IN THE
UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

JOSEPH LEE GIBSON et al., Plaintiffs, versus BOY SCOUTS OF AMERICA, et al., Defendants.	Civil Action No. 1:04cv00190 Judge Gladys Kessler Deck Type: Pro se General Civil

PLAINTIFFS' MEMORANDUM OF POINTS & AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION FOR CHANGE OF VENUE

Plaintiffs in the action captioned above oppose Defendants' Motion for Change of Venue, filed May 20, 2004, and respectfully submit this Memorandum of Points and Authorities in support of their opposition.[1] As show more fully below, Defendants have not carried their burden of showing that transferring venue to the Eastern District of Virginia would serve the convenience of the parties and the witnesses, or the interest of justice, in any significant way. Accordingly, the motion should be denied.

I. INTRODUCTION

The two principal Defendants in this case – the Boy Scouts of America ("BSA") and the BSA's National Capital Area Council ("NCAC") – are both domiciled in the District of Columbia. First Amended Complaint for Injunctive Relief and Damages (hereinafter cited as

[1] By Order dated June 7, 2004, the Court directed Plaintiffs to submit their response to Defendants' Motion for Change of Venue no later than July 7, 2004. This opposition is therefore timely.

"Cmplt."), ¶¶ 6, 8. BSA is a federally chartered corporation, is a "body corporate and politic" of the District of Columbia, and maintains its principal place of business in Texas. Cmplt. ¶ 6. NCAC is chartered by BSA and has its principal offices in Maryland. Cmplt. ¶ 8.

The Complaint alleges that NCAC, acting in secret but presumably at its offices in Maryland, arbitrarily revoked Plaintiff Joseph L. Gibson's ("Gibson's") membership in the Scouting Movement without providing him with any notice of the reasons for summarily expelling him, without any opportunity to appear at a hearing or other proceeding in his own defense, and without providing an opportunity to review documentary evidence or to learn the identity of adverse witnesses, if any.[2] Cmplt. ¶ 2. Defendant BSA ratified NCAC's arbitrary expulsion of Gibson, also without affording him even the rudiments of fair procedure and also acting at an undisclosed time and in an undisclosed location – but presumably at its offices in Texas. Id. The Complaint further alleges that agents or employees of Defendants made false and defamatory statements about Gibson, including defamatory statements made to Plaintiff Richardson while he was present in the District of Columbia. Cmplt. ¶¶ 43-48.

The individual Defendants – the "John Does" and "Richard Roes" – are the officials of BSA and NCAC who directed and/or participated in the wrongful acts. Cmplt. ¶¶ 7, 9. Because their identities were never disclosed to Plaintiffs, their state of residence is not known at this stage. Nevertheless, the Richard Roes acting for Defendant NCAC likely live in Maryland, the District of Columbia and/or Virginia, while the John Does acting for Defendant BSA are likely domiciled in Texas or, perhaps, in various other jurisdictions around the United States. The Complaint expressly excludes any John Doe or Richard Roe who is a resident of the Commonwealth of Virginia. Cmplt. ¶¶ 7, 9.

[2] Although the reasons for Gibson's expulsion have never been explained, it is undisputed that no allegations or suspicions of youth abuse in any form are involved. See Cmplt. ¶ 19.

Thus, none of the Defendants is a resident of Virginia. While both Plaintiffs reside in Virginia, both have places of business and work daily in the District and – most importantly for present purposes – the Plaintiffs have chosen this Court as the forum in which to sue. Venue is clearly proper in this District under 28 U.S.C. ¶ 1391, and Defendants have not contended otherwise.

Based on these facts, Defendants have moved to transfer venue pursuant to 28 U.S.C. § 1404(a), which provides for such transfers "[f]or the convenience of the parties and witnesses, in the interest of justice." As shown below, Defendants have offered no substantial justification for changing venue under the standards of Section 1404(a). Consequently, the motion should be denied.

II. ARGUMENT

A. Defendant Bears The Burden Of Showing That The Balance Of Convenience Strongly Favors Transfer

The moving party "bears the burden of establishing that the transfer of this action is proper." Greater Yellowstone Coalition v. Bosworth, 180 F. Supp. 2d 124, 127 (D.D.C. 2001); see In re Vitamins Antitrust Litigation, 263 F. Supp. 2d 67, 69 (D.D.C. 2003)("Defendants bear the burden of showing that the balance of case-specific factors favors transfer."). In carrying their burden, the Defendants must show the balance of convenience "greatly favors" or "is strongly in favor of' transferring venue. E.g., Anonymous v. FDIC, 617 F. Supp. 509, 512 (D.D.C. 1985) ("The courts have repeatedly held . . . that unless the balance of conveniences greatly favors the alternative forum, the plaintiff's forum choice should ordinarily be afforded considerable respect.") (emphasis added); Greater Yellowstone, 180 F. Supp. 2d at 127 (case-specific factors to be considered by the court in deciding a section 1404(a) transfer motion

include "the plaintiffs' choice of forum, unless the balance of convenience is strongly in favor of the defendants.") (emphasis added).

Although not dispositive, "[t]here can be no doubt that a plaintiff's choice of forum is entitled to at least some weight." SEC v. Savoy Industries, 587 F.2d 1149, 1154-55 (D.C. Cir. 1978) cert. denied, 440 U.S. 913 (1979). Indeed, this Court has observed that a court "must afford substantial deference to the plaintiffs' choice of forum."[3] Greater Yellowstone, 180 F. Supp. 2d at 128; see Air Line Pilots' Ass'n. v. Eastern Air Lines, 672 F. Supp. 525, 526 (D.D.C. 1987) ("Plaintiff's choice of forum is given paramount consideration and the burden of demonstrating that an action should be transferred is on the movant.").

As demonstrated in the next section of this Memorandum, Defendants have failed to carry their burden on this motion and, in fact, have failed to offer any meaningful justification for transferring venue, much less a justification sufficient to outweigh Plaintiffs' choice of forum in these circumstances.

B. Defendants Have Shown No Substantial Justification For Transferring Venue

Defendants cannot sustain their burden of justifying a transfer of venue by making wholly conclusory assertions as to the convenience of the parties and witnesses.

The convenience of the witnesses is normally considered the most important factor in exercising the court's discretion under section 1404(a). E.g., Workgroup Technology Corp. v. MGM Grand Hotel, L.L.C., 246 F. Supp. 2d 102, 116 (D. Mass. 2003)(citing Princess House, Inc. v. Lindsey, 136 F.R.D. 16, 18 (D. Mass. 1991)); Citibank N.A. v. Affinity Processing Corp.,

[3] As this Court noted in Greater Yellowstone, "this deference is mitigated if the plaintiffs' choice of forum has 'no meaningful ties to the controversy and no particular interest in the parties or subject matter.'" 180 F. Supp 2d at 128 (citing Chung v. Chrysler Corp., 903 F. Supp. 160, 165 (D.D.C. 1995)). This mitigating factor is inapplicable here, however, because this case has substantial District of Columbia ties. These include the facts that BSA is a federally chartered institution, that both BSA and NCAC are incorporated in D.C., that both Plaintiffs conduct their business

248 F. Supp 2d 172, 176 (E.D.N.Y. 2003) ("Courts have held that perhaps the most important consideration is the convenience of party and non-party witness in a Section 1404(a) motion."). However, "[t]he party seeking the transfer must clearly specify the key witnesses to be called and must provide a general statement of what their testimony will cover." 15 Charles Alan Wright, Arthur H. Miller & Edward H. Cooper, Federal Practice and Procedure, § 3851 (2004 Pocket Part at 250). If a movant offers only conclusory assertions in this regard, without identifying the witnesses in question or stating what their testimony will be, the motion to transfer will be denied. E.g., Smith v. Colonial Penn. Ins. Co., 943 F. Supp. 782, 784 (S.D. Tex. 1996) ("[V]ague statements about the convenience of unknown and unnamed witnesses is [sic] insufficient to convince this Court that the convenience of the witnesses and the parties would best be served by transferring venue."); Bacik v. Peek, 888 F. Supp. 1405, 1415 (N. D. Ohio 1993) ("'The party seeking the transfer must clearly specify the key witnesses to be called and must make a general statement of what their testimony will cover. . . . If a party has merely made a general allegation that witnesses will be necessary, without identifying them and indicating what their testimony will be the application for transfer will be denied.'") (quoting Lake v. Richardson-Merrell, Inc., 538 F. Supp. 262, 271 (N.D. Ohio 1982)).

Here, Defendants' arguments concerning the convenience of the parties and witnesses take only the most conclusory form: "Most if not all of the parties and witnesses who will be called into Court in the cause reside or conduct business or activities in the Commonwealth of Virginia." Defendants' Memorandum of Points and Authorities in Support of Motion for Change of Venue (hereinafter, "Defts' Mem.") at 2. This assertion not only fails to sustain Defendants' burden of showing convenience of the witnesses with specificity, it is also generally

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in the District, and that at least one of the defamatory statements alleged in the Complaint was published in the District of Columbia.

inaccurate as a matter of fact. First, as noted above (see p. 2, supra), none of the Defendants resides in Virginia. Second, witnesses employed by or acting as agents of Defendant NCAC likely reside in Maryland, the District, and/or Virginia, such that the District of Columbia is a reasonably convenient forum for all of them and a more convenient forum for some. Third, to the extent that potential witnesses do, in fact, reside in and around McLean or elsewhere in Northern Virginia, Alexandria is not significantly more convenient a forum than is this Court; indeed, many (including the Plaintiffs) would contend that it is less so. Finally, to the extent that witnesses reside in Texas or in other remote jurisdictions, there has been no showing that the Eastern District of Virginia is in any way a more convenient forum than the District of Columbia.

Thus, Defendants have not shown that the balance of convenience to the witnesses tips in any way in favor of transferring. As the Supreme Court has observed, "Section 1404(a) provides for transfer to a more convenient forum, not to a forum likely to prove equally convenient or inconvenient." Van Dusen v. Barrack, 376 U.S. 612, 645-46 (1964). Defendants have not come close to showing that the Eastern District of Virginia would be a more convenient forum.

The only other suggestion of a rationale for transfer offered by Defendants is the equally conclusory statement that "A substantial part of the underlying events and occurrences took place in the Commonwealth of Virginia, specifically in and around McLean, Virginia." Defts' Mem. At 2.[4] This assertion is, at best, obliquely relevant to the factors normally considered in connection with a motion under Section 1404(a) and, in any event, misses the point of the Complaint.

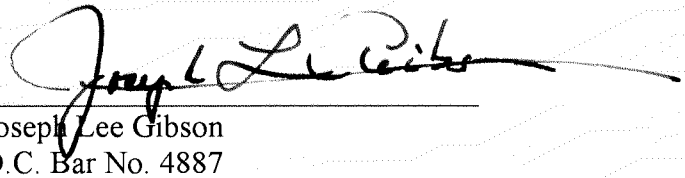
[4] The only case cited by Defendants in support of their motion, Preuss v. Udall, 359 F.2d 615, 618 (D.C. Cir. 1965), is cited for the uncontroversial proposition that a case may be transferred if a trial judge finds that the convenience of the parties and the interest of justice would be served thereby. The case sheds no light, however, on the question of how those standards should be applied in circumstances like those in the present case.

This case centers principally on the question of whether the two Defendants – one a federally chartered organization and the other one responsible for BSA's activities and programs in the National Capital Area – both of which are domiciled in the District of Columbia, adhered to their own regulations and basic common law precepts of fair procedure in their treatment of Plaintiffs. The acts and events critical to this inquiry did not occur in Virginia, but in the headquarters and offices of these federally chartered entities – or wherever else the cabals that decided Gibson's fate chose to hold their surreptitious meetings. Virginia's only significant interest in this matter flows from the residency of the Plaintiffs – but the Plaintiffs have chosen to attempt to vindicate their rights in this Court. That choice should be respected in these circumstances, and Defendants have offered no significant reason to disrupt it.

III. CONCLUSION

For all of the foregoing reasons, Defendants' Motion for Change of Venue should be denied. A proposed Order is attached.

Respectfully submitted,



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[PROPOSED] ORDER

Upon consideration of the Defendants' Motion for Change of Venue, filed May 20, 2004, and the parties briefs and arguments in support thereof and in Opposition thereto, it is hereby:

ORDERED that Defendants' Motion for Change of Venue be, and hereby is, denied.

ENTERED this ____ day of _____, 2004.

_____
Honorable Gladys Kessler
Judge, U.S. District Court
for the District of Columbia

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of July, 2004, true and correct copies of the foregoing "Plaintiffs' Opposition To Defendants' Motion For Change Of Venue" were sent via first-class mail to the following:

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