Interscope Records (“Interscope Records”), Interscope Records, Inc. (“IRI”), Death Row Records, Inc. (“Death Row”), Charles B. Ortner, and Paul, Hastings, Janofsky & Walker LLP (“Paul, Hastings”), have filed a motion to dismiss this action for improper venue pursuant to Fed. R. Civ. P. 12(b)(3). In the alternative, Defendants seek to have this case transferred to California pursuant to 28 U.S.C. § 1406(a). Defendants additionally have filed a motion to dismiss on the merits pursuant to Fed. R. Civ. P. 12(b)(6). For the reasons discussed below, the Court will transfer the case to the United States District Court for the Central District of California and allow the transferee court to dispose of the 12(b)(6) motion.

I. BACKGROUND

Plaintiffs, C. Delores Tucker and her husband William Tucker, filed a complaint on August 22, 1998, alleging claims of malicious prosecution, abuse of process, intentional infliction of emotional distress, civil conspiracy, and violations under the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1962 et seq. This case arises from two lawsuits that were prosecuted by Interscope Records and Death Row against Plaintiff C. Delores Tucker in the United States District Court for the Central District of California. See Interscope Records v. Tucker, No. CIV.A. 95-5444 (C.D. Cal. Aug. 15, 1995); Death Row Records, Inc. v Tucker, et al., No. CIV.A. 95-5503 (C.D. Cal. Aug. 17, 1995).

Interscope Records asserted claims against Mrs. Tucker for inducement to breach contract, intentional interference with contract and prospective business advantage, unfair business practices, and unfair competition. Interscope Records sought equitable relief in the form of an injunction, preventing Mrs. Tucker from further interfering with Interscope Records’ contractual and business relationship with Death Row, and monetary damages. Death Row alleged violations of RICO, intentional interference with contractual and prospective business advantages, extortion, unfair business practices, abuse of process, and it also sought injunctive relief. In June 1998, Interscope Records and Death Row moved to voluntarily dismiss their actions against Mrs. Tucker. By orders dated June 18, 1998, the California actions were dismissed without prejudice.

In the instant action, Mr. and Mrs. Tucker claim that Defendants used these two allegedly meritless lawsuits brought against Mrs. Tucker to harass, intimidate, and embarrass her, and to stop her anti-gangsta rap crusade. See Compl. ¶ 26. A majority of the allegations in the

complaint assert that the California suits were frivolous and brought for an improper purpose. See id. ¶¶ 22-34, 37-39, 42-43, 48-56, and 60-62. Plaintiffs also claim that they were victimized by the California actions through the use of abusive discovery. See id. ¶ 64. Plaintiffs focus on the depositions of Mrs. Tucker in the California actions and claim that those depositions constituted an abuse of process as they were allegedly used “for the purpose of intimidation, frustration, embarrassment, and harassment.” Id. ¶ 65. Plaintiffs further allege that after instituting their lawsuits, Interscope Records and Death Row hired a private investigation firm to investigate the Tuckers for the purpose of intimidating and embarrassing them. See Compl. ¶¶ 40-41. Plaintiffs allege that in furtherance of its intimidation, Death Row placed an advertisement in the national magazine, The Source, “containing a thinly veiled death threat against Plaintiff C. Delores Tucker.” Id. ¶ 44. Finally, Plaintiffs claim that Defendants conspired to create and market Tupac Shakur’s album “All Eyez on Me,” which allegedly defamed Mrs. Tucker and marked her for elimination. See id. ¶¶ 46-47.

Plaintiffs are citizens of Pennsylvania. Defendant Interscope Records is a partnership with its principal place of business located within the Central District of California. See Compl. ¶ 4; see also Defs.’ Mem. (Ortner Decl. thereto). Death Row Records and IRI are corporations with their principal place of business located within the Central District of California. See Compl. ¶¶ 3, 6; see also Defs.’ Mem. (Ortner Decl. thereto). Paul, Hastings is a limited liability partnership organized under the laws of California and maintains an office within the Central District of California. See Defs.’ Mem. (Ortner Decl. thereto). Mr. Ortner, a member of Paul, Hastings, maintains his residence within the state of New York. See id. Mr. Ortner’s

place of business, Paul, Hastings' New York office, is also located within the state of New York.
Id.

II. DISCUSSION

Plaintiffs' complaint does not specify any basis for venue. As Plaintiffs have voluntarily abandoned their RICO claim against Defendants, the only basis for venue in this case is the general venue statute for diversity cases, 28 U.S.C. § 1391(a). "A civil action wherein jurisdiction is founded only on diversity of citizenship may . . . 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 (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." 28 U.S.C. § 1391(a).

Plaintiffs' original choice of forum fails to satisfy the above criteria. First, section 1391(a)(1) permits this action in this judicial district only if all the defendants reside in Pennsylvania. Plaintiffs have admitted that this subsection does not apply because all of the defendants do not reside in the same state.

Second, under § 1391(a)(2), the test for determining whether venue is proper is not the defendant's contacts with a particular district, but rather "the location of those events or omissions giving rise to the claim." Cottman Transmission Sys., Inc. v. Martino, 36 F.3d 291, 294 (3d Cir. 1994) (citations omitted). In Cottman, the Court of Appeals explained that

the current statutory language . . . favors the defendant in a venue dispute by requiring that the events or omissions supporting a claim be "substantial." Events or omissions that might only have some tangential connection with the dispute in litigation are not enough.

Id.

All of the events alleged in Plaintiffs' complaint relate to the allegedly tortious prosecution of the California lawsuits instituted against Mrs. Tucker. Those lawsuits were litigated in the Central District of California and the alleged abuse of process about which Plaintiffs complain, such as the notices of deposition for Mrs. Tucker's depositions, were issued in the Central District of California. None of the discovery in those cases, including Mrs. Tucker's depositions, took place within the Eastern District of Pennsylvania; Mrs. Tucker's deposition testimony was, in fact, taken in Washington, D.C. and New York City. The allegations Plaintiffs offer concerning activities that occurred within this district are the investigation of the Tuckers, the circulation of the advertisement in The Source, and the sale of Tupac Shakur's album, "All Eyez on Me." These allegations of events that occurred within the Eastern District have only a tangential connection with this dispute in litigation and, under Cottman, are not enough to make venue proper in this Court.

Finally, section 1391(a)(3), does not apply as this action could have been brought in the Central District of California where venue properly lies and all defendants are subject to personal jurisdiction.

When venue is improper, as in this case, the Court may, in the interests of justice, transfer the case to a district court in which it could have been brought. See 28 U.S.C. § 1406(a). See also Goldlwar, Inc. v. Shubert, 369 U.S. 463 (1962); Grissinger v. Young, M.D., No. CIV.A. 98-1710, 1998 WL 376040, *3 (E.D. Pa. July 1, 1998). The burden of proving improper venue "should ordinarily" be on the defendant. See Myers v. American Dental Ass'n., 695 F.2d 716, 724-25 (3d Cir. 1982). Specifically, a defendant "moving to dismiss under 28 U.S.C. § 1406

bears the burden of establishing affirmatively that venue is improper.” Born v. Iannacone, No. CIV.A. 97-5607, 1998 WL 297621, *3 (E.D. Pa. June 3, 1998). As a substantial number of the events or omissions occurred outside this district, Defendants have met their burden.

Under the facts set forth in the complaint, this case could have been brought in the Central District of California because subject matter jurisdiction is based on diversity, Defendants are subject to personal jurisdiction in the Central District, and a substantial number of the events or omissions occurred in the Central District of California. See 28 U.S.C. § 1391(a)(2). The Court will, therefore, direct the Clerk to transfer this action to the United States District Court for the Central District of California and allow the transferee court to dispose of Defendants’ additional pending motion brought pursuant to Federal Rule of Civil Procedure 12(b)(6).

III. CONCLUSION

For the foregoing reasons, Defendants’ motion under Federal Rule of Civil Procedure 12(b)(3) is **GRANTED**. An appropriate order follows.

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA

C. DELORES TUCKER and WILLIAM :
TUCKER, her husband, :
 : CIVIL ACTION
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 Plaintiffs, :
 : NO. 98-4288
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 v. :
 :
 INTERSCOPE RECORDS, INC., a California :
 corporation, as managing general partner of :
 INTERSCOPE RECORDS, a California :
 general partnership: DEATH ROW RECORDS, :
 INC., a California corporation; and CHARLES :
 ORTNER, and his law firm, PAUL, :
 HASTINGS, JANOFSKY & WALKER LLP, :
 a limited liability partnership, :
 :
 Defendants. :
 :
 :

ORDER

AND NOW this 17th day of February, 1999, upon consideration of the Motion of Defendants Interscope Records, Inc., Interscope Records, Death Row Records, Inc., Charles B. Ortner, and Paul, Hastings, Janofsky & Walker LLP for dismissal or, in the alternative, transfer pursuant to 28 U.S.C. § 1406(a) (Docket No. 6), Plaintiffs' response (Docket No. 12), and Defendants' reply (Docket No. 13), it is hereby **ORDERED** that the motion to transfer is **GRANTED**. The Clerk is **DIRECTED** to transfer the entire file in this matter to the United States District Court for the Central District of California.

BY THE COURT:

RONALD L. BUCKWALTER, J.