

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NARINDER S. SAMRA,

NO. CIV. S-08-2587 LKK/GGH

Plaintiff,

v.

KARNAIL S. JOHAL, NILAKUMARI
JOHAL, DOES 1 through 20,

Defendants.

O R D E R

NARINDER S. SAMRA,
HARMINDER K. SAMRA,

Plaintiffs,

NO. CIV. S-08-2589 LKK/GGH

v.

KARNAIL S. JOHAL, NILAKUMARI
JOHAL, GRIGORY YELKIN,
TATYANA YELKIN, STEWART
TITLE, DOES 1 through 20,

Defendants.

Before the court are two related cases. Both involve fraud
and contracts claims between essentially the same parties, relating

1 to real estate transactions and investments.

2 In the first case, 2:08-cv-02587-LKK-GGH, plaintiff Narinder
3 S. Samra sues defendants Karnail S. Johal and Nilakumari Johal, for
4 events related to the purchase of "the Farnsworth Property,"
5 located in Washington state.

6 The second case, 2:08-cv-02589-LKK-GGH, involves these same
7 parties, but adds Harminder K. Samra as an additional plaintiff,
8 and Grigory Yelkin, Tatyana Yelkin, and the Stewart Title Co. as
9 additional defendants. This case concerns events related to
10 various other properties in Washington, and the individual
11 defendants' actions in forming a limited liability company, "Land
12 to Home, LLC."

13 Karnail S. Johal, Nilakumari Johal, Grigory Yelkin, and
14 Tatyana Yelkin (for purposes of this order, "individual
15 defendants") move in both cases for dismissal for lack of personal
16 jurisdiction or for lack of venue, or in the alternative, for
17 transfer of venue to the Western District of Washington.

18 **I. BACKGROUND**

19 Plaintiffs reside in California. Defendants reside in
20 Washington, and none of them has ever resided in California.
21 Karnail Johal is a non-citizen.

22 In the Farnsworth case, plaintiff Narinder S. Samra alleges
23 that Karnail met with Narinder in Sacramento, California and made
24 fraudulent statements which induced Narinder to give Karnail
25 \$140,000 to invest in a plan to purchase real estate in Washington.
26 Plaintiff alleges that as part of this plan, he and the Johals

1 agreed that all of their names would be put on this property.
2 However, the Johals allegedly refused to put Narinder's name on the
3 property and failed to sell the property. Narinder filed suit for
4 breach of fiduciary duty, fraud and intentional deceit, conversion,
5 breach of contract, and breach of the covenant of good faith and
6 fair dealing.

7 The Land to Home case involves similar claims. Karnail Johal
8 allegedly traveled to Sacramento, California and met with the
9 plaintiff Samras in their home in order to induce them to invest
10 in property in Washington. This investment took the form of
11 becoming partners, shareholders, and owners in Land to Home, LLC,
12 a Washington limited liability company designated solely to
13 purchase and sell certain particular real estate.¹ Karnail Johal
14 was allegedly the managing partner of Land to Home. Plaintiffs
15 invested \$200,000 in Land to Home. Land to Home allegedly
16 successfully purchased the subject property and sold it at a
17 substantial profit without paying the appropriate share of this
18 property to plaintiffs. Plaintiffs allege that defendant Stewart
19 Title, acting under Karnail's direction, inappropriately disbursed
20 the profits to plaintiffs and individual defendants. Against the
21 individual defendants, plaintiffs bring the same causes of action
22 as those in the Farnsworth case: breach of fiduciary duty, fraud
23 and intentional deceit, conversion, breach of contract, breach of
24 the covenant of good faith and fair dealing. Defendants' claims

25 _____
26 ¹ Plaintiffs have not named Land to Home itself as a
defendant.

1 for dismissal are based on this courts purported lack of personal
2 jurisdiction. Those claims do not survive if the case is
3 transferred to the Western District of Washington. Because
4 transfer is otherwise appropriate, the court does not address the
5 issue of personal jurisdiction.

6 **A. Whether Venue Is Proper Here**

7 Plaintiffs provide two bases for venue. First, as to claims
8 against Karnail Johal, plaintiffs argue that venue is proper under
9 28 U.S.C. § 1391(d). This section provides that “[a]n alien may
10 be sued in any district.” “§ 1391(d) is properly regarded . . . as
11 a declaration of the long-established rule that suits against
12 aliens are wholly outside the operation of all the federal venue
13 laws, general and special.” Brunette Mach. Works, Ltd. v. Kockum
14 Indus., Inc., 406 U.S. 706, 714 (1972). Plaintiffs allege that
15 defendant is an alien, and defendants have not contested this
16 allegation.

17 From the fact that venue is proper against Karnail Johal it
18 does not follow that venue is proper in the entire suit. “[V]enue
19 in an action in which an alien and a citizen are joined as
20 defendants is proper in any district in which venue would be proper
21 if the citizen was sued alone.” 14D Wright and Miller, Fed. Prac.
22 & Proc., Juris.3d § 3807 (2008).

23 **B. Transfer of Venue**

24 28 U.S.C. section 1404(a) provides that “for the convenience
25 of the parties and witnesses, in the interest of justice, a
26 district court may transfer any civil action to any other district

1 or division where it might have been brought." See also Decker
2 Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 842 (9th Cir.
3 1986).

4 Plaintiffs' claims against the various defendants clearly
5 could have been brought in the Western District of Washington. The
6 defendants are residents of Washington, so personal jurisdiction
7 would be proper there. Venue is proper for suits against Karnail
8 Johal in any district, and venue would apparently be proper for
9 Stewart Title under either 28 U.S.C. § 1391(a)(1) or § 1391(a)(2).

10 All of the witnesses identified by the parties at this point
11 reside in Washington.² As such, litigating this case in California
12 will impose a significantly greater burden than would litigating
13 this case in Washington. Aside from the convenience for witnesses,
14 the parties' interests in convenience are predictably opposed.
15 Defendant Stewart Title has not weighed in on the transfer of
16 venue.

17 As to the interests of justice, the Ninth Circuit has stated
18 that among the factors courts may consider are "(1) the location
19 where the relevant agreements were negotiated and executed, (2) the
20 state that is most familiar with the governing law, (3) the
21 plaintiff's choice of forum, (4) the respective parties' contacts
22 with the forum, (5) the contacts relating to the plaintiff's cause
23

24 ² Plaintiff noted that a defendant should not be able to
25 procure a transfer simply by naming additional witnesses in the
26 transferee forum whose testimony is only tangentially related to
the claims at issue. Even if the court ignores many of defendants'
named witnesses, this does not change the result.

1 of action in the chosen forum, (6) the differences in the costs of
2 litigation in the two forums, (7) the availability of compulsory
3 process to compel attendance of unwilling non-party witnesses, and
4 (8) the ease of access to sources of proof." Jones v. GNC
5 Franchising, Inc., 211 F.3d 495, 498-499 (9th Cir. 2000). In this
6 case, the balance of these factors support litigating in
7 Washington.


8 **IV. CONCLUSION**

9 For the reasons stated above, this court ORDERS that:

10 1) Defendants' motion under 28 U.S.C. 1404(a) to transfer
11 both cases to the Western District of Washington is
12 GRANTED.

13 IT IS SO ORDERED.

14 DATED: February 5, 2009.

15
16
17 
18 LAWRENCE K. KARLTON
19 SENIOR JUDGE
20 UNITED STATES DISTRICT COURT
21
22
23
24
25
26