

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

Civil Action No. 07-cv-00615-RPM

RICHARD G. MELAMED, LLC,

Plaintiff,

v.

CAPITAL COIN FUND I, LTD, an Ohio limited liability company,
CAPITAL COIN FUND II, LTD, an Ohio liability company, and
NUMISMATIC PROFESSIONALS, LTD., a Ohio limited liability company,

Defendants.

ORDER OF DISMISSAL AND FOR TRANSFER

This civil action was initiated by a complaint filed in the District Court, Jefferson County, Colorado, and removed to this court by the defendants' Notice of Removal, filed March 28, 2007. The defendants on the same date filed a motion to dismiss without prejudice or, alternatively, to transfer venue. The plaintiff filed a response in opposition to those motions on April 9, 2007.

The plaintiff's complaint alleges a first claim for relief under the Colorado Wage Act, C.R.S. §§ 8-4-101, *et seq.*, and the second claim for relief is for unjust enrichment. The factual support for these claims as alleged is that Richard G. Melamed, LLC, a Colorado limited liability company, was engaged to co-manage rare coin business operations in Colorado for the defendants and that it has not been paid the compensation due and payable under the terms of the written engagement through the date of termination. The attachments to the defendants' motion include a copy of a Management Agreement, dated May 16,

2005, effective July 1, 2004, between Numismatic Professionals, LTD, an Ohio limited liability company, and Brian Numismatics, Inc., and Richard G. Melamed, LLC, as "co-managers." That contract has been acknowledged by the plaintiff in opposition to the motion to dismiss. The written agreement includes a forum selection clause making Ohio law applicable and providing that any action brought upon or relating to the agreement must be instituted in Ohio. The motion to dismiss asks this Court to enforce the forum selection clause in the written agreement. The plaintiff's opposition asserts that the Colorado Wage Act claim is, under Colorado law, not subject to a forum selection clause and that venue for that claim is appropriate in accordance with the filing of the original complaint in Jefferson County.

Although the defendants' motion to dismiss refers to Fed.R.Civ.P. 12(b)(3), improper venue, the Court must consider the sufficiency of the first claim for relief as alleged to state a claim under the Colorado Wage Claim Act. Accordingly, the allegations of the complaint are examined under Fed.R.Civ.P. 12(b)(6) and it is apparent that the plaintiff's claims for payment of agreement compensation and commissions are based entirely on the Management Agreement and the plaintiff is not an employee within the meaning of the Colorado Wage Claim Act. The plaintiff's efforts to avoid the forum selection clause in the agreement which defines the relationship between the parties is unavailing. The plaintiff's first claim for relief is dismissed.

The plaintiff's claim for unjust enrichment should be transferred to the United States District Court for the Southern District of Ohio because it is directly

related to an action in that court in which Numismatic Professionals, LTD., is the plaintiff and Richard G. Melamed, LLC, together with Brian Numismatics, Inc., are defendants. Accordingly, it is

ORDERED that the first claim for relief in the plaintiff's complaint is dismissed, without prejudice, and it is

FURTHER ORDERED that this civil action is transferred to the United States District Court for the Southern District of Ohio.

DATED: April 11th, 2007

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior Judge