

O
JS-6

1
2
3
4
5
6
7
8
9
10

**United States District Court
Central District of California**

11 ROGER D. SILK,

12 Plaintiff,

13 v.

14 BARON BOND et al.,

15 Defendants.
16

Case № 2:21-cv-03977-ODW (JPRx)

**ORDER GRANTING MOTION TO
TRANSFER [53]**

17
18

I. INTRODUCTION

19 Defendants Baron Bond and Howard Miller move to transfer this action to the
20 United States District Court for the District of Maryland, pursuant to 28 U.S.C.
21 § 1404(a). (Mot. Transfer (“Motion” or “Mot.”), ECF No. 53.) Defendants argue that
22 a transfer is necessary for the convenience of the parties and witnesses, and in the
23 interest of justice. (*Id.*) For the reasons discussed below, the Court **GRANTS**
24 Defendants’ Motion to Transfer. (ECF No. 53.)¹

25
26

II. BACKGROUND

27 Plaintiff Roger Silk provided tax, estate, and related planning services to
28 decedent Frank Bond (“Decedent”) under three different agreements. (Compl. ¶¶ 20,

¹ Having carefully considered the papers filed in connection with the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

1 26, 28, ECF No. 1; *id.* Exs. 1, 2 (“Written Agreements”), ECF Nos. 1-1, 1-2.) During
2 the negotiations and performance of the contracts, Silk was a resident of California
3 and Decedent was a resident of Maryland. (*See* Decl. Roger Silk ISO Opp’n Mot.
4 Dismiss (“Silk Decl.”) ¶¶ 3-6, ECF No. 36-1 (cited by Silk in support of his
5 Opposition to Defendants’ Motion to Transfer).)

6 From approximately 1991 to 1995, Silk worked exclusively for Decedent under
7 an oral employment agreement (“Private Variable Annuity Agreement”). (Compl.
8 ¶ 20.) Throughout the negotiations and Silk’s performance of the Private Variable
9 Annuity Agreement, Silk traveled to Decedent’s office in Maryland. (Silk Decl. ¶ 4.)
10 After the Private Variable Annuity Agreement ended in 1995, Silk continued to advise
11 and manage aspects of Decedent’s finances, including Decedent’s estate. (Compl.
12 ¶ 21.)

13 Silk subsequently entered into two additional agreements with Decedent: the
14 “North Point Agreement,” (*Id.* ¶ 25, Ex. 1), and the “Westcliffe Agreement,” (*id.* ¶ 27,
15 Ex. 2.) Both agreements were in writing and on Silk’s letterhead, which identified his
16 office as being in Sherman Oaks, California. (*See* Written Agreements.) During
17 Decedent’s lifetime, he paid Silk their agreed-upon performance-based incentive fees.
18 (Compl. ¶ 22.) However, under all three agreements, the parties agreed to defer the
19 payments for Silk’s estate-planning work and certain income tax deferral work until
20 Decedent’s death. (*Id.* ¶¶ 25–28.) Accordingly, after Decedent’s death in July 2020,
21 Silk made a claim to Decedent’s estate in the Baltimore County Orphan’s Court for the
22 sum of these deferred payments. (*Id.* ¶¶ 29, 32.) Decedent’s estate disallowed Silk’s
23 claim. (*Id.* Ex. 3 (“Notice of Disallowance”), ECF No. 1-3.)

24 Silk then filed his Complaint in this Court, alleging three causes of action:
25 (1) breach of contract for the Private Variable Annuity Agreement, North Point
26 Agreement, and Westcliffe Agreement; (2) unjust enrichment (in the alternative); and
27 (3) promissory estoppel (in the alternative). (*Id.* ¶¶ 33–62.) The Court granted
28 Defendants’ motion to dismiss for lack of jurisdiction, (Order Granting Mot. Dismiss,

1 ECF No. 39), and the Ninth Circuit Court of Appeals reversed and remanded, (Op.,
2 ECF No. 42).

3 Following remand, Defendants now move to transfer this case to the federal
4 court in Maryland, pursuant to 28 U.S.C. § 1404(a). (Mot. 1–2.) Silk opposes the
5 Motion. (Opp’n Mot. (“Opposition” or “Opp’n”), ECF No. 58.) Defendants did not
6 file a Reply.

7 III. LEGAL STANDARD

8 “For the convenience of the parties and witnesses, in the interest of justice, a
9 district court may transfer any civil action to any other district or division where it
10 might have been brought.” 28 U.S.C. § 1404(a). Section 1404(a) “gives a district
11 court broad discretion to transfer a case to another district where venue is also
12 proper.” *Amini Innovation Corp. v. JS Imps., Inc.*, 497 F. Supp. 2d 1093, 1108
13 (C.D. Cal. 2007); *see also Commodity Futures Trading Comm’n v. Savage*, 611 F.2d
14 270, 279 (9th Cir. 1979) (“Weighing of the factors for and against transfer involves
15 subtle considerations and is best left to the discretion of the trial judge.”). “The
16 burden is on the moving party to establish that a transfer would allow a case to
17 proceed more conveniently and better serve the interests of justice.” *Amini*
18 *Innovation*, 497 F. Supp. 2d at 1109. “[T]he purpose of [§ 1404] is to prevent the
19 waste ‘of time, energy and money’ and ‘to protect litigants, witnesses and the
20 public against unnecessary inconvenience and expense.’” *Van Dusen v. Barrack*,
21 376 U.S. 612, 616 (1964) (quoting *Cont’l Grain Co. v. Barge FBL-585*, 364 U.S.
22 19, 26–27 (1960)).

23 IV. DISCUSSION

24 Defendants argue the Court should transfer venue to the District of Maryland
25 pursuant to § 1404, on the basis that the action could have been brought in that
26 district, and that the convenience of the parties and witnesses, as well as the interest of
27 justice, weigh in favor of transfer. (Mot. 1.) Silk responds that the Court should not
28

1 transfer the case because the Central District of California is a proper venue, and his
2 choice of venue should be given substantial weight. (*See generally* Opp’n.)

3 A district court may transfer an action to another federal district court (the
4 “transferee court”) if (1) the action originally might have been brought in the
5 transferee court, and (2) the convenience of parties and witnesses, and the interest of
6 justice, favor transfer. 28 U.S.C. § 1404(a); *Hatch v. Reliance Ins. Co.*, 758 F.2d 409,
7 414 (9th Cir. 1985); *Metz v. U.S. Life Ins. Co.*, 674 F. Supp. 2d 1141, 1145 (C.D. Cal.
8 2009). Generally, “substantial weight is accorded to the plaintiff’s choice of forum,
9 and a court should not order a transfer unless the ‘convenience’ and ‘justice’
10 factors . . . weigh heavily in favor of venue elsewhere.” *Catch Curve, Inc. v. Venali,*
11 *Inc.*, No. 2:05-cv-04820-DDP (AJWx), 2006 WL 4568799, at *1 (C.D. Cal. Feb. 27,
12 2006) (citing *Sec. Inv. Prot. Corp. v. Vigman*, 764 F.2d 1309, 1317 (9th Cir. 1985)).
13 “The party seeking the transfer bears the burden of persuasion.” *Id.*

14 **A. Bringing the Action in the Transferee Court**

15 An action originally might have been brought in a transferee court when, at the
16 time the action commenced, the transferee court (1) possessed subject matter
17 jurisdiction over the action, (2) had personal jurisdiction over the parties, and (3) was
18 a proper venue. *Rubio v. Monsanto Co.*, 181 F. Supp. 3d 746, 760 (C.D. Cal. 2016)
19 (citing *A.J. Indus., Inc. v. U.S. Dist. Ct. for Cent. Dist. Cal.*, 503 F.2d 384, 386–88
20 (9th Cir. 1974)).

21 Regarding jurisdiction, Defendants plausibly assert that at the time the action
22 commenced, the United States District Court for the District of Maryland possessed
23 subject matter jurisdiction over the action, and personal jurisdiction over the parties.
24 (Mot. 9–10.) Silk does not directly dispute that the case could have been initially
25 brought there or oppose the Motion on these bases. (*See generally* Opp’n.) He has
26 therefore conceded these issues. *See Heraldez v. Bayview Loan Servicing, LLC*,
27 No. 2:16-cv-1978-R, 2016 WL 10834101, at *2 (C.D. Cal. Dec. 15, 2016) (“Failure to
28 oppose constitutes a waiver or abandonment of the issue.”), *aff’d*, 719 F. App’x 663

1 (9th Cir. 2018). Accordingly, the Court accepts Defendants’ jurisdictional assertions
2 that the action originally might have been brought in the District of Maryland, for the
3 purposes of this Motion.

4 As for venue, venue is proper in “a judicial district in which any defendant
5 resides, if all defendants are residents of the State in which the district is located,” or
6 “in which a substantial part of the events or omissions giving rise to the claim
7 occurred,” or, failing that, in “any judicial district in which any defendant is subject to
8 the court’s personal jurisdiction with respect to such action.” 28 U.S.C. § 1391(b).
9 Here, as the parties do not dispute the District Court of Maryland’s personal
10 jurisdiction over the parties in this case, the existence of personal jurisdiction over
11 Defendants provides a basis for finding the Maryland venue proper. Thus, venue is
12 proper in the District of Maryland.

13 As the United States District Court for the District of Maryland would have
14 possessed both subject matter and personal jurisdiction, and as venue is proper there,
15 this case could have originally been brought in the transferee court.

16 **B. Convenience of the Parties and Witnesses, and Interest of Justice**

17 The Court must next determine whether the convenience of the
18 parties and witnesses, as well as the interest of justice, favor transfer. *See* 28 U.S.C.
19 § 1404(a).

20 1. *Convenience of the Parties and Witnesses*

21 “Importantly, while the convenience of party witnesses is a factor to be
22 considered [in a § 1404(a) motion], the convenience of non-party witnesses is the
23 more important factor.” *Ironworkers Loc. Union No. 68 & Participating Emps.*
24 *Health & Welfare Fund v. Amgen, Inc.*, No. 2:07-cv-5157-PSG (AGRx), 2008 WL
25 312309, at *5 (C.D. Cal. Jan. 22, 2008) (citing *Saleh v. Titan Corp.*, 361 F. Supp. 2d
26 1152, 1160 (S.D. Cal. 2005)). However, a transfer is not appropriate merely to shift
27 the inconvenience from one party to another. *Amini Innovation*, 497 F. Supp. 2d
28 at 1109–10.

1 Regarding the convenience of the parties, Silk is located in Nevada, which is
2 California-adjacent, and Bond and Miller are both located in Maryland. (Compl.
3 ¶¶ 8–9; Mot. 1 n.1 (providing that Bond has relocated to Florida but maintains a home
4 and office in Maryland).) Accordingly, a transfer of forum from California to
5 Maryland would simply shift the inconvenience of traveling a longer distance from
6 Defendants to Silk. As such, this factor is neutral.

7 Regarding the convenience of the witnesses, Defendants list the following
8 witnesses Silk anticipates calling for testimony in this case: Mayrov Bond (located in
9 Florida), Jim Lintott (located in Virginia), Jeff Daley (located in Maryland), Neil
10 Axler (located in New York), and expert witness Peter Hickey (located in Illinois).
11 (Mot. 14.) None of these witnesses are in California, nor are they located on or near
12 the West Coast. Furthermore, Silk does not dispute that he expects to call these
13 witnesses to testify on his behalf or that their testimony will be probative. (*See*
14 *generally* Opp’n.) As a majority of the witnesses are geographically located closer to
15 Maryland than California, Maryland appears to be a more convenient forum to them.
16 And as Silk does not dispute that the value of their testimony will be probative, this
17 factor favors transfer.

18 Silk argues that Defendants cannot use his potential witnesses to support this
19 factor, relying on *Ansari v. UnitedHealthcare Ins. Co.*, No. 2:19-cv-04068-JAK
20 (JPRx), 2019 WL 6729716, at *4 (C.D. Cal. Sept. 25, 2019). (Opp’n 13.) However,
21 the Court does not read *Ansari* to require that the witnesses’ convenience be based
22 solely on the moving party’s witnesses; Silk’s witnesses are also a relevant
23 consideration before the Court. Therefore, the witnesses’ convenience favors transfer.

24 2. *Interest of Justice*

25 Next, in evaluating the interest of justice, courts may consider the following
26 factors: (1) the location where the relevant agreements were negotiated and executed,
27 (2) the state that is most familiar with the governing law, (3) the plaintiff’s choice of
28 forum, (4) the respective parties’ contacts with the forum, (5) the contacts relating to

1 the plaintiff’s cause of action in the chosen forum, (6) the differences in the costs of
2 litigation in the two forums, (7) the availability of compulsory process to compel
3 attendance of unwilling non-party witnesses, and (8) the ease of access to sources of
4 proof. *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498–99 (9th Cir. 2000). Courts
5 may also consider “the administrative difficulties flowing from court congestion [and]
6 the ‘local interest in having localized controversies decided at home.’” *Decker Coal*
7 *Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986) (quoting *Piper*
8 *Aircraft Co. v. Reyno*, 454 U.S. 235, 241 n.6 (1981)). The Court considers the
9 relevant factors in turn.

10 a. Location

11 In a contracts dispute, courts consider the locations of relevant substantial
12 events, like where the parties negotiated, executed, and performed or breached the
13 agreements in dispute. *Niagra Bottling, LLC v. Orion Packaging Sys., LLC*, No. 5:12-
14 cv-00498-VAP (DTBx), 2012 WL 1747398, at *5 (C.D. Cal. May 14, 2012). Courts
15 specifically consider the location where the majority of the agreements in a breach of
16 contract case were negotiated and executed. *Jones*, 211 F.3d at 499.

17 Here, during the negotiation and execution of the two written agreements, Silk
18 was in California and Decedent was in Maryland. (Silk Decl. ¶ 8; *see* Aff. Howard
19 Miller ISO Mot. Dismiss ¶ 5, ECF No. 30-2.) However, the parties dispute the
20 location Silk and Decedent negotiated and executed the oral agreement. On the one
21 hand, Defendants argue Silk and Decedent negotiated and executed the oral agreement
22 in Maryland. (Mot. 13.) On the other, Silk argues that he was “living and working in
23 California” “at all relevant times” pertaining to this lawsuit, although he does not
24 contest that Decedent was then-located in Maryland. (Opp’n 6 (citing Silk Decl.))
25 Accordingly, the Court finds it reasonable to conclude that the parties negotiated and
26 executed all three agreements in both Maryland and California. Thus, this factor
27 weighs neutral.

1 b. Familiarity with governing law

2 In diversity cases, courts must determine which venue would be most familiar
3 with the law governing the action. *Van Dusen*, 376 U.S. at 645. This factor “does not
4 ask whether a court is equally capable” of applying a state’s laws; rather this factor
5 “focuses on the familiarity of each forum with the applicable law.” *Applied*
6 *Elastomerics, Inc. v. Z-Man Fishing Prods., Inc.*, No. C 06-2469 CW, 2006 WL
7 2868971, at *5 (N.D. Cal. Oct. 6, 2006); *cf. Metz*, 674 F. Supp. 2d at 1148 (finding
8 that courts in both California and New York were fully capable of applying New York
9 substantive law).

10 Here, Silk’s causes of action are based primarily on Maryland statutory law for
11 breach of contract. Although both the California and Maryland courts are equally
12 capable of applying Maryland law, courts in Maryland regularly adjudicate matters
13 arising under Maryland state law and are thus more familiar with the law governing
14 the case. On the other hand, it is reasonable to infer that courts in the Central District
15 of California, including this Court, adjudicate fewer cases arising under Maryland law,
16 and as such are less familiar with the law governing this case. Accordingly, this factor
17 favors transfer.

18 c. Local interest

19 The venue where events occur has a “local interest in having localized
20 controversies decided at home.” *Decker Coal*, 805 F.2d at 843; *see Vu v.*
21 *Ortho-McNeil Pharm., Inc.*, 602 F. Supp. 2d 1151, 1157 (N.D. Cal. 2009) (finding
22 one district’s local interest stronger “because the events at issue took place there”).
23 Here, the events relevant to Silk’s causes of action took place in both Maryland and
24 California, so this factor is neutral.

25 d. Ease of access to evidence/sources of proof

26 “[The] ease of access to documents does not weigh heavily in the transfer
27 analysis, given that advances in technology have made it easy for documents to be
28 transferred to different locations.” *Metz*, 674 F. Supp. 2d at 1149. Accordingly, the

1 moving party must show some evidence to suggest that the transportation of evidence
2 to the original venue would be difficult. *See Bohara v. Backus Hosp. Med. Benefit*
3 *Plan*, 390 F. Supp. 2d 957, 963 (C.D. Cal. 2005) (finding that “the movant must show
4 particularly the location [and] difficulty of transportation . . . of such records”).

5 Here, Defendants have already produced electronically scanned copies of their
6 hard-copy files, which can readily be accessed as evidence. (*See Opp’n 13*). This
7 established electronic availability suggests the parties will find evidence and
8 discovery easy to access in either forum. As such, the Court finds that the ease of
9 access to evidence proves the same in both Maryland and California, and this factor is
10 neutral.

11 e. Costs of litigation

12 Regarding the costs of litigation, Silk is not a current resident of California.
13 Thus, if the case proceeds in California, he will incur costs of travel regardless of
14 venue, though his litigation costs would reasonably be less if traveling from Nevada
15 to California than if traveling to Maryland. However, if the case proceeds in
16 Maryland, the costs of litigation would be reduced for a majority of people involved.
17 Bond is located in Maryland, and Miller, along with most of the non-party witnesses,
18 is located on the East Coast. That means their combined costs of travel will be less to
19 Maryland than to California. As the costs of litigation will be greater on balance to
20 litigate in California than in Maryland, this factor favors transfer.

21 f. Compulsory process

22 A subpoena may command a person to attend a trial, hearing, or deposition
23 within 100 miles of where the person resides, is employed, or regularly transacts
24 business in person. Fed. R. Civ. P. 45(c)(1). A subpoena may also command a
25 person to attend a trial, hearing, or deposition within the state where the person
26 resides, is employed, or regularly transacts business in person if the person would not
27 incur substantial expense. *Id.* This means that, “[f]or non-party witnesses, the court’s
28 subpoena power extends to anywhere within the district and/or one hundred miles of

1 the place of trial.” *Huynh v. Mercedes-Benz USA, LLC*, No. 2:22-cv-5045-MWF
2 (SKx), 2022 WL 18142559, at *4 (C.D. Cal. Nov. 8, 2022) (quoting *Costco*
3 *Wholesale Corp. v. Liberty Mut. Ins. Co.*, 472 F. Supp. 2d 1183, 1193 (S.D. Cal.
4 2007)).

5 Here, the majority of the anticipated non-party witnesses are within neither
6 100 miles of the Central District of California nor the state of California, and as a
7 result, many of the relevant non-party witnesses will likely be outside the Court’s
8 subpoena power. *See* Fed. R. Civ. P. 45(c)(1). In contrast, several of the non-party
9 witnesses are within 100 miles of the District Court for the District of Maryland.
10 Thus, the availability of compulsory process favors transfer.

11 g. Plaintiff’s choice of forum

12 Lastly, absent a strong showing of inconvenience, a plaintiff’s preference of
13 forum will not be disturbed. *Decker Coal*, 805 F.2d at 843. However, where the
14 plaintiff is not a resident of the preferred forum, less deference is given to their
15 choice of forum. *See Ainsworth v. Experian Info. Sols., Inc.*, No. 8:10-cv-01706-
16 CJC (RNBx), 2011 WL 2135713, at *2 (C.D. Cal. May 12, 2011) (citing *Williams v.*
17 *Bowman*, 157 F. Supp. 2d 1103, 1107 (N.D. Cal. 2001)). Here, Silk is a resident of
18 Nevada, not California, which lessens any deference given to his choice of forum
19 otherwise. (*See* Compl. ¶ 8.) Thus, Silk’s choice of forum is entitled to only
20 minimal deference under the circumstances of this case.

21 **C. Conclusion—Motion to Transfer**

22 In sum, the convenience of the witnesses, familiarity with governing law, cost
23 of litigation, and compulsory process factors favor transfer, and the remaining factors
24 are neutral. The balance of the convenience and justice factors thus overcomes the
25 minimal deference given to Silk’s forum preference. As this action could originally
26 have been brought in the United States District Court for the District of Maryland, and
27 as Defendants establish that the convenience of the parties and witnesses, as well as
28

1 the interest of justice, favor transfer, the Court finds transfer to Maryland is warranted
2 under the circumstances of this case.²

3 **V. CONCLUSION**

4 For the reasons discussed above, the Court **GRANTS** Defendants’ Motion to
5 Transfer pursuant to 28 U.S.C. § 1404. (ECF No. 53.) All dates and deadlines are
6 **VACATED**. The Clerk of the Court shall **TRANSFER** this case to the United States
7 District Court for the District of Maryland, 101 W. Lombard Street, Baltimore,
8 Maryland, 21201.

9
10 **IT IS SO ORDERED.**

11
12 February 29, 2024

13
14 
15 _____
16 **OTIS D. WRIGHT, II**
17 **UNITED STATES DISTRICT JUDGE**

18
19
20
21
22
23
24
25
26
27 _____
28 ² Defendants’ request, in the event that the Court declines to transfer this case, that the Court order limited jurisdictional discovery in advance of any merits discovery. (Mot. 19.) However, as the Court finds transfer appropriate, Defendants’ request in the alternative is denied as moot.