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

Sergiu Tabirta,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 21 L 6989
	)	
James J. Cummings, individually, and Gilster-Mary Lee Corp., an Illinois corporation,	)	
	)	
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. Here, the defendants have provided information indicating the convenience of Randolph County, while the plaintiff has failed to provide information indicating the convenience of Kankakee County. The defendants' motion is, therefore, granted and this case is transferred to the Twentieth Judicial District in Randolph County.

Background

On December 13, 2016, two tractor-trailers collided on Interstate 71 in Delaware County, Ohio. The collision resulted in the amputation of both of Sergiu Tabirta's legs. On December 27, 2016, Tabirta filed a two-count negligence action in the Circuit Court of Cook County. Count one was directed against James Cummings, the driver of the other tractor-trailer and alleged negligence in the operation of his vehicle. Count two was directed against Gilster-Mary Lee Corporation (GML), the tractor-trailer's owner, for negligence based on an agency theory of liability.

GML is a Missouri corporation headquartered in Chester, Illinois, Randolph County, but conducts business nationwide. On February 14, 2017, GML filed a motion to transfer venue pursuant to the Code of Civil Procedure, 735 ILCS 5/2-101, arguing that the accident did not occur in Cook County and neither defendant resided in Cook County within the meaning of statute. GML admitted it has conducted business in Cook County since 1968, but denied "doing business" here within the meaning of the venue statute.

In response, Tabirta argued that Cook County was a proper venue because GML hired James Bolton, a Cook County resident who worked from a home office, thereby constituting an "other office" as provided in the statute. 735 ILCS 5/2-102(a). GML hired Bolton to service three clients in the Chicago metropolitan area. Bolton averred that he was GML's "point person" for those customers if they had questions about sales or orders. Bolton also averred that he devoted 85 percent of his time to a client located in Du Page and Kane Counties and less than five percent to a Cook County customer. This court found that Bolton serviced clients on behalf of GML and that he did so out of his home did not preclude a finding that GML was "doing business" in Cook County. As a result, this court denied GML's motion to transfer venue, and GML appealed.

The appellate court analyzed the meaning of "other office" through *Melliere v. Luhr Bros.*, 302 Ill. App. 3d 794 (5th Dist. 1999). *Tabirta v. Cummings*, 2019 IL App (1st) 172891-B, ¶¶ 26-29. The *Melliere* court wrote that:

> the phrase 'other office' as used in [the Illinois] venue statute means a fixed place of business at which the affairs of the corporation are conducted in furtherance of a corporate activity. This other office may be, but need not be, a traditional office in which clerical activities are conducted. Rather, we believe that the phrase other office includes any fixed location purposely selected to carry on an activity in furtherance of the corporation's business activities. The facility may be open to the public or may be a strictly private corporate operation.

Id. at ¶ 28 (quoting *Melliere*, 302 Ill. App. 3d at 800). The appellate court emphasized that GML recognized Bolton as its point person, and that he worked at a fixed location, his home. *Id.* at ¶ 29. The court concluded that Bolton's residence constituted an "other office" under the venue statute and, therefore, affirmed this court's judgment. *Id.* The Illinois Supreme Court accepted GML's petition for leave to appeal.

The Court acknowledged that Bolton's "activities [were] in furtherance of GML's corporate business interests," 2020 IL 124798, ¶ 27, but concluded, nonetheless, that Bolton's home office was not an "other office." *Id.* at ¶ 32. The Court was unpersuaded because GML did not hire Bolton because of his location in Cook County, GML did not purposefully select Cook County, and GML did not own, lease, or pay any expenses associated with Bolton's residence. *Id.* at ¶¶ 28-30. "The fact that Bolton conducted work for GML from his home office, standing alone, is insufficient to corroborate plaintiff's claim that the home was an 'other office' of GML." *Id.* at ¶ 32. The Court also concluded that GML was not doing business in Cook County within the meaning of the statute. 735 ILCS 5/2-102(a). "GML had no office or other facility in Cook County. Nor did GML design, manufacture, advertise, finance, or sell its products from within Cook County. . . . The work he conducted from his Cook County residence was merely incidental to GML's usual and customary business of food product manufacturing." *Id.* at ¶ 35. For those reasons, the Court remanded the case to this court with directions to transfer the case to an appropriate venue.

Analysis

The defendants seek to transfer venue pursuant to the Code of Civil Procedure or, alternatively, pursuant to the *forum non conveniens* doctrine. The procedural pathways differ. In Illinois, venue is a product of statute. *See* 735 ILCS 5/2-101. In contrast, *forum non conveniens* arises from the common law and is based on equitable principles. *See Lagenhorst v. Norfolk S. Ry.*, 219 Ill. 2d 430,

441 (2006) (citing *Vinson v. Allstate Ins. Co.*, 144 Ill. 2d 306, 310 (1991)).

Venue

"Proper venue is an important privilege which is given great weight in Illinois." *Stambaugh v. International Harvester Co.*, 102 Ill. 2d 250, 260 (1984). The Illinois venue statute provides that every action must be commenced either:

> (1) in the county of residence of any defendant who is joined in good faith and with probable cause for the purpose of obtaining a judgment against him or her and not solely for the purpose of fixing venue in that county, or (2) in the county in which the transaction or some part thereof occurred out of which the cause of action arose.

735 ILCS 5/2-101. Section 2-102(a) further provides that a private corporation "is a resident of any county in which it has its registered office or other office or is doing business." 735 ILCS 5/2-102(a).

The venue statute's purpose is to ensure "that the action will be brought either in a location convenient to the defendant, by providing for venue in the county of residence, or convenient to potential witnesses, by allowing for venue where the cause of action arose." *Baltimore & Ohio R.R. Co. v. Mosele*, 67 Ill. 2d 321, 328 (1977). The statute "reflect[s] the legislature's view that a party should not be put to the burden of defending an action in a county where the party does not maintain an office or do business and where no part of the transaction complained of occurred." *Bucklew v. G.D. Searle & Co.*, 138 Ill. 2d 282, 289 (1990) (citing *Stambaugh*, 102 Ill. 2d at 260-62, and *Mosele*, 67 Ill. 2d at 328). The rationale is that if a plaintiff had this power, then "a defendant would be entirely at his mercy, since such an action could be made oppressive and unbearably costly." *Heldt v. Watts*, 329 Ill. App. 408, 1946 Ill. App. LEXIS 353, *8 (1st Dist. 1946).

It is undisputed the truck collision occurred in Ohio; thus no part of the underlying transaction occurred in Illinois. With that exclusion, venue is proper in Illinois where GML is a resident, either by way of a registered office, other office, or where GML is doing business. Corporate residency under the doing-business provision requires that the defendant conduct its usual and customary business in the county where venue is sought. *Mosele*, 67 Ill. 2d at 329. To that end, a relevant factor in a court's analysis is the quantity or volume of business conducted by the defendant in the county. *Weaver v. Midwest Towing, Inc.*, 116 Ill. 2d 279, 286 (1987). A defendant is considered doing business only where its activities are "of such a nature to localize the business and make it an operation within the district." *Mosele*, 67 Ill. 2d at 329-30.

In this case, the defendants seek to transfer this case to Randolph County because it is GML's principal place of business and is the location of GML's primary manufacturing facility and registered agent. GML has two facilities in Chester, Randolph County: one is the company headquarters and main research and development lab; the second is a manufacturing facility. These facilities are plainly within GML's usual and customary business in Randolph County. Further, GML estimates that 90 percent of its business is generated in Randolph County. The obvious conclusion is that GML has its registered office and is doing business in Randolph County within the meaning of section 2-102(a).

Tabirta has proposed Kankakee County as the proper venue because GML has a factory there and, consequently, is doing business within the meaning of section 2-102(a). Tabirta specifically asserts that the Kankakee facility manufactures a variety of GML's food products, qualifying the facility as an office and as a location for doing business for purposes of affixing venue. GML asserts that the Kankakee plant manufactures only 10 percent of company products. While this may be true, 10 percent is still sizeable given the overall volume of GML products. The certain conclusion is that GML also does business in Kankakee County within the meaning of section 2-102(a).

In sum, Tabirta and the defendants have each proposed proper fora within the meaning of the venue statute. As a result, this court must engage in a *forum non conveniens* analysis to determine which forum is more convenient.

Forum Non Conveniens

A *forum non conveniens* motion seeks to move a lawsuit from one proper forum to another that is more convenient. *Tabirta v. Cummings*, 2020 IL 124798, ¶ 1. In other words, the *forum non conveniens* 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). The equitable doctrine of *forum non conveniens* 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 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 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).

198 Ill. 2d at 516, *citing Griffith*, 136 Ill. 2d at 105-06; *Bland*, 116 Ill. 2d at 224; and *Adkins*, 54 Ill. 2d at 514. 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.

Guerine, 198 Ill. 2d 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. *Id.* at ¶ 18. "The 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 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. 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 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 15 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. 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 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 described above.

I. Private Factors

A. Convenience of the Parties

A court is to first weigh 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. 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 may be assumed that Kankakee County is a convenient forum for Tabirta. This is despite the fact that Tabirta, apparently, lives in Cook County and despite the presumption that he is forum shopping. In contrast, GML's principal place of business, primary manufacturing facility, and registered agent are located in Randolph County. It is unclear at this point where Cummings lives. Given the lack of a more complete record, this factor is neutral as to either 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 is of no issue since records may be transported physically or electronically. *See Ruch v. Padget*, 2015 IL App (1st) 142972, ¶¶ 61, 65. It is, therefore, of little concern that all of GML's documentary evidence is in Randolph County. In contrast, GML submitted an affidavit indicating that its corporate officers or employees who may be called to testify in this action are located in Randolph County. The precise number of these representatives is unknown, but their location is uncontested. In contrast, Tabirta has failed to provide any evidence supporting

Kankakee County as a more convenient forum, other than it was selected for the "sole purpose of simplicity and advancement." Pltf's Resp. at ¶17. Although neither party provided a robust, fact-based argument on this factor, the likely greater number of GML witnesses weighs in favor of Randolph County.

C. Compulsory Process of Unwilling Witnesses

A judge in either Randolph or Kankakee County would have equal authority to subpoena unwilling witnesses; consequently, this factor is considered neutral.

D. Cost of Obtaining Attendance of Willing Witnesses

The parties did not raise this issue; consequently, it is considered neutral.

E. Viewing the Premises

Viewing the premises is not an issue in this case, particularly since the accident location is in Ohio. This factor is neutral.

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

Once again, the parties did not substantively address this issue; consequently, it is considered neutral.

II. Public Factors

A. Settling Local Controversies Locally

The first public factor concerns a forum's interest in resolving the case. This case arose out of a collision in Ohio and was initially brought in Cook County. After the Supreme Court found Cook County an improper venue, the parties proposed counties they believe are convenient. While Tabirta asserts that Kankakee County is convenient, he fails in any way to explain how this controversy is localized there. Indeed, Kankakee County appears to have no connection whatsoever to this controversy.

In contrast, the defendants argue that Randolph County is the location of its original Illinois facility and has a longstanding relationship with the community. Randolph County is also GML's principal place of business and the location of its registered agent. Additionally, two of GML's four Illinois facilities are located in Randolph County, and they happen to be GML's largest facilities and produce its greatest amount of business. These facts lead to the conclusion that Randolph County residents have a greater interest in addressing the duties of a Randolph County corporation than do residents of Kankakee County. This factor favors a transfer to Randolph County.

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

This public factor often follows the first, and it does in this case. 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. In this case, Randolph County residents have a substantial interest in this dispute because GML is headquartered there and two of its largest facilities are located there. Given GML's strong corporate presence in Randolph County, it is no imposition for Randolph County to assume the costs associated with discovery in and trial of this case. This factor favors a transfer to Randolph 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. At the same time, "[c]ourt 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. 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 Annual Report for law division cases valued at more than $50,000 and resolved by jury verdict indicates that Randolph County disposed of three cases in an average of 34.7 months, while

Kankakee County disposed of no cases because it had none in that category. Administrative Office of the Illinois Courts, *Annual Report of the Illinois Courts, 2020, Statistical Summary*, at 81. Prior reports show, however, that Kankakee County disposed of one case in 68.4 months, *Annual Report of the Illinois Courts, 2019, Statistical Summary*, at 71, and five cases in 64.9 months, *Annual Report of the Illinois Courts, 2018, Statistical Summary*, at 60. Given this data, it is fair to conclude that Randolph County has the ability to dispose of cases faster—in slightly less than three years compared to more than five years in Kankakee County. It is, therefore, reasonable to conclude that this case would be resolved quickly in Randolph County. This factor favors Randolph County.

III. Balance of Factors

Tabirta's choice of forum is given little deference, but not no deference, because it is presumed he is forum shopping since he does not live in Kankakee County and the accident did not occur there. Further, a review of the relevant factors indicates that four favor Randolph County, five are neutral, and none favors Kankakee County. This one-sided tilt plainly meets the exceptional circumstance necessary to justify the transfer of a case pursuant to the *forum non conveniens* doctrine.

Conclusion

For the reasons presented above, it is ordered that:

1. The defendants' motion to transfer venue based on the *forum non conveniens* doctrine is granted;

2. This matter is transferred to the Twentieth Judicial Circuit in Randolph County; and

3. The defendants shall pay all costs for the transfer.

Judge John H. Ehrlich

SEP 21 2021

Circuit Court 2075

John H. Ehrlich, Circuit Court Judge