

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CAPITAL SOURCE FINANCE, LLC

v.

DELCO OIL, INC., ET AL.

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: Civil Action No. DKC 2006-2706

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MEMORANDUM OPINION

Presently pending and ready for resolution are separate motions filed by Jan I. Berlage, Esq., and Mark L. Horwitz, Esq., to withdraw as counsel for Defendants Stephen B. DeLuca and All-Star Sports Camp, Inc. (papers 129 and 133), and the motion of Mr. DeLuca and All-Star Sports Camp, Inc. (collectively, "Defendants"), to transfer the case to the United States District Court for the Middle District of Florida (paper 130). For the following reasons, the motions to withdraw will be granted, All Star Sports Camp, Inc. will be required to show cause as to why a default should not be entered against it, and Mr. DeLuca will be proceeding *pro se* unless new counsel enters an appearance. Defendants' motion to transfer, which comes too late and contains insufficient justification, will be denied.

This case has been pending in this court for more than three years. In September 2007, the court denied a motion to transfer the case that was based on arguments similar to those advanced in the pending transfer motion. Since then, there have been several changes of counsel, litigation of a partial motion for summary

judgment, and ongoing discovery. In a July 2009 status report and telephone conference, it was agreed that all discovery would be completed by October 30, 2009, and a non-jury trial was set for December 7, 2009, on the remaining claims against Mr. DeLuca and All Star Sports Camp, Inc. Then, in mid-September, Defendants filed the pending motions for counsel to withdraw and to transfer the case to Florida.

Defendants have been on notice for over two years of this court's view of the transfer issue under 28 U.S.C. § 1404, yet they did not file a motion with supporting declarations until now, after Plaintiff and the court have devoted considerable resources to getting the case ready for trial in December of this year. Transfer would undoubtedly cause a delay of that trial date. While several purported defense witnesses have provided declarations in support of Defendants' transfer motion, asserting that "upon information and belief" they have "knowledge relevant" to the case, Defendants have failed to identify the substance of the proposed testimony, thus the court is unable to evaluate its import.¹ As explained in the court's earlier memorandum (paper 71), Mr. DeLuca's agreement in the applicable forum selection clauses and the presence of Plaintiff's witnesses in Maryland offset the witness problems Defendants present. Defendants have failed to show by a preponderance of the evidence that the proposed transfer

¹ The original motion identified five potential "important" witnesses, only one of whom, Donald Giehl, appears on the current list.

will better and more conveniently serve the interests of the parties and witnesses and better promote the interests of justice.

When the motion to withdraw was filed by Jan I. Berlage, Mr. DeLuca and All-Star Sports Camp, Inc. were sent a notice from the court (paper 131), advising the corporation that new counsel must enter an appearance by October 21, 2009, or it would be subject to default. That date has come and gone, and no appearance has been entered. Mr. DeLuca was advised that if he did not file an opposition to the motion, he would be proceeding *pro se*. More recently, Mark L. Horwitz has moved to withdraw, noting that his appearance was entered solely for the deposition of Mr. Richard Hill in Florida. Plaintiff has no objection to the granting of these motions as long as the schedule is unaffected.

Accordingly, the motions to withdraw will be granted. All-Star Sports Camp, Inc., will be directed to show cause as to why a default should not be entered against it, and Defendants' motion to transfer will be denied. The discovery deadline of October 30, 2009, remains; the pretrial conference will be held on November 23, 2009, at 4:00 p.m.; and the non-jury trial will begin on December 7, 2009.

/s/
DEBORAH K. CHASANOW
United States District Judge