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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KEVIN CORDUA,
Plaintiff,
v.
NAVISTAR INTERNATIONAL TRANSPORTATION
CORP. and GULF STREAM COACH, INC.,
Defendants.

No. C 10-04961 CW
ORDER DENYING
DEFENDANT GULF
STREAM COACH,
INC.'S MOTION TO
TRANSFER
(Docket No. 6)

United States District Court
For the Northern District of California

Pursuant to 28 U.S.C. § 1404(a), Defendant Gulf Stream Coach, Inc., moves to transfer Plaintiff Kevin Cordua's action to the South Bend Division of the Northern District of Indiana. Plaintiff opposes the motion. Defendant Navistar Inc., erroneously sued as Navistar International Transportation Corp., did not join or oppose Gulf Stream's motion. The motion is decided on the papers and the January 13, 2011 hearing is vacated. Having considered the papers submitted by the parties, the Court DENIES Gulf Stream's motion.

BACKGROUND

Plaintiff alleges that, on or about October 26, 2008, he purchased a 2008 Endura Max G6371HC, a motor home manufactured by Gulf Stream, an Indiana corporation, and Navistar. In his opposition, Plaintiff asserts that Navistar manufactured the engine and chassis and that Gulf Stream manufactured the coach. He avers that the vehicle has suffered from various defects requiring numerous repairs and claims that Defendants breached their express

1 and implied warranties. He seeks relief under California's Song-
2 Beverly Consumer Warranty Act, Cal. Civ. Code §§ 1790, et seq.

3 Gulf Stream offered Plaintiff an express limited warranty.¹
4 Under the heading "Jurisdiction and Applicable Law," the warranty
5 provided,

6 Exclusive jurisdiction for any claims, demands or causes
7 of action for defects . . . of any nature or damages due
8 from such defects . . . shall be in the courts in the
9 State of Manufacture. The laws applicable to any
10 litigation, dispute, mediation, arbitration or any claim
11 whatsoever arising from the sale, purchase, or use of the
12 recreational vehicle shall be those of the State of
13 Manufacture. The State of Manufacture of the
14 recreational vehicle is Indiana.

15 Pullin Decl., Ex. A ¶ 7. Above the signature block, the warranty
16 stated in bold print,

17 I/WE HEREBY ACKNOWLEDGE THAT I/WE HAVE READ AND RECEIVED
18 THIS LIMITED WARRANTY PRIOR TO ENTERING INTO ANY CONTRACT
19 TO PURCHASE MY/OUR GULF STREAM RECREATIONAL VEHICLE AND
20 AGREE TO ABIDE BY ALL OF ITS TERMS AND PROVISIONS
21 INCLUDING, BUT NOT LIMITED TO, THE DISCLAIMER OF ALL
22 OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING ANY
23 IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A
24 PARTICULAR PURPOSE, TO THE EXTENT APPLICABLE LAW ALLOWS,
25 AND THE PROVISIONS HEREOF PROVIDING THAT THE EXCLUSIVE
26 JURISDICTION FOR ANY CLAIMS WHATSOEVER SHALL BE IN THE
27 COURTS IN THE STATE OF MANUFACTURE AND THAT THE
28 APPLICABLE LAW SHALL BE THE LAW OF THE STATE OF
29 MANUFACTURE.

30 Id. at 2 (upper case in original). The warranty bears a signature,
31 which Plaintiff does not deny is his. Gulf Stream also asserts
32 that Plaintiff executed a "Gulf Stream Recreational Vehicle
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35 ¹ The warranty apparently did not cover the portions of the
36 motor home manufactured by Navistar. See Pullin Decl., Ex. A ¶ 5
37 (stating that the warranty did not cover "automotive systems
38 including, but not limited to, . . . the chassis and drive train
39 and any part of that chassis included/supplied by the chassis
40 manufacturer").

1 Registration Form," which indicates that he received a copy of the
2 limited warranty. Pullin Decl., Ex. B.

3 Plaintiff filed his complaint in Alameda County Superior Court
4 on September 28, 2010. On November 2, 2010, Gulf Stream, with
5 Navistar's consent, removed Plaintiff's case to federal court.

6 LEGAL STANDARD

7 Gulf Stream brings its motion pursuant to 28 U.S.C. § 1404(a),
8 which provides: "For the convenience of parties and witnesses, in
9 the interest of justice, a district court may transfer any civil
10 action to any other district or division where it might have been
11 brought." Section 1404(a) accords a district court broad
12 discretion with respect to transferring a case. Stewart Org., Inc.
13 v. Ricoh Corp., 487 U.S. 22, 31 (1988) (citing Norwood v.
14 Kirkpatrick, 349 U.S. 29, 32 (1955)). In assessing whether to
15 exercise its discretion to do so, a district court considers the
16 following: (1) convenience of the parties; (2) convenience of the
17 witnesses; and (3) the interest of justice. Id. The Ninth Circuit
18 has identified numerous additional factors a court may consider in
19 determining whether a change of venue should be granted pursuant to
20 § 1404(a):

- 21 (1) the location where the relevant agreements were
22 negotiated and executed, (2) the state that is most familiar
23 with the governing law, (3) the plaintiff's choice of forum,
24 (4) the respective parties' contacts with the forum, (5) the
25 contacts relating to the plaintiff's cause of action in the
chosen forum, (6) the differences in the costs of litigation
in the two forums, (7) the availability of compulsory process
to compel attendance of unwilling non-party witnesses, and
(8) the ease of access to sources of proof.

26 Jones v. GNC Franchising Inc., 211 F.3d 495, 498-99 (9th Cir.
27 2000). Although not dispositive, "the presence of a forum

1 selection clause is a 'significant factor'" in a court's analysis
2 as to whether to transfer an action pursuant to § 1404(a). Id. at
3 499 (quoting Stewart Org., 487 U.S. at 29).

4 The burden is on the defendant to show that the convenience of
5 parties and witnesses and the interests of justice require transfer
6 to another district. Commodity Futures Trading Comm'n v. Savage,
7 611 F.2d 270, 279 (9th Cir. 1979). The Supreme Court has ruled
8 that a § 1404(a) analysis should be an "individualized, case-by-
9 case consideration of convenience and fairness." Van Dusen v.
10 Barrack, 376 U.S. 612, 622 (1964).

11 DISCUSSION

12 As an initial matter, Gulf Stream misapprehends which party
13 carries the burden on a motion to transfer pursuant to § 1404(a).
14 Citing The Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972), Gulf
15 Stream argues that, unless Plaintiff demonstrates that the forum
16 selection clause in the warranty is unenforceable, the Court must
17 transfer this case in the interest of justice. This is not the
18 law. As noted above, on a motion pursuant to § 1404(a), the
19 defendant bears the burden of showing that a case should be
20 transferred. See also Decker Coal Co. v. Commonwealth Edison Co.,
21 805 F.2d 834, 843 (9th Cir. 1986) (stating that, on a motion to
22 transfer pursuant to § 1404(a), the "defendant must make a strong
23 showing of inconvenience to warrant upsetting the plaintiff's
24 choice of forum"). The existence of a forum selection clause does
25 not shift this burden to the plaintiff. In Stewart, the Supreme
26 Court rejected the Eleventh Circuit's analysis of a motion to
27 transfer, pursuant to § 1404(a), based on the standards set forth

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1 in Bremen.² 487 U.S. at 28-29. The Court held that § 1404(a)
2 controls the analysis and that, under this statute, a district
3 court must “weigh in the balance a number of case-specific
4 factors.” Id. Although a district court considers the presence of
5 a forum selection clause, it “also must weigh in the balance the
6 convenience of the witnesses and those public-interest factors of
7 systemic integrity and fairness that, in addition to private
8 concerns, come under the heading of ‘the interest of justice.’”
9 Id. at 30. “The forum-selection clause, which represents the
10 parties’ agreement as to the most proper forum, should receive
11 neither dispositive consideration . . . nor no
12 consideration . . . , but rather the consideration for which
13 Congress provided in § 1404(a).” Id. at 31. The Court opined that
14 a district court, based on its weighing of the § 1404(a) factors,
15 could “refuse to transfer a case notwithstanding the counterweight
16 of a forum-selection clause.” Id. Against this legal backdrop,
17 Gulf Stream does not establish that the interests of justice
18 require transfer of this case.

19 Gulf Stream argues, without any elaboration, that witnesses
20 and documents relevant to this case are located in Indiana, its
21 state of incorporation. This does not constitute the strong
22 showing sufficient to upset Plaintiff’s choice of forum. Gulf
23 Stream also maintains that the forum selection clause warrants

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25 ² Gulf Stream cites Jones, which is not contrary. There, the
26 Ninth Circuit stated that, on a motion pursuant to 28 U.S.C.
27 § 1406(a), Bremen controls whether a case should be dismissed for
28 improper venue based upon a forum selection clause. 211 F.3d at
497. Gulf Stream, however, has not moved to dismiss pursuant to
§ 1406(a).

1 transfer in the interest of justice. Plaintiff does not dispute
2 that the warranty has a forum selection clause or that he was
3 adequately informed of and assented to it. Although this carries
4 significant weight, other factors militate against transfer.

5 The public policy of the forum state is as significant a
6 factor as a forum selection clause in a § 1404(a) analysis.³
7 Jones, 211 F.3d at 499. As noted above, Plaintiff's action arises
8 under the Song-Beverly Consumer Warranty Act, commonly known as
9 California's "automobile lemon law." Murillo v. Fleetwood Enters.,
10 Inc., 17 Cal. 4th 985, 990 (1998) (citation and internal quotation
11 marks omitted). The Act "regulates warranty terms, imposes service
12 and repair obligations on manufacturers, distributors, and
13 retailers who make express warranties, requires disclosure of
14 specified information in express warranties, and broadens a buyer's
15 remedies to include costs, attorney's fees, and civil penalties"
16 and gives "recourse to the buyer of a new automobile that suffers
17 from the same defect repeatedly, or is out of service for
18 cumulative repairs for an extended period." Id. at 989 (citations
19 and internal quotation marks omitted). The Act is "strongly
20 pro-consumer, expressly providing that waiver of its provisions by
21 a buyer, 'except as expressly provided in this chapter, shall be
22 deemed contrary to public policy and shall be unenforceable and
23 void.'" Id. (quoting Cal. Civ. Code § 1790.1). Further, the Act
24 "makes clear its pro-consumer remedies are in addition to those

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26 ³ A state's public policy is also a consideration in
27 considering whether to enforce a forum selection clause under
28 Bremen. See 407 U.S. at 15; Jones, 211 F.3d at 497.

1 available to a consumer pursuant to" other California laws. Id. at
2 990. It is "manifestly a remedial measure, intended for the
3 protection of the consumer" and "should be given a construction
4 calculated to bring its benefits into action." Id. (citation and
5 internal quotation marks omitted).

6 California's pro-consumer public policy with respect to the
7 sale of motor vehicles weighs heavily against transfer. Requiring
8 individual California retail consumers to litigate their Song-
9 Beverly Consumer Warranty Act claims in an out-of-state forum would
10 impede their ability to vindicate their statutory rights. Indeed,
11 California state courts refuse to enforce forum selection clauses
12 if doing so "would substantially diminish the rights of California
13 residents in a way that violates [the] state's public policy." Am.
14 Online, Inc. v. Superior Court, 90 Cal. App. 4th 1, 12 (2001). In
15 America Online, the state appellate court refused to enforce a
16 forum selection clause, in part because of the pro-consumer
17 policies underlying California's Consumer Legal Remedies Act
18 (CLRA), Cal. Civ. Code §§ 1750, et seq. In particular, the court
19 noted that the CLRA contained an anti-waiver provision, which
20 signaled the law's remedial purpose and importance in protecting
21 consumers. 90 Cal. App. 4th at 14. Similarly, the Song-Beverly
22 Consumer Warranty Act contains an anti-waiver provision and has
23 been declared to be a remedial scheme intended to protect
24 California consumers.

25 In addition, Plaintiff is an individual California citizen and
26 Gulf Stream is a corporation. Gulf Stream does not dispute it
27 would be more convenient for Plaintiff to litigate his claim in his
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1 home state. Although the relative financial ability of the parties
2 is generally not entitled to great weight, it should be taken into
3 account. Brackett v. Hilton Hotels Corp., 619 F. Supp. 2d 820, 820
4 (N.D. Cal. 2008). This factor accordingly weighs against transfer.

5 Also, several material witnesses, such as Plaintiff and
6 individuals who repaired the motor home, and physical evidence,
7 such as the motor home itself, are presumably located in
8 California. The convenience of witnesses is often the most
9 important factor in deciding whether to transfer an action pursuant
10 to § 1404(a). Getz v. Boeing Co., 547 F. Supp. 2d 1080, 1083 (N.D.
11 Cal. 2008). Although Gulf Stream asserts that it would be
12 inconvenient to produce witnesses and evidence in a California
13 forum, it does not identify particular hardships it would face if
14 required to litigate in this Court. Thus, this factor also weighs
15 against transfer.

16 Several other factors militate against transfer. The warranty
17 and sale documents were apparently executed at JC's RV's, a
18 business located in Livermore, California. See Pullin Decl. ¶¶ 9-
19 11, Exs. A and B. California courts are familiar with the Song-
20 Beverly Consumer Warranty Act, and the state has an interest in the
21 enforcement of its provisions. Additionally, Plaintiff and Gulf
22 Stream both have contacts with California; in contrast, there is no
23 indication that Plaintiff has had any contact with Indiana. And
24 most of the incidents related to Plaintiff's cause of action
25 occurred in California: Plaintiff purchased the motor home and
26 sought repairs for it in California. Plaintiff chose to file his

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1 suit in California, which has a strong public policy favoring the
2 vindication of consumer rights.⁴

3 Gulf Stream points to Rowsby v. Gulf Stream Coach, Inc., 2009
4 WL 1154130 (C.D. Cal.), in which the district court granted Gulf
5 Stream's motion to transfer. However, that court's transfer order
6 does not address claims under the Song-Beverly Consumer Warranty
7 Act or the public policy underlying it, which weighs heavily in
8 this case.⁵ Gulf Stream also cites an unpublished decision in
9 Shapiro v. Gulf Stream Coach Inc., No. 5:09-cv-000789-VAP (C.D.
10 Cal.). However, in that case, the court dismissed and transferred
11 the case pursuant to 28 U.S.C. § 1406(a); here, Gulf Stream has
12 moved pursuant to § 1404(a), which entails a different analysis.
13 See Jones, 211 F.3d at 497-98 (distinguishing analyses under
14 §§ 1406(a) and 1404(a)).

15 Gulf Stream has not met its burden to establish that the
16 convenience of the parties and witnesses and the interest of
17 justice justify transferring this case to the South Bend Division
18 of the Northern District of Indiana. Notwithstanding the parties'
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21 ⁴ Gulf Stream asserts that Plaintiff's choice of forum should
22 be given less weight because he does not reside in the forum.
23 However, Plaintiff apparently lives in Brentwood, California, which
24 is located in Contra Costa County north of Livermore, where he
25 allegedly purchased his motor home. Contra Costa County lies
26 within this judicial district. 28 U.S.C. § 84(a).

27 ⁵ Although the plaintiff's complaint cited sections of the
28 Song-Beverly Consumer Warranty Act, the complaint stated that the
lawsuit was for violations of the Magnuson-Moss Warranty Act, 15
U.S.C. §§ 2301, et seq. The plaintiff's opposition to Gulf
Stream's motion to transfer reiterated this point. Thus, the
Rowsby court did not consider California's public policy as part of
its § 1404(a) balancing.

1 forum selection clause, other factors weigh against a discretionary
2 transfer of Plaintiff's case.

3 CONCLUSION

4 For the foregoing reasons, Gulf Stream's motion to transfer
5 venue pursuant to § 1404(a) is DENIED. (Docket No. 6.)

6 Although they have appeared in this action, Defendants have
7 not responded to Plaintiff's complaint. Defendants shall do so
8 with seven days of the date of this Order.

9 In violation of Civil L.R. 7-3(c), Gulf Stream filed its reply
10 in support of its motion to transfer on January 6, 2011, seven days
11 before the date this motion was to be heard. Gulf Stream is
12 admonished that, in the future, it must comply with this judicial
13 district's local rules.

14 An initial case management conference is scheduled for
15 February 15, 2011.

16 IT IS SO ORDERED.

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18 Dated: January 7, 2011



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CLAUDIA WILKEN
United States District Judge