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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HAGENS BERMAN SOBOL SHAPIRO)	CASE NO. C09-0894 RSM
LLP,)	
)	
Plaintiff,)	ORDER DENYING DEFENDANTS’
)	MOTION TO DISMISS, TRANSFER, OR
v.)	STAY AND DENYING PLAINTIFF’S
)	MOTION FOR LEAVE TO COMMENCE
ERAN RUBINSTEIN and SUSAN M.)	DISCOVERY
BOLTZ RUBINSTEIN,)	
)	
Defendants.)	

I. INTRODUCTION

This matter comes before the Court on two motions: Defendants’ “Motion to Dismiss or, in the Alternative, to Transfer or Stay” (Dkt. #17), and Plaintiff’s “Motion for Leave to Commence Discovery and for Other Relief” (Dkt. #31). This matter is a contract dispute between Plaintiff Hagens Berman Sobol Shapiro LLC (“Hagens Berman”), and two individual defendants (the “Rubinsteins”) who were employed as “of counsel” at Hagens Berman to help the firm acquire new securities class action clients using their extensive contacts. The Rubinsteins were paid \$30,000 per month for 12 months. The relationship deteriorated after several months, eventually resulting in this suit filed June 30, 2009, in

1 which Hagens Berman alleges breach of contract, breach of duties of good faith and fair
2 dealing, and breach of fiduciary duty.

3 Hagens Berman moved for a preliminary injunction to, among other things, compel the
4 Rubinsteins to produce client contact information acquired during the “of counsel”
5 employment relationship and documents related to communications with those clients. The
6 Court granted the motion in substantial part (Dkt. #20) and the Rubinsteins appealed. That
7 appeal is still pending.

8 The Rubinsteins filed their own breach of contract action concerning the same set of
9 facts in Pennsylvania state court on July 9, 2009, a little more than a week after this suit was
10 filed. The Rubinsteins, in the motion presently before this Court, move to dismiss this case,
11 or in the alternative, transfer this case to Pennsylvania, or stay this case pending resolution of
12 the Pennsylvania case. The Pennsylvania Action was later removed to the Eastern District of
13 Pennsylvania. Hagens Berman, defendants in that action, filed a motion to dismiss, stay or
14 transfer that action to this Court. The Eastern District of Pennsylvania has suspended all
15 action in that case until this Court’s ruling on the present motion.

16 Presently, the Rubinsteins argue (1) this action should be dismissed because it was a
17 “preemptive strike” not deserving of first-to-file rule protection, (2) this court lacks personal
18 jurisdiction over them, (3) venue is not proper, and (4) this case should be transferred to
19 Pennsylvania. This Court DENIES Defendants’ Motion to Dismiss, Stay or Transfer, and
20 holds that jurisdiction and venue are proper, and this case should continue in the Western
21 District of Washington. The Court also DENIES Plaintiff’s Motion for Leave to Commence
22 Discovery for the reasons given below.

23 24 **II. MOTIONS TO STRIKE**

25 There are some housekeeping matters the Court must deal with before addressing the
26 pending motions. After the noting date for the Motion to Dismiss, Stay, or Transfer, and after
27 their reply was filed, the Rubinsteins filed an “update” to their motion notifying the Court of
28 a decision in the Central District of California relevant to the motion (Dkt. #34). This notice

1 of supplemental authority was improper first because it contained argument regarding the
2 case, and second because the case was decided *before* the Rubinstein’s filed their Motion to
3 Dismiss, Stay, or Transfer. Hagens Berman then filed a surreply (Dkt. #35) containing a
4 motion to strike, but then, perhaps feeling obligated to do so, improperly added argument
5 attempting to distinguish the Rubinsteins’ supplemental authority. This prompted the
6 Rubinsteins to file a surreply to the surreply (Dkt. #36), in violation of local rule CR 7(g),
7 with additional argument. All these filings are stricken for failure to comply with the local
8 rules.

9 Hagens Berman later filed an “update” informing this Court that the Pennsylvania
10 Action was suspended (Dkt. #39). This was proper because the filing only informed this
11 Court of the objective fact that the other action was stayed and attached the relevant order
12 from the Pennsylvania Action. The Rubinsteins then filed an “Update and Motion to Suspend
13 All Discovery Matters” (Dkt. #40). Hagens Berman moved to strike that filing (Dkt. #41) on
14 the grounds that if it is an update, it is cumulative of the prior update and contains
15 impermissible argument, and if it is a new motion, it is improperly noted and also cumulative
16 of the Motion for Leave to Commence Discovery (Dkt. #31) which was already fully briefed.
17 The Rubinsteins filed a response to Hagens Berman’s motion to strike (Dkt. #42) in which
18 they explained that their filing was not a request for a “stay of discovery” but was a request
19 for “suspension” of discovery, and “[a] request for ‘suspension’ has no legal efficacy, is not a
20 request to stay discovery, and requires no noting date.” (Dkt. #42 at 2).

21 The Court is aware of no rule explaining how a request for suspension of discovery “has
22 no legal efficacy” or why filings that have no legal efficacy should be permitted. When a
23 party makes a “request” for anything it should be in the form of a motion and needs to be
24 properly noted, this one was not. Thus the Court GRANTS Hagens Berman’s Motion to
25 Strike the filing at docket number 40. The Court also strikes docket number 42 since it was
26 an improper reply to a motion to strike. *See* Local Rule CR 7(g).

1 Here, the Rubinsteins purposefully availed themselves of the privileges of Washington
2 by signing an employment contract with a Washington-based law firm. They traveled to
3 Washington for preliminary meetings that led to the contract. They communicated with
4 Hagens Berman attorneys in Washington while performing the contract and were supervised
5 by a Hagens Berman attorney based in Washington. Finally, the Rubinsteins were paid from
6 Washington accounts. Since this lawsuit arose from the contract and the employment
7 relationship, the claims arise from these contacts.

8 Jurisdiction is also reasonable. The Rubinsteins, who reside in Pennsylvania, argue that
9 they cannot afford to litigate in Washington. This is simply not credible considering that both
10 Rubinsteins are licensed attorneys experienced in class action lawsuits and were recently paid
11 \$360,000 for one year's work. The fact that litigation in Washington might be inconvenient
12 does not make jurisdiction unreasonable. By signing an employment contract with a law firm
13 based in Washington, the Rubinsteins put themselves on notice that they might be haled into
14 a Washington court. Washington also has a strong interest in adjudicating the claims of one
15 of its resident businesses. *See Lake*, 817 F.2d at 1421-22 (listing reasonableness factors).
16 Thus jurisdiction is proper.

17 18 **C. Venue**

19 The federal venue statute, 28 U.S.C. § 1391, provides that in cases based solely on
20 diversity jurisdiction venue is proper, among other places, in “a judicial district in which a
21 substantial part of the events or omissions giving rise to the claim occurred.” 28 U.S.C.
22 § 1391(a)(2). In a contract action, courts look to where contract negotiations took place,
23 where the contract was signed, where performance occurred, where breach occurred, and
24 where the parties engaged in business. *Nordquist v. Blackham*, 2006 WL 2597931 (W.D.
25 Wash. 2006).

26 Here, the Rubinsteins personally visited Seattle on two occasions for preliminary
27 negotiations. Because the contract called for the Rubinsteins to make contacts and find
28 clients all over the world, it is not easy to pin down any specific place where the contract was

1 performed. However, it is noteworthy that in performing the contract, the Rubinsteins were
2 in constant communication with attorneys in Seattle. *See Schwarz v. Nat'l an Lines, Inc.*, 317
3 F. Supp. 2d 829, 834 (noting that telephone conversations and correspondence can support
4 “substantial part of events or omissions” venue). Furthermore, the major event prompting
5 this litigation was the Rubinstein’s refusal to provide potential client contact information to
6 Mr. Berman, because he allegedly attempted to negotiate contracts with clients the
7 Rubinsteins were seeking in Australia. Mr. Berman is the managing partner of Hagens
8 Berman working out of its Seattle office, thus all communications regarding the core events
9 leading to this suit went through Seattle. The Rubinsteins also filed a disciplinary action
10 against Mr. Berman with the Washington Bar. Hagens Berman alleges that the Rubinsteins
11 failed to disclose problems they had with other law firms, similar to the problems that
12 occurred here, and these omissions occurred, at least in part, in Seattle. Finally, this entire
13 case arises from an employment contract in which the Rubinsteins were to serve as “of
14 counsel” to a Seattle-based law firm, a factor which weighs in favor of venue in this district.
15 Given that a substantial part of the events and omissions leading to this contract dispute
16 occurred in Seattle, venue is proper in this district.

17 18 **D. Transfer**

19 The Rubinsteins request that this case be transferred to the Eastern District of
20 Pennsylvania. 28 U.S.C. § 1404(a) states that “[f]or the convenience of the parties and
21 witnesses, in the interest of justice, a district court may transfer any civil action to any other
22 district or division where it might have been brought.” Hagens Berman disputes whether
23 venue would be proper in the Eastern District of Pennsylvania. Given that the contract was
24 signed in Pennsylvania, the Rubinsteins worked pursuant to the contract at their home office
25 in Pennsylvania, and the correspondence between Hagens Berman and the Rubinsteins went
26 through Pennsylvania, venue is likely proper there based on the “substantial part” test.
27 However, the Court declines to transfer this case because the convenience of the parties and
28 witnesses and the interests of justice do not favor transfer.

1 In determining whether transfer is appropriate under § 1404(a), the Court must weigh
2 numerous factors, including: (1) the location where the relevant agreements or alleged events
3 in the lawsuit took place; (2) the state that is most familiar with the governing law; (3) the
4 plaintiff's choice of forum; (4) the respective parties' contacts with the forum, and the
5 relation of those contacts to the plaintiff's cause of action; (5) the difference in cost of
6 litigation in the two forums; (6) the availability of compulsory process to compel attendance
7 of non-party witnesses; and (7) the ease of access to sources of proof. *Jones v. GNC*
8 *Franchising, Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000). There is a presumption in favor of
9 plaintiff's choice of forum. *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1957); *Decker Coal*
10 *Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986). This presumption is
11 even stronger where, as here, the plaintiff brings suit in his home forum. *Piper Aircraft Co.*
12 *v. Reyno*, 454 U.S. 235, 255-56 (1981).

13 The Rubinsteins make no arguments regarding convenience of witnesses or location of
14 evidence. Their sole argument regarding transfer is that litigating in Washington would be
15 financially difficult for them. They assert that they have "absolutely no financial wherewithal
16 to acquire legal representation in Washington." (Dkt. 28 at 6). This argument is
17 unpersuasive given that both Rubinsteins are licensed class action attorneys whose services
18 are worth approximately \$360,000 per year, as evidenced by the contract at issue in this
19 case.¹ Furthermore, the Rubinsteins' suit in Pennsylvania seeks damages of \$10,000,000,
20 suggesting that they could obtain counsel on a contingency fee basis if those counterclaims
21 were brought in this court.

22 The Court also notes that "[i]mprovements in communication and transportation have
23 reduced much of the historical burden of litigation in a distant forum." *Decker Coal*, 805
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26 ¹ The Rubinsteins request an opportunity to present financial records to the
27 Court for in camera inspection. The Court declines. The Court has no
28 special expertise in financial matters, the records would not be subject to
cross examination, and there is no way to verify whether all relevant records
have been produced. Additionally, it would be unproductive to have a mini-
trial on the "inconvenience issue" at this stage.

1 F.2d at 841. Although some inconvenience still remains, transferring the case to
2 Pennsylvania would merely shift that inconvenience, not eliminate it.

3 The other relevant factors either tip slightly against transfer or are in equipoise. As
4 discussed above, this case arises from significant contacts with the Western District of
5 Washington. The parties have not made any arguments regarding convenience to witnesses
6 or location of evidence, and there is no reason to think Pennsylvania would be superior in this
7 regard. It is too early at this stage to know what law will govern the contract in dispute.
8 Accordingly, after all factors have been weighed, there is no reason to disrupt Hagens
9 Berman's choice of forum. The motion to transfer is DENIED.

10 11 **IV. PLAINTIFF'S MOTION TO COMMENCE DISCOVERY**

12 Hagens Berman moves the Court for leave to commence discovery and requests that the
13 Court order the Rubinsteins to participate in a Rule 26(f) Conference within three days of this
14 order. A Rule 26(f) conference is to be held "as soon as practicable." Fed. R. Civ. Proc.
15 26(f)(1). The Rubinsteins have declined to commence discovery on the grounds that it is not
16 practicable because discovery might not be necessary if this case were dismissed or
17 transferred. Because the Court has denied the Rubinsteins' Motion to Dismiss, Transfer, or
18 Stay, this claimed impediment no longer exists.

19 The Court declines to set a three day deadline since there is no evidence that the
20 Rubinsteins will delay discovery now that it is beyond doubt this case will continue in this
21 Court. Such a rigid deadline is not warranted. However, the Court sees no reason why it is
22 not practicable to hold a conference at this time, and is therefore confident the parties will
23 commence discovery shortly in accordance with the Federal Rules of Civil Procedure. No
24 sanctions are warranted at this time, but as always, the Court may impose sanctions on any
25 party who obstructs the discovery process in the future.

1 **V. CONCLUSION**

2 Having reviewed the relevant pleadings, the declarations and exhibits attached thereto,
3 and the remainder of the record, the Court hereby finds and ORDERS:

4 (1) Defendants' Motion to Dismiss, Transfer, or Stay (Dkt. #17) is DENIED.

5 (2) Plaintiff's Motion for Leave to Commence Discovery (Dkt. #31) is DENIED.

6 (3) Docket Entries 34, 35, 36, 40, and 42 are STRICKEN for failure to comply with
7 local rules.

8 (4) The Clerk is directed to forward a copy of this Order to all counsel of record.

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10 DATED this 22nd day of October, 2009.

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13 RICARDO S. MARTINEZ
14 UNITED STATES DISTRICT JUDGE
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