

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
NORTH CAROLINA
WESTERN DIVISION
CASE NO. 5:11-CV-00054-FL**

Carolina Conduit Systems, Inc.,

Plaintiff,

vs.

MasTec North America, Inc.,

Defendant.

**ORDER GRANTING DEFENDANT'S
MOTION TO TRANSFER VENUE**

THIS MATTER is before the Court by way of a Motion by the Defendant, MasTec North America, Inc. ("MasTec"), to Transfer Venue to the United States District Court for the Eastern District of Virginia, Richmond Division pursuant to 28 U.S.C. § 1404(a) (Docket Entry No. 5). The Plaintiff, Carolina Conduit Systems, Inc. ("Carolina Conduit"), does not oppose the Motion (Docket Entry No. 11). For the reasons that follow, the Motion is **GRANTED**.

This is a construction dispute involving a \$4 Million Dollar light rail project located in Norfolk, Virginia. The case was initially filed by Carolina Conduit in the Johnston County Superior Court. MasTec timely removed the case to this Court, answered and filed a Motion to Transfer Venue.

The contract between the Parties contains a Virginia choice of law provision and, further, provides the venue for any dispute between the Parties shall be either be the Chesterfield County, Virginia Circuit Court or the United States District Court for the Eastern District of Virginia, Richmond Division. The Court recognizes that N.C. Gen. Stat. § 22B-3 provides forum selection clauses contained in contracts entered into within the State of North Carolina are

ordinarily not enforceable. However, that state law is not dispositive of the instant motion. *Stewart Organization, Inc. v. Ricoh Corp.*, 487 U.S. 22 (1988) (recognizing that an Alabama statute invalidating forum selection clauses should neither be ignored nor dispositive, but simply one factor a federal court should take into consideration when conducting the Section 1404(a) analysis); *Scholl v. Sagon RV Supercenter, LLC*, 249 F.R.D. 230 (W.D.N.C. 2008) (reaching the same conclusion with respect to N.C. Gen. Stat. § 22B-3).

Under Section 1404(a) this Court must undertake an eleven factor analysis. *Jim Crockett Promotions, Inc. v. Action Media Group, Inc.*, 751 F. Supp 93, 96 (W.D.N.C. 1990) (setting forth the eleven factors); *see also Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947). In addition, this Court must examine the forum selection clause to see if there is any reason to disregard the presumption of validity it enjoys under federal law. *Allen v. Lloyd's of London*, 94 F.3d 923 (4th Cir. 1996).

Turning to the instant Motion, this Court has weighed the eleven factors under Section 1404(a) and examined the forum selection clause under *Allen*. This Court concludes the forum selection clause is valid as the product of an arm's length transaction between sophisticated commercial parties. Further, this Court is of the opinion that a transfer of venue is warranted on the Record before this Court. Militating chiefly in favor of that conclusion are the following: (1) the forum selection clause in the contract; (2) most, if not all, of the non-party witnesses in this case are outside the subpoena power of this Court; (3) many of those non-party witnesses are located in Virginia including representatives of the project owner and the City of Norfolk who are likely to be important witnesses in this case; (4) a Virginia court is the better choice to interpret matters of Virginia law; (5) requiring Carolina Conduit to litigate in the neighboring Commonwealth of Virginia would not result in grave inconvenience to it, particularly in light of

the fact it freely contracted to perform the work at issue in this case in Virginia; and (6) the Motion is unopposed by Carolina Conduit.

IT IS, THEREFORE, ORDERED ADJUDGED AND DECREED MasTec's Motion to Transfer Venue is **GRANTED** and this case is **TRANSFERED** to the United States District Court for the Eastern District of Virginia, Richmond Division for further proceedings.

IT IS SO ORDERED.

Dated: February 25, 2011

A handwritten signature in black ink that reads "Louise W. Flanagan". The signature is written in a cursive style with a large initial "L".

The Honorable Louise W. Flanagan
Chief United States District Judge