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

Jesus Mendez and Emelio Cazarez Mendez, Plaintiffs, v. Victor M. Pulido and Water Integrated Treatment Systems, LLC, Defendants.	)	No. 19 L 12147
Victor M. Pulido and Water Integrated Treatment Systems, LLC, Third-Party Plaintiffs, v. S & C Turf Masters, Inc., Third-Party Defendant.	)	

MEMORANDUM OPINION AND ORDER

It is the movant's burden in a *forum non conveniens* motion to show that the balance of inconvenience factors strongly favors a transfer of forum. The defendant, Water Integrated Treatment Services, LLC, has successfully identified only one factor out of nine that favors transfer. The balance of factors does not favor another forum and, therefore, the motion to transfer this case to Kendall County is denied.

Facts

This case arises from a vehicle collision that occurred on November 24, 2018 in Yorkville on Illinois Route 47 at its intersection with Baseline Road, on the border of Kendall and Kane counties. Jesus Mendez was driving a truck with Emilio Cazarez Mendez as a passenger. Both Jesus and Emilio were residents of Kendall County and were travelling on behalf of their employer, S & C Turf Masters, Inc. (S & C). As Jesus drove along Baseline Road into the intersection, his vehicle was struck by a truck driven by Victor Pulido, a resident of Dolton, Cook County. At the time of the incident, Pulido was driving a company truck as an employee of Water Integrated Treatment Services (WITS), also located in Dolton.

The Mendezes, through attorneys based in DeKalb County, brought one count of negligence against both Pulido and WITS. A separate count for spoliation of evidence related to WITS' truck was subsequently dismissed. WITS, through attorneys based in Cook County, joined S & C as a third-party defendant to argue for contribution. WITS then moved for transfer to Kendall County under the *forum non conveniens* doctrine. Ill. S. Ct. R. 187.

Analysis

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 v. Illinois Cent. R.R. Co.*, 2012 IL 113812, ¶ 14 (2012) (listing cases).

A *forum non conveniens* motion asks the court to evaluate whether the plaintiff's chosen forum is appropriate for the current case. This is an equitable consideration different than a motion related to venue. *See Langenhorst v. Norfolk S. Ry.*, 219 Ill. 2d 430, 440-41 (2006). When considering *forum non conveniens*, the court assumes the plaintiff's

chosen forum is a proper venue and "look[s] beyond the criteria of venue when it considers the relative convenience of a forum." *Id.* at 441 (quoting *Bland v. Norfolk & Western Ry. Co.*, 116 Ill. 2d 217 (1987)); *Fennell*, 2012 IL 113812 at ¶ 47.

A *forum non conveniens* motion requires the movant to show the overall weight of several convenience factors strongly favors transfer 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)). As adopted from *Gulf,* the convenience factors 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 interest 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 trial of a case easy, expeditious, and inexpensive." *Guerine*, 198 Ill. 2d at 516 (citing *Griffith*, 136 Ill. 2d at 105-06 and *Bland,* 116 Ill. 2d at 224). The "other practical problems" considered by the court include the compulsory process of unwilling witnesses, the cost of obtaining the attendance of willing witnesses, the possibility of viewing the premises, and the location of the parties' attorneys. *See Fennell*, 2012 IL 113812 ¶¶ 15, 67. The public interest factors are (1) the local interest in deciding local controversies, (2) the imposition of trial expenses and jury duty on a county with little connection to the dispute, and (3) the administrative difficulties related to congested fora. *Guerine*, 198 Ill. 2d at 516. A circuit court is instructed to "include *all* of the relevant private and public interest factors in their analysis." *Fennell*, 2012 IL 113812 at ¶ 24 (emphasis in original).

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. *Id.* at ¶ 18. "The plaintiff's right to select the forum is substantial" and "should rarely be disturbed." *Id.* "However, when the plaintiff is foreign to the chosen forum and when the action giving rise to the litigation did not occur in the chosen forum, the plaintiff's choice of forum is accorded less deference," *id.*, but not no deference. *See Ellis v. AAR Parts Trading Inc.*, 357 Ill. App. 3d 723,

742-43 (1st Dist. 2005) (citing *Dawdy v. Union Pac. R.R.*, 207 Ill. 2d 167, 173-74 (2003); *Guerine* 198 Ill. 2d at 517).

Each *forum non conveniens* motion presents unique facts that should be reviewed on their own merits. *See Langenhorst*, 219 Ill. 2d at 443. Circuit courts have "considerable discretion" in making a decision. *Id.* at 441. The court's discretionary power "should be exercised *only in exceptional circumstances* when the interests of justice require a trial in a more convenient forum." *Id.* at 442 (emphasis in original). The decision by the court will be reversed only if "no reasonable person would adopt the view taken." *See Dawdy*, 207 Ill. 2d at 176-77.

Before applying the private and public factors to the case at hand, this court believes some commentary on the *forum non conveniens* analysis is highly warranted. First, the analysis by Illinois courts of motions to transfer litigation based on the *forum non conveniens* doctrine has always been weighted to trials and not discovery. The reality is, however, that very, very few cases go to trial. For example, out of 15,285 civil cases valued at more than $50,000 and disposed of in 2019 in Cook and Kendall counties, only 337 cases (about two percent) were resolved by a jury verdict. *See* Admin. Off. of the Ill. Cts., *Annual Report of the Illinois Courts: Statistical Summary - 2019*, 70 (2020), https://www.illinoiscourts.gov/Resources/9ce30c6e-f2c8-4990-b5b4-a1eae2db5739/2019_Statistical_Summary.pdf. Further, the amount of time parties and their attorneys spend in discovery far exceeds the amount of time they spend at trial. An analysis focused on the trial 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, as stated in *Langenhorst* and its progeny, has not been updated over the past fifteen years to reflect the changing face of litigation. 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. Several of the elements 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 of 2020 and 2021 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.

Notwithstanding the current test's shortcomings, this analysis will proceed with the required factor analysis as described above.

I. Private Factors

A. Convenience of the Parties

The court first weighs the convenience of the parties to the chosen forum. "The 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*, 219 Ill. 2d at 444. A defendant cannot claim that a plaintiff's chosen venue is inconvenient for the plaintiff. *Guerine*, 198 Ill. 2d at 518.

The Mendezes chose Cook County as their preferred venue, so it is assumed Cook County is at least not inconvenient for them. Pulido and WITS are both located in Dolton, Cook County. Dolton is approximately 22 miles from the Cook County courthouse and approximately 55 miles from the Kendall County courthouse. The Cook County courthouse is less than half the distance for WITS and Pulido and saves more than thirty miles of travel, so it is the more convenient forum for the defendants. Neither of the defendants contends that Cook County is inconvenient for them.

The Mendezes argue that the choice of the defendants' home county is dispositive against transfer by relying on *Kwasinewski v.*

Schaid, which eliminates the need to weigh any other factors. 153 Ill. 2d 550, 555 (1992) ("It is all but incongruous for defendants to argue that their own home county is inconvenient."). This reading conflates the defendant's personal convenience with the overall weight of the multiple convenience factors that the court must review. *Fennell*, 2012 IL 113812 at ¶ 24; *see also Blake*, 2013 IL App (1st) 122987 at ¶ 15 ("[A] court must consider all relevant criteria without emphasizing any one factor."). In *Kwasinewski*, unlike this case, the court considered an interstate *forum non conveniens* motion where the defendant had closer proximity to the accident site than the plaintiff and the public interest factors concerned a choice of law. 153 Ill. 2d at 554, 556. The defendant's residence was only one of several factors reviewed by the court before coming to their conclusion. *Id. at* 553. As the Mendezes later cited, "If the central emphasis were placed on any one factor, the *forum non conveniens* doctrine would lose much of the very flexibility that makes it so valuable." *Dawdy*, 207 Ill. 2d at 176.

S & C did not brief this motion and no other party to the motion included S & C in their analysis. S & C's impact on the analysis is therefore neutral.

The convenience of the parties weighs in favor of Cook County.

B. The Relative Ease of Access to Evidence

The next convenience factor considers the ease of access to evidence. Most real and documentary evidence offers little issue of being transported physically or electronically between two counties and therefore has little impact on this analysis. *See Ruch v. Padget*, 2015 IL APP (1st) 142972, ¶¶ 61, 65. WITS did not identify any specific documentary or physical evidence of interest. The Mendezes mentioned the WITS truck driven by Pulido in the accident, but this truck was claimed by the Mendezes in their dismissed count for spoliation to no longer have any evidentiary usefulness; therefore, real and documentary evidence do not affect the analysis.

As for witnesses, WITS mentions the likelihood of medical witnesses, but fails to identify any specific witness it intends to call.

The burden of this motion lies with WITS and this court will not "speculate about a witness['s] whereabouts or unwillingness to testify at trial." *Erwin v. Motorola, Inc.*, 408 Ill. App. 3d 261, 277 (1st Dist. 2011) (citing cases). Further, either court would likely take a remote deposition for any 213(f)(2) witnesses, which eliminates any bearing on this motion.

The Mendezes have identified three witnesses, each of whom live within Kendall County. Each of these witnesses signed affidavits stating Cook County is not inconvenient. These affidavits neither address whether the witnesses would find Kendall County more convenient nor offer a resolution to scheduling problems associated with distant witnesses, but at least suggest a willingness to travel to Cook County. *See Guerine*, 198 Ill. 2d at 524-25. Through interrogatories, WITS identified two likely 213(f)(1) witnesses: Dan Sullivan in Cook County and Pedro Ygoza in Indiana. Both of these witnesses point to Cook County as the more convenient forum. Because the Mendezes' identified witnesses have indicated that Cook County is not inconvenient and the identified witnesses for WITS are closer to Cook County, this factor favors Cook County.

C. Compulsory Process of Unwilling Witnesses

The burden of compelling witness testimony does not affect this analysis, because this motion is for intrastate transfer of forum.

D. Cost of Obtaining Attendance of Willing Witnesses

WITS has not identified any witnesses that might result in extra costs by holding the trial in Cook County, so this factor is neutral.

E. Viewing the Premises

Next follows the possibility that the court may decide to have a jury view the accident site. "This convenience factor is not concerned with the *necessity* of viewing the premises, but rather is concerned with the *possibility* of a view, if appropriate." *Fennell*, 2012 IL 113812 at ¶ 37 (emphasis in original).

The Mendezes' complaint alleges that the piles of snow from a storm prior to the accident are a potential cause of the accident, and WITS has also alleged weather as a possible grounds for S & C's contribution. The scene of the accident is the intersection of two highways. It is unlikely that a jury would be able to view the intersection in weather similar to the day of the incident.

While this factor points slightly to Kendall County, the extremely low likelihood of a judge in either Cook or Kendall County sending a jury out to a highway intersection gives this factor little weight.

F. Location of Attorneys

The next consideration is the location and relative convenience of the parties' attorneys. The courts have given this factor minimal influence on the overall balance. *Id.* at ¶ 40. The attorneys for the defendant, Clausen Miller P.C., are located in Chicago within blocks of the Cook County courthouse, but approximately 53 miles from the Kendall County courthouse. The attorneys for the Mendezes, Cronauer Law, LLP, are located in Sycamore, DeKalb County. Sycamore is located approximately 32 miles from the Kendall County courthouse and approximately 66 miles from the Cook County courthouse.

Similar to the analysis for party convenience, it would be odd to allow WITS to claim that the Mendezes' choice of venue was inconvenient for the Mendezes' counsel. Therefore, despite Cronauer Law's obvious proximity to Kendall County, their choice of Cook County in combination with Clausen Miller's closeness to the Cook County courthouse weighs in favor of Cook County.

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

WITS has not identified any other private factor of interest.

II. Public Factors

A. Administrative Concerns

This factor considers court congestion by comparing the case load and resolution times of the fora in question. *Id.* 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. WITS argues that the case load in Cook County is overloaded by citing to *Smith v. Jewel Food Stores, Inc.*, 374 Ill. App. 3d, 31, 35 (1st Dist. 2007). However, under *Dawdy*, a review of the most recent Annual Report of the Illinois Court is the appropriate reference. 207 Ill. 2d at 181.

The 2019 report for law division cases over $50,000 shows that Cook County had 10,451 new cases, disposed of 10,153 and ended the year with 16,392 cases. Admin. Off. of the Ill. Cts., *supra,* at 44. Kendall County had 53 new cases, disposed of 67 and ended with 130 pending cases. *Id.* For cases resolved by jury verdict, Cook County disposed of 336 cases in an average of 29.9 months while Kendall County disposed of one case in 26.2 months. *Id.* at 72-73. In 2017 (the last year that both courts had reportable statistics), Cook County resolved 454 cases by verdict in an average 32.2 months while Kendall County resolved three cases in an average of 38.2 months. Admin. Off. of the Ill. Cts., *Annual Report of the Illinois Courts, Statistical Summary - 2017*, 59 (2018), https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/27364ff5-a7a1-45af-929c-c25241d26921/2017%20Statistical%20Summary.pdf.

While there are more cases in Cook County, a transfer to Kendall County would result in a similar if not longer resolution time; therefore this factor is neutral.

B. Local Interest in Settling Local Controversies

The next public factor concerns a forum's interest in resolving the case. "When an automobile accident occurs within a county's borders, that county has a significant interest in the dispute." *Smith*, 374 Ill. 3d

at 34. At the same time, a county also has a legitimate interest in resolving disputes involving a defendant business registered within its borders and whose business extends into its borders. *See Langenhorst*, 219 Ill. 2d at 451. *But see Dawdy*, 207 Ill. 2d at 184 (the business connection to the forum must be more than a post office box).

The vehicle collision in this case occurred within Kendall County which gives it a significant interest in the dispute. This case, however, also involves two defendants located in Cook County, Pulido and WITS, who use Cook County roads with vehicles registered in Cook County to complete their business. Further, there are witnesses who are residents of both Kendall and Cook Counties. Both counties therefore have a legitimate interest in resolving this controversy, and this factor is neutral.

C. Jury Imposition

A court should avoid imposing administrative costs and the burden of jury duty on a forum with little interest to the dispute. *Dawdy*, 207 Ill. 2d at 183. WITS's principal offices are located in Cook County, Pulido is a resident of Cook County, at least one of the witnesses is a resident of Cook County, and WITS completes similar business in Cook County. While the accident occurred within Kendall County, Cook County has an interest sufficient to justify the imposition of jury duty and administrative costs on the residents of Cook County. This factor is neutral.

III. Balance of Factors

First, the Mendezes' choice of forum is given lower deference, because Cook County is neither their home county nor where the accident occurred. Next, a review of the relevant factors leads to the conclusion that five factors are neutral, three favor Cook County, and one favors Kendall County. This balance falls far short of an exceptional circumstance that strongly favors transfer away from a plaintiff's chosen forum, even considering the lower deference owed to the Mendezes. The sole factor in favor of Kendall County is the location of the accident, which is significant, but not controlling. To make this

single factor dispositive would both upset the flexibility of the *forum non conveniens* factor test and render the plaintiff's choice of forum under the venue statute redundant.

Conclusion

Based on the foregoing, it is ordered that:

The defendant's motion for *forum non conveniens* is denied.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

JUN 25 2021

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