

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge Zita L. Weinshienk

Civil Action No. 09-cv-00175-ZLW-MEH

DAVIS AUDIO VISUAL, LLC,

Plaintiff,

v.

RICHARD GREER,

Defendant.

ORDER

The matter before the Court is Defendant's Motion And Brief To Transfer Venue Pursuant To 28 U.S.C. § 1404 (Doc. No. 4). The Court has determined that the motion can be resolved on the parties' briefs without a hearing.

Defendant requests that this action be transferred to the United States District Court for the Northern District of Texas, Dallas Division. 28 U.S.C. § 1404(a) provides that "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." Courts look to factors including the following when determining a motion for transfer of venue under 28 U.S.C. § 1404(a): (1) the plaintiff's choice of forum, (2) the accessibility of witnesses and other sources of proof, including the availability of compulsory process, (3) the cost of making the necessary proof, (4) the possibility of obtaining a fair trial, and (5) all other practical considerations that make a trial easy,

expeditious, and economical.¹ “The party seeking to transfer a case has the burden of proving that the existing forum is inconvenient, and the plaintiff’s choice of forum should be disturbed only when the balance of factors tips strongly in favor of transfer.”²

A. Plaintiff’s Choice of Forum

Under Tenth Circuit law, “[u]nless the balance [of considerations] is strongly in favor of the movant the plaintiff’s choice of forum should rarely be disturbed.”³ Because, as set forth below, Defendant has not made a strong showing that the other relevant factors support a transfer of venue in this case, the Court gives Plaintiff’s choice of forum significant weight in this case.

B. The Accessibility of Witnesses and Other Sources of Proof

Defendant asserts that Dallas, Texas is the more convenient forum for witnesses because the majority of the key witnesses in this case live in or near Dallas. However, Defendant has identified only one witness who lives in or near Dallas: himself. The only other witness whom Defendant identifies by name,⁴ Ed Berru, apparently lives in Henderson, Colorado.⁵ Of the three witnesses identified by Plaintiff, two live in

¹See Chrysler Credit Corp. v. Country Chrysler, Inc., 928 F.2d 1509, 1516 (10th Cir. 1991).

²Bitler v. A.O. Smith Corp., 2001 WL 1579378, *1 (D. Colo. Dec. 10, 2001).

³Scheidt v. Klein, 956 F.2d 963, 965 (10th Cir. 1992) (internal quotation and citation omitted).

⁴Defendant’s reference to Event Technology Services, LLC (ETS) as a “witness” is not helpful since Defendant fails to identify any specific ETS employee who might be testifying and where he or she lives.

⁵Response to Defendant’s Motion To Transfer Venue Pursuant to 28 U.S.C. § 1404 (Doc. No. 11) at Ex. 1 ¶ 6.

Colorado (Tim Dyer and Newell Bessendorfer), and one (Jose Cadena) is currently in the process of moving from Texas to Colorado.⁶ Defendant has failed to show that the convenience of the witnesses favors transferring this case to Dallas.

Defendant states in a conclusory fashion that “the majority of relevant documents” are located in Texas,⁷ but offers no supporting evidence or further detail concerning what these documents are, where they are, or why the documents could not be accessed in or easily sent to Colorado.⁸ There has been no showing that relevant documents will be inaccessible or less accessible if this case remains in District Court in Colorado.

Defendant also states that “[t]he compulsory process to secure attendance of witnesses weighs in favor of transfer.”⁹ However, again, the only non-Colorado witness identified by Defendant is Defendant himself, and this Court has subpoena power over Defendant in this action because he is a party.¹⁰ Defendant’s argument concerning service of process lacks merit.

⁶Id. ¶ 5.

⁷ Defendant’s Motion And Brief To Transfer Venue Pursuant To 28 U.S.C. § 1404 (Doc. No. 4) at 7.

⁸See e.g. Galvin v. McCarthy, 545 F. Supp. 2d 1176, 1183 (D. Colo. 2008) (“[Defendant] does not list the records that are located in Texas or explain why transmitting such records, either in paper or electronic form, to Colorado is more inconvenient than transferring the information within Texas. . . . Either way, the information and documentation will need to be copied or scanned and delivered to counsel for Plaintiff. Thus, [Defendant] has failed to show that the location of the evidence weighs in favor of transfer.”).

⁹Defendant’s Motion And Brief To Transfer Venue Pursuant To 28 U.S.C. § 1404 (Doc. No. 4) at 8.

¹⁰See Fed. R. Civ. P. 45(b)(2).

C. Cost

Defendant has not shown that proceedings in Colorado will cost more than proceedings in Dallas. Defendant does contend that Plaintiff should be required to bear the cost of travel to another state for hearings and trial because Plaintiff “has ample financial resources” and Defendant “has few resources.”¹¹ However, Defendant has submitted no evidence in support of his contentions concerning the parties’ respective financial resources. Considerations of cost do not favor venue transfer in this case.

D. The Possibility of Obtaining a Fair Trial

Neither of the parties assert that they would be unable to obtain a fair trial in either Denver or Dallas.

E. Other Considerations

Defendant appears to argue that the “interests of justice” component of 28 U.S.C. § 1404(a) favors having a Texas jury hear the trial of this case because, according to Defendant, the events that are the subject of the action took place in or near Dallas. Plaintiff, on the other hand, argues that many of the central events in this case occurred in Colorado. It may be the case that some relevant events took place in Colorado and some took place in or near Dallas; at this early stage in the proceedings, the Court cannot make that determination conclusively. Further, Defendant has not

¹¹Defendant’s Motion And Brief To Transfer Venue Pursuant To 28 U.S.C. § 1404 (Doc. No. 4) at 7.

explained why the facts in this case have some material characteristic of locality which makes them better suited to determination by a Texas jury than by a Colorado jury.¹²

The applicable factors, taken together, do not support a transfer of venue in this case pursuant to 28 U.S.C. § 1404. Accordingly, it is

ORDERED that Defendant's Motion And Brief To Transfer Venue Pursuant To 28 U.S.C. § 1404 (Doc. No. 4) is denied.

DATED at Denver, Colorado, this 15th day of July, 2009.

BY THE COURT:



ZITA L. WEINSHIENK, Senior Judge
United States District Court

¹²See e.g. *Four Corners Nephrology Assocs., P.C. v. Mercy Medical Center*, 464 F. Supp. 2d 1095, 1100 (D. Colo. 2006) (finding, under the circumstances of the case, that a local jury would be better suited to determining facts involving parties operating and events occurring in that region).