



dismiss on the merits as the court could not transfer the matter because it lacked personal jurisdiction over him, a contention the court quickly rejected.<sup>2</sup>

### **Discussion**

Under 28 U.S.C. § 1406 (a), the district court “in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.” The transferee court must be one in which the action could have been properly filed initially, satisfying venue and personal jurisdiction requirements. *See SongByrd, Inc., v. Estate of Grossman*, 206 F.3d 172, 179 n.9 (2d Cir. 2000).

Venue is clearly improper here. There is no doubt that this action could have been brought in the District of New Jersey because the conduct giving rise to this action (*i.e.*, the car accident on the N.J. Turnpike) took place in New Jersey. *See* 28 U.S.C. § 1391(a) (1). It also appears that defendant subjected himself to personal jurisdiction in New Jersey by driving on the N.J. Turnpike. Thus, the court finds that it is in the interests of justice to transfer this action to the District of New Jersey, pursuant to 28 U.S.C. § 1406(a). The issues of personal jurisdiction and statute of limitations were never formally raised via motion by defendant. Defendant may raise those issues before the transferee court.

SO ORDERED.

DATED: Brooklyn, New York  
November 17, 2010

/s/  
DORA L. IRIZARRY  
United States District Judge

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<sup>2</sup> *See McGowan v. Marrzan*, 2010 WL 3529132, at \*1 (S.D.N.Y. Aug. 26, 2010) (“A court lacking personal jurisdiction over a defendant may transfer the case to another jurisdiction where venue is appropriate and personal jurisdiction may be had if such a transfer is in the interest of justice.”); *see also Goldlawr, Inc. v. Heiman*, 369 U.S. 463, 466 (1962).