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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARTIN GOOR,

Plaintiff,

v.

MARK VIGNOLES,

Defendant.

No. C 12-01794 DMR

**ORDER DENYING PLAINTIFF'S
MOTION TO RETRANSFER CASE**

Plaintiff Martin Goor moves the court pursuant to 28 U.S.C. §§ 1404 and 1391 to retransfer this case to the United States District Court for the District of New Jersey. For the reasons set forth below, the court DENIES the motion.

I. Background and Procedural History

On October 26, 2011, Goor, a New Jersey citizen, filed this suit against Defendant Mark Vignoles, a California citizen, in the United States District Court for the District of New Jersey. [Docket No. 1.] Goor brings two causes of action based on Vignoles' alleged failure to repay a loan for \$100,000, which was memorialized by a note ("the Note"). (*See generally* Compl.) On January 12, 2012, Vignoles moved to dismiss for lack of personal jurisdiction or improper venue or, in the alternative, to transfer the case to the Northern District of California.

In support of his motion, Vignoles filed a declaration in which he stated that "[a]lthough the Note purports to memorialize a personal loan by Goor to me, I did not, in fact, receive any funds

1 directly from Goor.” (Decl. of M. Vignoles ¶ 5, Jan. 12, 2012.) On April 9, 2012, the District of
2 New Jersey granted Vignoles’ motion to transfer the case to this court without reaching the issues of
3 personal jurisdiction or improper venue. [Docket No. 17 (Transfer Order).] In its order, the court
4 underscored the fact that Vignoles had “filed an affidavit stating that . . . he never received funds
5 from Goor at all (much less funds originating in New Jersey),” and found that that fact weighed in
6 favor of transfer. (Transfer Order 3.) On July 18, 2012, after the case had been transferred to the
7 Northern District of California, the parties filed a Joint Case Management Statement before this
8 court. In that submission, Vignoles seemingly made an about-face, indicating that Goor had in fact
9 delivered a payment of \$100,000 to him:

10 [T]he payment reflected a capital contribution by Plaintiff to a joint enterprise
11 formed by Service West Inc. . . . , a California corporation as to which Defendant
12 Vignoles is President and sole shareholder, and CFT, Inc. . . . , a New York
13 corporation as to which Plaintiff is President and sole shareholder. The joint
14 venture, Service West New York (“SWNY”), did business in the New York and
15 New Jersey area for a period of two or more years.

14 [Docket No. 33 (CMC Statement) 2.] Vignoles also stated that “Goor received more money in
15 indirect personal distributions from SWNY for insurance, monthly car allowance and personal
16 AMEX card reimbursements than the amount he claims herein.” (CMC Statement 2.) Goor,
17 arguing that these statements are “contrary to what [Vignoles] had previously represented” and that
18 they constitute “new evidence and proof that the transfer was erroneous,” now moves to retransfer
19 the case to the District of New Jersey. (Pl.’s Mot. 6, 7).

20 II. Legal Standards

21 28 U.S.C. § 1404(a) provides that “[f]or the convenience of parties and witnesses, in the
22 interest of justice, a district court may transfer any civil action to any other district or division where
23 it might have been brought or to any district or division to which all parties have consented.” Thus,
24 the analysis involved in a motion to transfer is twofold. *Hatch v. Reliance Ins. Co.*, 758 F.2d 409,
25 414 (9th Cir. 1985). Unless all parties have consented to the prospective transferee district, the court
26 must first decide whether that district is one in which the action “might have been brought.” *Id.* If
27 the court finds that the first factor is satisfied, it must then decide whether “the convenience of
28 parties and witnesses” and “the interest of justice” favor transfer. *Id.*

1 A prospective transferee district is one in which the action “might have been brought” if, at
2 the time the plaintiff filed the action, the transferee district would have had subject matter
3 jurisdiction, had personal jurisdiction over the defendant, and was a proper venue. *AGCS Marine*
4 *Ins. Co. v. Associated Gas & Oil Co., Ltd.*, 775 F. Supp. 2d 640, 646 (S.D.N.Y. 2011); *see also*
5 *Commercial Lighting Prods., Inc. v. U.S. Dist. Court*, 537 F.2d 1078, 1079 (9th Cir. 1976); *F.T.C. v.*
6 *Watson Pharm., Inc.*, 611 F. Supp. 2d 1081, 1090 (C.D. Cal. 2009). In determining whether “the
7 convenience of parties and witnesses” and “the interest of justice” favor transfer, a court must weigh
8 multiple factors, including:

- 9 (1) the location where the relevant agreements were negotiated and executed, (2)
10 the state that is most familiar with the governing law, (3) the plaintiff’s choice of
11 forum, (4) the respective parties’ contacts with the forum, (5) the contacts relating
12 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.

13 *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000). The court must also consider
14 “public-interest factors of systemic integrity and fairness that, in addition to private concerns, come
15 under the heading of ‘the interest of justice.’” *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 30
16 (1988) (quoting 28 U.S.C. § 1404(a)).

17 Once a transferor court has transferred an action to a transferee court, the transferee court
18 should generally abide by the transferor court’s transfer decision and should not retransfer the case.
19 *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 816 (1988); *Ametek Inc. v. Hewlett-*
20 *Packard Co.*, C-90-20278-DLJ, 1990 WL 10072473, at *1 (N.D. Cal. July 10, 1990). However,
21 there are limited circumstances where retransfer is appropriate. A transferee court may retransfer a
22 case under “extraordinary circumstances such as where the initial decision was clearly erroneous
23 and would work a manifest injustice.” *Christianson*, 486 U.S. at 817; *see also Ametek*, 1990 WL
24 10072473, at *1. A court may also retransfer a case based on “a considered decision that the case
25 then is better tried in the original forum for reasons which became known after the original transfer
26 order.” *In re Cragar Indus., Inc.*, 706 F.2d 503, 505 (5th Cir. 1983); *see also Pac. Coast Marine*
27 *Windshields v. Malibu Boats*, 1:11-CV-01594-LJO, 2011 WL 6046308 , at *2 (E.D. Cal. Dec. 5,
28 2011).

1 **III. Discussion**

2 As an initial matter, the court notes its concern that, in seeking the transfer of this case to the
3 Northern District of California, Vignoles left the District of New Jersey with the misimpression that
4 this case involves a personal loan, and that Vignoles never received the loan money. Vignoles
5 attempts to justify his change in position by clarifying that he, in fact, did receive funds – but not for
6 his own benefit:

7 [A]lthough the Note purports to memorialize a personal loan by Goor to me, I did
8 not, in fact, receive any funds from Goor *for my benefit*. At Goor’s request, I
9 served as a conduit for his capital contribution into SWNY, depositing the money
10 into the SWNY joint venture account as agreed . . . This is what I mean when I
11 stated in my previous declaration that “I did not, in fact, receive any funds
12 directly from Goor.”

13 (Decl. M. Vignoles, ¶ 6, Sept. 5, 2012) (emphasis added.) Thus, Vignoles contends, the position that
14 he took in the joint statement is consistent with the position he took prior to the transfer. Regardless
15 of the technical compatibility of Vignoles’ pre-transfer and post-transfer statements, it should have
16 been obvious to Vignoles that the District of New Jersey would not understand his pre-transfer
17 statement to mean what he now claims it meant. By failing to alert the District of New Jersey to the
18 specific meaning of his statement, Vignoles may well have misled that court. Therefore, although
19 this court does not find that the District of New Jersey’s decision to transfer this case was in any way
20 erroneous, Vignoles’ about-face strikes the court as precisely the sort of extraordinary circumstance
21 and manifest injustice that could support retransfer of the case.

22 However, prior to reaching the issue of whether retransfer is appropriate, the court must
23 determine whether the District of New Jersey is one in which this action might have been brought.
24 Plaintiff maintains that the District of New Jersey has subject matter jurisdiction over this case,
25 personal jurisdiction over the parties, and is a proper venue. (Compl. ¶ 8; Pl.’s Mot. 8.) It is
26 undisputed that the District of New Jersey has diversity jurisdiction over this case pursuant to 28
27 U.S.C. § 1332(a). However, the court requested and the parties submitted supplemental briefing
28 regarding whether the District of New Jersey may exercise personal jurisdiction over Vignoles.
[Docket Nos. 46 (Order to Submit Supplemental Briefing), 47 (Pl.’s Supplemental Br.), 48 (Def.’s
Supplemental Br.)]

1 Personal jurisdiction is “the power of a court to enter judgment against a person.” *S.E.C. v.*
2 *Ross*, 504 F.3d 1130, 1138 (9th Cir. 2007). Generally, determining whether personal jurisdiction
3 exists over a nonresident defendant involves two inquiries: “[f]irst, the exercise of jurisdiction must
4 satisfy the requirements of the applicable state long-arm statute. Second, the exercise of jurisdiction
5 must comport with federal due process.” *Dow Chem. Co. v. Calderon*, 422 F.3d 827, 830 (9th Cir.
6 2005). New Jersey’s long-arm statute allows New Jersey courts to assert personal jurisdiction over a
7 non-resident defendant to the fullest limits of the Due Process Clause of the United States
8 Constitution. *Avdel Corp. v. Mecure*, 58 N.J. 264, 268 (1971). Therefore, the jurisdictional analysis
9 collapses into a single determination of whether the exercise of personal jurisdiction comports with
10 the due process clause. *See Dow Chem.*, 422 F.3d at 830-31.

11 The due process clause permits a court to exercise personal jurisdiction only when the
12 defendant has certain minimum contacts with the forum such that the maintenance of the suit does
13 not offend traditional notions of fair play and substantial justice. *Int’l Shoe Co. v. Washington*, 326
14 U.S. 310, 316 (1945). In analyzing whether a defendant has minimum contacts with the forum state,
15 courts distinguish between specific and general jurisdiction. *See Helicopteros Nacionales de*
16 *Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984). Specific jurisdiction exists when the action
17 relates to or “arises out of” a defendant’s contacts with the forum. *Id.* In contrast, general
18 jurisdiction does not require that the cause of action arise out of or relate to the defendant’s activities
19 in the forum state but requires that the defendant’s contacts with a forum state be “continuous and
20 systematic.” *Id.* at 415-16.

21 Goor has the burden of proving that there are sufficient contacts between Vignoles and the
22 forum to support jurisdiction. *See Am. Tel. & Tel. Co. v. Compagnie Bruxelles Lambert*, 94 F.3d
23 586, 588, *supplemented*, 95 F.3d 1156 (9th Cir. 1996); *Provident Nat. Bank v. Cal. Fed. Sav. &*
24 *Loan Ass’n*, 819 F.2d 434, 437 (3d Cir. 1987). Under Third Circuit law, the allegations in the
25 complaint are not sufficient proof of jurisdiction; instead, a plaintiff must “establish[] jurisdictional
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1 facts through sworn affidavits or other competent evidence.”¹ *Time Share Vacation Club v. Atl.*
2 *Resorts, Ltd.*, 735 F.2d 61, 66 n.9 (3d Cir. 1984); *see also Metcalfe v. Renaissance Marine, Inc.*, 566
3 F.3d 324, 330 (3d Cir. 2009) (the plaintiff must “prov[e] by affidavits or other competent evidence
4 that jurisdiction is proper”); *but cf. Telcordia Tech Inc. v. Telkom SA Ltd.*, 458 F.3d 172, 176 (3d
5 Cir. 2006) (in determining whether a court may exercise personal jurisdiction over a defendant, the
6 court “must accept all of the plaintiff’s allegations as true”). Courts must resolve in the plaintiff’s
7 favor conflicts between the facts contained in the parties’ evidence. *Telcordia Tech*, 458 F.3d at
8 176.

9 Here, Goor has provided uncontroverted evidence that (1) the loan agreement that Vignoles
10 executed on December 4, 2006 was sent to Goor in New Jersey; (2) Goor received a fax in New
11 Jersey providing wiring instructions sent on behalf of Vignoles and; (3) Goor wired the \$100,000 to
12 Vignoles pursuant to the loan agreement from his bank account in New Jersey. (Decl. M. Goor, ¶¶
13 2-4, Aug. 22, 2012.) The record is also replete with references to Goor’s and Vignoles’ prior
14 relationship, giving rise to the inference that Vignoles knew or should have known that these events
15 were going to occur in New Jersey. Additionally, Goor has provided evidence that Service West,
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17 _____
18 ¹ The court has not found decisive authority on whether it should apply Third Circuit or Ninth
19 Circuit law to determine whether federal due process permits personal jurisdiction over Vignoles in New
20 Jersey. In determining whether there is personal jurisdiction over a party in an out-of-circuit forum,
21 some courts apply the law of the circuit in which they sit, *see e.g., SongByrd, Inc. v. Estate of Grossman*,
22 206 F.3d 172, 181 (2d Cir. 2000), while other courts apply the law of the circuit of the court in which
23 jurisdiction is at issue. *See, e.g. Budget Blinds, Inc. v. White*, 536 F.3d 244, 261 (3d Cir. 2008); *Shaw*
24 *Family Archives, Ltd. v. CMG Worldwide, Inc.*, 434 F. Supp. 2d 203, 210 (S.D.N.Y. 2006). In the
25 absence of clear guidance, this court will apply Third Circuit law, the law that would apply if the
26 District of New Jersey were determining whether it had jurisdiction over Vignoles.

27 While there are differences between the Third and Ninth Circuits with respect to due process
28 considerations regarding personal jurisdiction, the court concludes the outcome in this case would be
the same under either circuit’s precedent. For example, in contrast to Third Circuit law, in the Ninth
Circuit, “uncontroverted allegations in [the plaintiff’s] complaint must be taken as true” for the purposes
of determining whether a forum has personal jurisdiction over a defendant. *Am. Tel. & Tel. Co. v.*
Compagnie Bruxelles Lambert, 94 F.3d at 588. However, that particular legal principle does not change
the result here, for Goor’s complaint does not allege any facts relevant to determining whether Vignoles
is subject to personal jurisdiction in New Jersey. And, just as the Third Circuit does, the Ninth Circuit
resolves conflicts in evidence in favor of the plaintiff. *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154
(9th Cir. 2006). Therefore, the jurisdictional facts that the court considers in this case would be the same
under Ninth Circuit law as they are under Third Circuit law. The court also finds that these facts would
have the same legal significance in the Ninth Circuit as they do in the Third Circuit. *See infra* notes 2,
3.

1 Inc., a corporation that Vignoles owns and controls, leased facilities and engaged in litigation in
2 New Jersey. (Decl. M. Goor, Ex. H.)

3 In support of his contention that he is not subject to jurisdiction in New Jersey, Vignoles has
4 provided uncontroverted evidence that he lives in California; that he has never owned any assets in
5 New Jersey; that he has never had a bank account in New Jersey or appointed anyone to accept
6 service of process on his behalf in New Jersey; that he negotiated the Note by telephone from
7 California; and that he prepared and executed the Note in California. (Decl. M. Vignoles, ¶¶ 2-3,

8 5.) There are also several disputed facts for which the parties provide conflicting evidence, but
9 which the court will resolve in Goor’s favor for the purposes of determining whether there is
10 personal jurisdiction in New Jersey. *Telcordia Tech*, 458 F.3d at 176. Specifically, Goor’s affidavit
11 indicates that the \$100,000 that Goor sent Vignoles was a personal loan rather than an investment or
12 a loan to a corporate entity; that repayment of the loan was to be by payment to Goor in New Jersey;
13 and that SWNY, the joint venture to which Vignoles referred in the Joint Case Management
14 Statement, was never formed. (Decl. M. Goor, ¶¶ 2, 10.)

15 Having considered these facts, the court finds that Goor has not demonstrated that the
16 District of New Jersey has personal jurisdiction over Vignoles.

17 **A. Goor Has Not Demonstrated that Vignoles is Subject to General Jurisdiction in**
18 **New Jersey**

19 Goor has presented no evidence that Vignoles, in his individual capacity, has had
20 “continuous and systematic” contacts with New Jersey. *See Helicopteros Nacionales*, 466 U.S. at
21 414. Goor suggests that Vignoles may be subject to personal jurisdiction in New Jersey because
22 Vignoles owned and controlled Service West, Inc., a corporation that leased facilities and engaged in
23 litigation in New Jersey. (Pl.’s Supplemental Br. 4.) However, a forum cannot exercise jurisdiction
24 over an individual corporate shareholder or employee simply because it can exercise jurisdiction
25 over the corporation itself. *See Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 (1984);
26 *MoneyGram Payment Sys., Inc. v. Consorcio Oriental, S.A.*, 65 F. App’x 844, 850 (3d Cir. 2003).
27 Nor can a court exercise personal jurisdiction over an individual based on actions the individual
28 takes in a corporate capacity. *See Oorah, Inc. v. Schick*, CIV.A.08-2202 (FLW), 2009 WL 198192,

1 at *8 (D.N.J. Jan. 27, 2009).² Therefore, the activities of Service West, Inc. are irrelevant to
2 determining whether Vignoles is subject to personal jurisdiction in New Jersey. Accordingly, the
3 court finds no basis to conclude that Vignoles is subject to general jurisdiction in New Jersey.

4 **B. Goor Has Not Demonstrated that Vignoles is Subject to Specific Jurisdiction in**
5 **New Jersey**

6 It is presumptively reasonable to subject a defendant to specific jurisdiction in a forum where
7 the defendant “deliberately has engaged in significant activities . . . or has created continuing
8 obligations between himself and residents of the forum.” *Burger King Corp. v. Rudzewicz*, 471 U.S.
9 462, 475-76 (1985) (citations and quotations omitted). However, the fact that a nonresident has
10 contracted with a resident of the forum state is not, by itself, sufficient to create personal jurisdiction
11 over the nonresident in the forum. *Id.* at 479. Instead, it is “prior negotiations and contemplated
12 future consequences, along with the terms of the contract and the parties’ actual course of dealing []
13 that must be evaluated in determining whether the defendant purposefully established minimum
14 contacts within the forum.” *Id.* In performing this evaluation, the court considers only “the
15 defendant’s conduct and connection with the forum State,” not the “unilateral activity of another
16 party.” *Id.* at 475-76.

17 Here, the only facts in evidence regarding Vignoles’ conduct in connection with New Jersey
18 are that he sent the loan agreement and wiring instructions to Goor in New Jersey, and that he was to
19 repay the loan to Goor in New Jersey. (Decl. M. Goor, ¶¶ 2-4.) These contacts do not rise to the
20 level that courts have identified as sufficient to establish personal jurisdiction in a particular forum.
21 First, there is no evidence that Vignoles solicited the contract or initiated the loan from Goor.
22 *Compare Mellon Bank (East) PSFS, Nat’l Ass’n v. Farino*, 960 F.2d 1217, 1223 (3d Cir. 1992)
23 (finding in a “close case” that personal jurisdiction existed and emphasizing that it was defendants
24 who approached the plaintiff to establish a business relationship) *with Vetrotex Certaineed Corp v.*
25 *Consol. Fiber Glass Prods. Co.*, 75 F.3d 147, 152 (3d Cir. 1996) (finding defendant was not subject

27 ² Like the Third Circuit, the Ninth Circuit has held that a court cannot exercise personal
28 jurisdiction over an individual based on actions the individual takes in a corporate capacity. *See*
Forsythe v. Overmyer, 576 F.2d 779, 784 (9th Cir. 1978).

1 to personal jurisdiction in forum and distinguishing *Mellon Bank* because defendant had not
2 “solicited the contract or initiated the business relationship leading up to the contract”). Nor is there
3 evidence that “business” in New Jersey was going to result from this contract. *Cf. North Penn Gas*
4 *Co. v. Corning Natural Gas Corp.*, 897 F.2d 687, 690-91 (3d Cir. 1990) (holding that defendant
5 subjected itself to personal jurisdiction in Pennsylvania by entering into an agreement with a
6 Pennsylvania plaintiff to reserve storage space in Pennsylvania and making consecutive payments to
7 the plaintiff in Pennsylvania).³ Goor provides evidence that Vignoles was to repay Goor in New
8 Jersey, but does not indicate that New Jersey was in any way integral to the contract. The court
9 declines to find that Vignoles is subject to personal jurisdiction in New Jersey based solely on
10 Vignoles’ communication with Goor while Goor was in New Jersey, and Vignoles’ obligation to
11 repay Goor in New Jersey.

12 Goor also argues that Vignoles states in his declaration that he made his own capital
13 contribution to SWNY, and that SWNY operated in New Jersey. (Pl.’s Supplemental Br. 4.) Goor
14 argues that because Vignoles, in his personal capacity, invested in a business that operated in New
15 Jersey, he is subject to personal jurisdiction in New Jersey. (Pl.’s Supplemental Br. 4.)

16 This argument is unavailing for a number of reasons; most significantly, Goor stated in his
17 declaration that SWNY was *never actually formed* (see Decl. M. Goor, ¶ 6), and, for the present
18 purposes, the court must take him at his word. *Telcordia Tech*, 458 F.3d at 176. Thus, the court
19 cannot find that Vignoles is subject to personal jurisdiction in New Jersey on the basis of his alleged
20 interest in SWNY’s activities.

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23 ³ The Ninth Circuit, like the Third Circuit, emphasizes the issues of whether the defendant
24 initiated the contract and whether the contract did or would have resulted in significant activities in the
25 forum. *See Roth v. Garcia Marquez*, 942 F.2d 617, 620-21 (9th Cir. 1991). In *Roth*, the court held that
26 the fact that plaintiff had solicited defendant to enter into the contract at issue weighed against finding
27 personal jurisdiction over the defendant in California, the plaintiff’s home state. However, in what the
28 court stated was “a very close call,” it held that the defendant was subject to personal jurisdiction in
California because the contract he entered into “concerned a film, most of the work for which would
have been performed in California.” *Id.* at 622. The court emphasized that the contract therefore
“depended upon activities in California” and that it was therefore “not an instance where the contract
was a one-shot deal that was merely negotiated and signed by one party in the forum.” *Id.* Here, as in
Roth, there is no evidence Vignoles initiated the contract. Moreover, the key factor in *Roth* – resulting
business in the forum – is absent here as well.

