

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION**

William Dastice,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 22 L 660
	)	
Jewel Food Stores, Inc., Jewel Osco, Inc.,	)	
	)	
Defendants.	)	

**MEMORANDUM OPINION AND ORDER**

The *forum non conveniens* doctrine permits the transfer of a case to another venue if the weighing of various private and public factors strongly favors a transfer. In this case, there is a presumption that the plaintiff is forum shopping and balance of factors demonstrates that DuPage County would be a more convenient forum for all parties. The defendants' motion is, therefore, granted.

**Facts**

On April 29, 2020, William Dastice was shopping in a Jewel-Osco store located at 7329 South Cass Avenue in Darien, DuPage County. A ceiling leak had allowed water to collect on the floor of one of the store aisles. As Dastice was walking in that aisle, he slipped, fell, and suffered injuries.

Dastice brought a one-count, negligence complaint against the defendants. Dastice alleges that he was a business invitee at the Jewel-Osco and, therefore, Jewel-Osco owed him a duty of care for his own safety. Dastice claims that Jewel-Osco breached its duty by allowing the floor to remain wet and slippery despite knowing of the condition, failing to warn customers of the condition, failing to barricade the area, and failing to follow its policies and procedures for preventing slip-and-fall accidents.

Jewel Food Stores, Inc. ("Jewel") filed a motion to transfer this case to DuPage County Circuit Court based on *forum non conveniens*. In their briefs, the parties raise these additional facts:

- Dastice is a resident of Darien, DuPage County.
- Szymon Borowski, Jewel's investigating manager, is a resident of Willowbrook, DuPage County. Borowski swore in an affidavit that,

based on the location of his residence and work, it would be much more convenient for him to appear at the DuPage County courthouse than at the Daley Center.

- From April through November 2020, Dastice received treatment at Northwestern Medicine. The record does not indicate at which location Dastice received treatment.

### Analysis

A motion filed pursuant to the *forum non conveniens* doctrine contained in Illinois Supreme Court Rule 187 seeks to transfer a lawsuit from one forum with proper venue to another, more convenient forum with proper venue. *Tabirta v. Cummings*, 2020 IL 124798, ¶ 1. Thus, “this doctrine assumes the existence of at least two forums in which the defendant is amenable to jurisdiction.” *Foster v. Chicago & N. W. Transp. Co.*, 102 Ill. 2d 378, 381 (1984). Here, Cook and DuPage Counties are both proper venues for this action based on the location of the alleged tort and Jewel owning and operating stores in both counties.

The equitable doctrine of *forum non conveniens* is well established in Illinois courts and is “founded in considerations of fundamental fairness and sensible and effective judicial administration.” *First Nat’l Bank v. Guerine*, 198 Ill. 2d 511, 515 (2002) (quoting *Adkins v. Chicago, Rock Island & Pac. R.R. Co.*, 54 Ill. 2d 511, 514 (1973)). Illinois courts adopted the modern line of precedent from the United States Supreme Court case *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947). See *Fennell*, 2012 IL 113812, ¶ 14 (listing cases). A *forum non conveniens* motion requires the movant to show the overall weight of several convenience factors strongly favors transfer (or dismissal) to a more convenient forum. *Guerine*, 198 Ill. 2d at 517 (citing *Griffith v. Mitsubishi Aircraft Int’l, Inc.*, 136 Ill. 2d 101, 106 (1990)).

The convenience factors adopted from *Gulf* are divided into “private interest factors affecting the litigants and public interest factors affecting court administration.” *Fennell*, 2012 IL 113812, ¶ 14. Illinois courts have defined the private factors to include:

(1) the convenience of the parties; (2) the relative ease of access to sources of testimonial, documentary, and real evidence; and (3) all other practical problems that make a trial of a case easy, expeditious, and inexpensive—for example, the availability of compulsory process to secure attendance of unwilling witnesses, the cost to obtain attendance of willing witnesses, and the ability to view the premises (if appropriate).

*Guerine*, 198 Ill. 2d at 516 (citing cases). Courts have generally broken down the third element to address each aspect separately. The public interest factors are:

(1) interest in deciding localized controversies locally; (2) the unfairness of imposing the expense of a trial and the burden of jury duty on residents of a county with little connection to the litigation; and (3) the administrative difficulties presented by adding further litigation to court dockets in already congested fora.

*Id.* at 516-17. The public and private factors are not weighed against each other but are weighed together to test whether they strongly favor transfer away from the plaintiff's chosen forum. *Fennell*, 2012 IL 113812, ¶ 18. Courts are admonished that "[t]he plaintiff's right to select the forum is substantial" and "should rarely be disturbed." *Id.*

The consideration given to a *forum non conveniens* motion rests on several relevant presumptions. First, as to a plaintiff's choice of forum, "[w]hen the home forum is chosen, it is reasonable to assume that the choice is convenient. [Second,] [w]hen the plaintiff is foreign to the forum chosen . . . this assumption is much less reasonable and the plaintiff's choice deserves less deference." *Guerine*, 198 Ill. 2d 511, 517-18 (2002) (citing cases). Third, "[w]hen the plaintiff is foreign to the chosen forum and the action that gives rise to the litigation did not occur in the chosen forum, 'it is reasonable to conclude that the plaintiff engaged in forum shopping to suit his individual interests, a strategy contrary to the purposes behind the venue rules.'" *Bruce v. Atadero*, 405 Ill. App. 3d 318, 328 (1st Dist. 2010) (citing *Dawdy*, 207 Ill. 2d at 174, quoting, in turn, *Certain Underwriters at Lloyd's London v. Illinois Cent. R.R.*, 329 Ill. App. 3d 189, 196 (1st Dist. 2002)). The Supreme Court has plainly stated its position against forum shopping. "Decent judicial administration cannot tolerate forum shopping as a persuasive or even legitimate reason for burdening communities with litigation that arose elsewhere and should, in all justice, be tried there." *Fennell*, 2012 IL 113812, ¶ 19.

Before applying the private and public factors to the case at hand, this court believes some commentary on the *forum non conveniens* analysis is warranted. First, Illinois courts analyzing motions to transfer litigation based on the *forum non conveniens* doctrine have tended to focus on trials and not discovery. The reality is, however, that very, very few cases go to trial. Further, the amount of time parties and their attorneys spend in discovery far exceeds the amount of time they spend at trial. Analysis focused on trials is, quite frankly, out of sync with modern litigation practice. A more current analysis would give equal or greater weight to the

applicability of enumerated factors to pre-trial proceedings, particularly the discovery process.

Second, the *forum non conveniens* analysis has not been updated for at least a decade and a half. Several of the factors enumerated in the analysis do not reflect the reality of modern litigation, such as viewing the premises, which rarely, if ever, occurs during a modern jury trial. Other factors have been rendered trivial because of improved technology and its entrenchment in court proceedings. In application, this reality renders the public factors far weightier than the private factors.

Third, the Covid-19 pandemic has altered the private convenience factors related to obtaining parties' and witnesses' deposition or trial testimony. It is now common for depositions and trial testimony to occur remotely, with attorneys, witnesses, and a court reporter in multiple, separate locations. The cost savings to all parties have been enormous. It is difficult to think that clients, counsel, and witnesses will return to far more expensive discovery and trial practices after the pandemic is over.

Fourth, these cost and time savings further muddle the *forum non conveniens* analysis. If, for example, technology has made in-person depositions largely a thing of the past, then venue for the discovery portion of a case is next to irrelevant given that all documents are now electronically transferable. That conclusion would also make the trial portion of the case the only relevant temporal factor, in contrast to this court's earlier point that *forum non conveniens* should focus more on the discovery phase.

Notwithstanding the limitations of the current *forum non conveniens* analysis, this court will proceed with the required factor analysis described above.

## I. Private Factors

### A. Convenience of the Parties

As to the first private factor, “[t]he defendant must show that the plaintiff’s chosen forum is inconvenient to the defendant and that another forum is more convenient to all parties.” *Langenhorst v. Norfolk S. Ry.*, 219 Ill. 2d 430, 444 (2006). Although a defendant is not required to claim a plaintiff’s chosen venue is inconvenient for the plaintiff, *Guerine*, 198 Ill. 2d at 518, courts have also recognized it is quite easy for a party to declare its forum preference as convenient and the opposing party’s as inconvenient. “If we follow this reasoning, the convenience of the parties means little. . . .” *Hale v. Odman*, 2018 IL App (1st) 180280, ¶ 34 (quoting *Fennell*, 2012 IL

113812, ¶ 20). “To avoid this inevitable conflict, we must look beyond the declarations of convenience and realistically evaluate convenience and the actual burden each party bears when traveling to the plaintiff’s chosen forum.” *Id.* at ¶ 35.

It is notable that Jewel provided an affidavit from Borowski, its investigating manager, as to the convenience of the DuPage County courthouse given his residence and work in DuPage County. In contrast, Dastice did not file a sworn affidavit indicating that Cook County was convenient or more convenient than proceeding in DuPage Circuit Court, particularly given his residence in DuPage County.

Although the evidentiary record is quite thin at this point, the facts that Dastice is foreign to Cook County and his claim arose in DuPage County meet the presumption that Dastice is forum shopping. The failure to supply an affidavit as to the convenience of Cook over DuPage County reinforces that fundamental presumption. This factor weighs in favor of DuPage County.

#### B. The Relative Ease of Access to Evidence

This factor focuses on testimony from witnesses other than the parties as well as documentary evidence. Neither party has identified any witnesses other than Dastice and Borowski, both DuPage residents. Dastice does indicate that he received treatment at Northwestern Medicine, but it is unclear whether this was his only or primary medical provider or at which Northwestern Medicine location he received treatment. Ultimately, these facts are not particularly helpful. Courts have recognized that the location of real and documentary evidence is of no issue since the materials may be physically or electronically transferred between the two counties. *See Ruch v. Padget*, 2015 IL App (1st) 142972, ¶¶ 61, 65. It is also important to note that, out of professional courtesy, physicians are generally deposed where they work, regardless of the litigation’s venue. To that extent, the ability of remote proceedings makes the physicians’ depositions convenient regardless of the venue location.

This factor favors DuPage County.

#### C. Compulsory Process of Unwilling Witnesses

Neither party addresses this factor, but it is obvious that a judge in either county would be empowered to compel unwilling witnesses. This factor is, therefore, judged neutral.

D. Cost of Obtaining Attendance of Willing Witnesses

Again, the parties do not address this factor. It may be assumed that proceeding in Cook County would be more expensive than proceeding in DuPage given the location of Dastice and Borowski's residence. Yet without more facts, this factor must be considered neutral.

E. Viewing the Premises

The convenience factor is not concerned with the necessity of viewing the site but rather the possibility of viewing the site, if appropriate. *Dawdy*, 207 Ill. 2d at 178. Although it is doubtful that a judge in either Cook or DuPage Counties would excuse a jury to visit the Jewel store in Darien, it is unquestionably more convenient for a visit to be taken by a DuPage County jury than one in Cook County. This factor favors DuPage County.

F. Other Practical Considerations That Make a Trial Easy, Expeditious, and Inexpensive

One of Dastice's only arguments is that Cook County is more convenient because the parties' attorneys are located here. While the location of the attorneys are located here, "the location of the parties' attorneys is accorded little weight in determining a *forum non conveniens* motion." *Langenhorst*, 219 Ill. 2d at 450 (citing *Boner v. Peabody Coal Co.*, 142 Ill. 2d 523, 534 (1991)). To the limited extent that this factor has weight, it favors Cook County.

II. Public Factors

A. Deciding Localized Controversies Locally

This case concerns an injury to a DuPage County resident at a Jewel store located in DuPage County; therefore, DuPage County has a significant interest in this case. Compared to Cook County residents, DuPage County residents certainly would have a greater interest in an injury occurring at a store in their vicinity. In contrast, Cook County's relevance to this dispute, if any, is only because Jewel operates other stores here and Dastice may have received some medical at a facility located here. This factor favors DuPage County.

B. Unfairness of Imposing Expense and Burden on a County with Little Connection to the Litigation

The Supreme Court has stated plainly that a court should avoid imposing administrative costs and the burden of jury duty on a forum with little interest in the dispute. *Dawdy*, 207 Ill. 2d at 183. As a result, this public factor often follows from the first, and it does in this case. This factor favors DuPage County.

### C. Administrative Concerns

This factor considers court congestion by comparing the caseload and resolution times of the fora in question. *Fennell*, 2012 IL 113812 at ¶ 43. “Court congestion is a relatively insignificant factor, especially where the record does not show the other forum would resolve the case more quickly.” *Guerine*, 198 Ill. 2d at 517. And, under *Dawdy*, a review of the most recent Annual Report of the Illinois Courts is the appropriate reference. 207 Ill. 2d at 181.

The 2020 report for law division cases valued at more than \$50,000 and resolved by jury verdict shows that DuPage County disposed of two cases by jury trials in an average of 45.5 months while Cook County disposed of 69 cases by jury trials in 28.6 months. Administrative Office of the Illinois Courts, *Annual Report of the Illinois Courts, Statistical Summary*, at 81. The utility of these statistics is, however, suspect given that much of the state’s circuit courts were closed for a considerable portion of 2020. Yet these are the only statistics available and they show Cook County resolves cases by trial a year and a half faster than DuPage County. This factor favors Cook County.

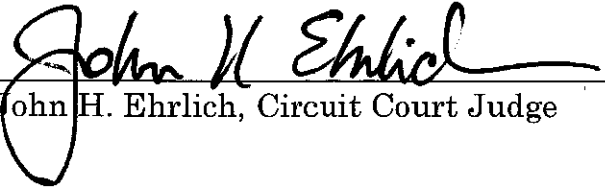
### III. Balance of Factors

A review of the factors shows that two are neutral, six favor DuPage County. Of the two factors that favor Cook County—location of the parties’ attorneys and case resolution—neither is given considerable weight. In contrast, the two most important public factors favor DuPage County. In sum, the facts presented show DuPage County is a substantially more convenient forum for the parties.

### Conclusion

For the reasons presented above, it is ordered that:

1. The defendant's motion to transfer is granted;
2. This matter is transferred to the Eighteenth Judicial Circuit in DuPage County; and
3. The defendant shall pay the costs of the transfer.

  
\_\_\_\_\_  
John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

FEB 07 2023

Circuit Court 2075