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 purpose of a motion to reconsider is to bring to the court's attention a change in the law, an error in the court's previous application of existing law, or newly discovered evidence that was not available at the time of the prior decision. Here, the plaintiff argues the court erroneously applied the *forum non conveniens* doctrine, despite the presence of two appropriate venues and the plaintiff's failure to address the argument. As this court's decision properly applied the doctrine and followed the directions of the Illinois Supreme Court, the plaintiff's motion for reconsideration is denied.

Facts

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.

GML additionally filed a motion to transfer venue pursuant to the doctrine of *forum non conveniens*, which this court denied.

In response to the venue motion, Tabirta argued 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 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 DuPage 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 explained 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. ¶ 28 (quoting *Melliere*, 302 Ill. App. 3d at 800). The appellate court emphasized that GML recognized Bolton as its point person and he worked at a fixed location, his home. *Id.* ¶ 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 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.* ¶ 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.* ¶¶ 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.* ¶ 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.* ¶ 35. For those reasons, the Court "remand[ed] to the circuit court with directions to transfer the case from Cook County to an appropriate venue." *Id.* ¶ 39.

GML subsequently filed a motion to transfer venue pursuant to the Code of Civil Procedure or, alternatively, pursuant to the *forum non conveniens* doctrine. On September 21, 2022, this court granted the defendant's motion to transfer venue to Randolph County. On October 14, 2021, Tabirta filed a motion to reconsider. GML filed its reply brief.

Analysis

The purpose of a motion to reconsider is to bring to the court's attention a change in the law, an error in the court's previous application of existing law, or newly discovered evidence that was not available at the time of the prior hearing or decision. *Hachem v. Chicago Title Ins. Co.*, 2015 IL App (1st) 143188, ¶ 34; *Emrikson v. Morfin*, 2012 IL App (1st) 111687, ¶ 29; *Belluomini v. Zaryczny*, 2014 IL App (1st) 122664, ¶ 20; *People v. $280,020 United States Currency*, 372 Ill. App. 3d 785, 791 (1st Dist. 2007). "The decision to grant or deny a motion to reconsider lies within the trial court's discretion, and we will not disturb the court's ruling absent an abuse of discretion." *Stringer v. Packaging Corp. of America*, 351 Ill. App. 3d 1135, 1140 (4th Dist. 2004) (citing *Broadnax v. Morrow*, 326 Ill. App. 3d 1074, 1082 (4th Dist. 2002)). A reconsideration motion is not the place "to raise a new legal theory or factual argument." *River Plaza Homeowner's Ass'n v. Healey*, 389 Ill. App. 3d 268, 280 (1st Dist. 2009). As a result, legal theories and factual arguments not previously made, are waived. *Id.*

Despite Tabirta's assertions to the contrary, his selection of Kankakee County led to the reasonable conclusion he was forum shopping because he was apparently a resident of Cook County and the injury occurred in Ohio. Tabirta's choice of forum was, therefore, given little deference, but not no deference. Tabirta argues that he was not forum shopping because he initially asserted that Cook County, his place of residence, was a proper forum. Yet the Supreme Court found Cook County to be an improper forum, and it is certainly not within this court's discretion to disrupt that ruling or

consider the underlying assertions in Tabirta's rejected briefs. It is also intriguing that Tabirta asserts this court inappropriately applied the doctrine of *forum non conveniens,* but then uses the same principles to justify the deference he alleges he should have been accorded.

Tabirta argues that this court's previous application of existing law was erroneous. According to Tabirta, the Supreme Court's directions to "remand to the circuit court with directions to transfer the case from Cook County to *an* appropriate venue," 2020 IL 124798,¶ 39 (emphasis added), means this court is required to transfer the case to the venue of his selection. Notably, the Supreme Court did not direct this court to transfer the case to *any* appropriate venue, rather "*an* appropriate venue." Given that language, this court previously recognized both Randolph County and Kankakee Counties as appropriate venues. After conducting a *forum non conveniens* analysis, this court determined Randolph County was an appropriate, and more convenient, venue.

Tabirta argues his choice of forum should not have been disrupted and this court impermissibly engaged in a *forum non conveniens* analysis. Yet Tabirta and GML each proposed a proper forum; consequently, it was within this court's discretion to engage in a *forum non conveniens* analysis to determine the most convenient forum. Most significant is that GML explicitly asked this court to grant the motion to transfer based on venue or, alternatively, based on the *forum non conveniens* doctrine. This court plainly did not err by conducting a *forum non conveniens* analysis in response to an argument presented by one of the parties.

Tabirta is also in no position to protest the grant of a transfer based on *forum non conveniens* as being unfair because it was "unbriefed," given he had every opportunity to address the argument. A circuit court "should not permit litigants to stand mute, lose a motion, and then frantically gather evidentiary material to show that the court erred in its ruling." *Gardner v. Navistar Int'l Transp. Corp.*, 213 Ill. App. 3d 242, 248 (4th Dist. 1991). Similarly, Tabirta now argues that this court's former decision regarding GML's 2017 motion for transfer based on *forum non conveniens* should stand based on *stare decisis*. Importantly, the Supreme Court overruled that decision. Moreover, Tabirta previously failed to make this legal argument and, thus, has forfeited it. *River Plaza*, 389 Ill. App. 3d at 280.

Conclusion

For the reasons presented above, it is ordered that:

The plaintiff's motion to reconsider is denied.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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