

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EMBLAZE LTD.,

Plaintiff,

-against-

10 Civ. 5713 (PKC)

APPLE INC.

MEMORANDUM
AND ORDER

Defendant.

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P. KEVIN CASTEL, U.S.D.J.:

Plaintiff Emblaze, Ltd. (‘Emblaz ’) brings a patent infringement action alleging that defendant Apple, Inc. (‘App ’) has infringed its patent in violation of 35 U.S.C. 271. Apple moved to transfer venue to the United States District Court for the Northern District of California, pursuant to 28 U.S.C. 1404(a), and I granted that motion by Memorandum and Order dated February 24, 2011. Emblaze has moved under Local Rule 6.3 for reconsideration of that decision.

Apple argues that this Court no longer has jurisdiction to reconsider its decision, now that the transfer has occurred. See In re Northwest Airlines Corp., No. 07 Civ. 2677, 2008 WL 4755377 (S.D.N.Y. Oct 28, 2008) (‘Following the proper transfer of a case from one district to another pursuant to 1404(a), the transferor court loses all jurisdiction over the case.’).¹ Generally, a decision transferring a case can only be reconsidered or appealed through a writ of mandamus if the petitioner acts ‘prior to receipt of the action’s papers by the clerk of the transferee court[] to file the petition for the writ

¹ Emblaze is not challenging whether this Court had the power to transfer the case under   1404(a), but merely that it erred in granting the motion to transfer. Cf. Farrell v. Wyatt, 408 F.2d 662, 665 (2d Cir. 1969) (“[T]he question here is whether the district court had power to order the transfer; when that is the issue, we reject the argument . . . that the clerk’s physical transfer of the file destroyed our jurisdiction.”).

or a motion in the transferor court to stay the order.” Warrick v. General Electric Co., 70 F.3d 736, 739 (2d Cir. 1995) (citing Drabik v. Murphy, 246 F.2d 408, 408-10 (2d Cir. 1957)). However, there is an exception to this rule where “the district court has acted hastily in transferring the case’s papers, [such that] a diligent petitioner . . . would be precluded from seeking mandamus.” Id. (internal quotations and omissions omitted).

In this district, Local Rule 83.1 requires the clerk to wait for the expiration of seven days before mailing the original case file to the transferee court. This Court signed the order directing transfer of the action on February 24, 2011, and that order was entered February 25, 2011. The case was then electronically transmitted to the Northern District of California on March 4, 2011.² The docket entry reflecting this transmission notes that it was “Filed” on February, 25, 2011 but “Entered” on March 4, 2011. Under this district’s Electronic Case Filing (“ECF”) Rules, a document is deemed filed on the date and time stated on the Notice of Electronic Filing (“NEF”) from the Court. (ECF Rule 13.11.) The NEF from this district indicates that the docket transaction was entered on March 4, 2011. (Decarlo Decl., Exh. 1.) The Northern District of California received the electronic transfer the same day, March 4, according to a Notice of Transfer on that Court’s docket. (Docket No. 26, 11 Civ. 1079 (N.D. Cal. March 8, 2011).) Emblaze filed its motion for reconsideration on March 11, 2011. (Docket No. 25.)

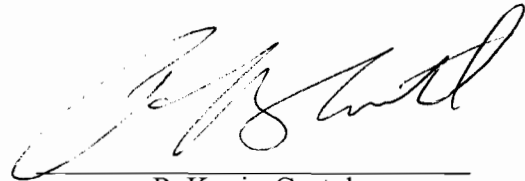
Emblaze argues that the transfer of the case should not deprive it of the right to timely move for reconsideration within fourteen days under Local Rule 6.3. However, Emblaze did not move for reconsideration until well after the expiration of seven days from the order granting transfer. That order was signed on January 24 and

² Based upon phone conversations with the Clerks’ offices in both this District and in the District of Northern California, it appears that this electronic transmission is the only transfer which takes place. No longer is a physical file sent when an electronically filed case is transferred.

entered on January 25, and the Clerk electronically transferred the case on March 4. In moving for reconsideration on March 11, Emblaze did not act diligently to preserve the Court's power to reconsider the transfer. Cf. Warrick, 70 F.3d at 739. Here, unlike in Warrick, Emblaze's motion would have been filed after the transferee court received the case's papers whether or not the Clerk complied with Local Rule 83.1.

Because Emblaze filed its motion after the transferee court received the file, and that was not the result of this Court acting "hastily" in transferring the case's papers, this Court does not have jurisdiction to reconsider its decision. Emblaze's Motion for Reconsideration (Docket No. 26) is DENIED.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'P. Kevin Castel', written over a horizontal line.

P. Kevin Castel
United States District Judge

Dated: New York, New York
June 2, 2011