

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

INTERNATIONAL PACKAGING
CORPORATION d/b/a
INTERNATIONAL DISPLAY CO.
Plaintiff

v.

ACRILEX, INC.
Defendant

C.A. No. 91-382L

MEMORANDUM AND ORDER

RONALD R. LAGUEUX, Chief Judge.

This matter is presently before the Court on defendant Acrilex, Inc.'s motion to transfer this case to the United States District Court for the District of New Jersey pursuant to the federal change of venue statute, 28 U.S.C. § 1404(a). Plaintiff brought this suit claiming damages for breach of contract and breach of express and implied warranties in connection with allegedly defective acrylic sheets sold to plaintiff by defendant. For the reasons given below, this Court finds that transfer is not appropriate in this case, and therefore defendant's motion is denied.

I. Introduction

Plaintiff International Packaging Corporation is a Rhode Island corporation located in Pawtucket, Rhode Island. One of its divisions, International Display Company, agreed in the latter part of 1989 to manufacture jewelry display cases for Liz Claiborne Jewelry, a new company formed by Liz Claiborne, Inc. to sell its jewelry line in stores throughout the United States.

Liz Claiborne provided International Display with certain specifications for the display cases, calling for the use of acrylic plastic with a matte white pearlescent finish.

International Display approached defendant Acrilex to manufacture these sheets. Acrilex is a New Jersey corporation which manufactures customized acrylic sheets at its factory in New Jersey. After numerous telephone calls and correspondence, and two visits by the president of Acrilex to International Display's plant in Pawtucket, International Display and Acrilex agreed that Acrilex would supply the acrylic sheets.

International Display incorporated the acrylic sheets supplied by Acrilex into display cases for Liz Claiborne Jewelry, and the cases were distributed to over 500 department stores throughout the United States. However, within several weeks of their delivery to the stores there were complaints that the display cases were warping. International Display contends that the warping was due to defects in the acrylic sheets provided by defendant.

Liz Claiborne claimed damages from International Display, and that claim was settled. International Packaging Corporation has now brought this action against Acrilex for breach of contract and breach of express and implied warranties under the Uniform Commercial Code.

Acrilex filed a motion seeking a transfer of venue pursuant to 28 U.S.C. § 1404(a), arguing that defendant's location in New Jersey and the presence of Liz Claiborne witnesses in New York.

City, within the subpoena power of the United States District Court for the District of New Jersey, makes that court a more convenient venue for this action. On September 29, 1992, this Court heard oral argument on the motion, and took the matter under advisement. It is now in order for decision.

II. Discussion

Defendant makes its motion pursuant to 28 U.S.C. § 1404(a), which provides:

For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

There is no question that this action might have been brought in the District of New Jersey, the home state of defendant.

Diversity actions may be brought in any of the following forums:

- (1) a judicial district where any defendant resides, if all defendants reside in the same State,
- (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or
- (3) a judicial district in which the defendants are subject to personal jurisdiction at the time the action is commenced.

28 U.S.C. § 1391(a).

Transfer may be appropriate if a defendant can establish that the balance of convenience weighs strongly in their favor. The Supreme Court has stated that "unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed." Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508, 67 S.Ct. 839, 843, 91 L.Ed. 1055 (1947). Furthermore,

"there is ordinarily a strong presumption in favor of the plaintiff's choice of forum, which may be overcome only when the private and public interest factors clearly point towards trial in the alternative forum." Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255, 102 S.Ct. 252, 70 L.Ed.2d 419 (1981). The Court identified those private and public interest as follows:

The factors pertaining to the private interests of the litigants include the "relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive." The public factors bearing on the question include the administrative difficulties flowing from court congestion; the "local interest in having localized controversies decided at home"; the interest in having the trial of a diversity case in a forum that is at home with the law that must govern the action; the avoidance of unnecessary problems in conflict of laws, or in the application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty.

454 U.S. at 241 n.6 (quoting Gilbert, 330 U.S. 501, 508-9 (1947)). Although the Gilbert/Piper Aircraft analysis was formulated to address the issue of forum non conveniens, the same factors apply when a court is deciding a motion to transfer. Paradis v. Dooley, 774 F.Supp. 79, 82 (D.R.I. 1991); Ryan Klimek, Ryan Partnership v. Royal Ins. Co., 695 F. Supp. 644, 646 (D.R.I. 1988).

Defendant claims that plaintiff's choice of forum is entitled to less than the usual weight in the circumstances of this case because "the operative facts of the case have no material connection with the district." That contention is

clearly without merit. A plaintiff's choice of forum is generally given great weight when it chooses a forum in the district in which it resides. Ryan, Klimek, Ryan, 695 F. Supp. at 647. Furthermore, the facts of this case show significant connections to this state. The contract in question was made through a number of telephone conversations between plaintiff in Rhode Island and defendant in New Jersey, defendant's president came to Rhode Island during these negotiations, the acrylic sheets were shipped to plaintiff in Rhode Island, and plaintiff's manufacturing process occurred here. This district is a reasonable forum for this action, and transfer is appropriate only if defendant can make a strong showing of inconvenience. Id.

Examining the Piper Aircraft factors, the Court concludes that defendant has failed to meet that burden. First, defendant has failed to show that it is significantly more inconvenienced by trying this action in Rhode Island than plaintiff would be by trying it in New Jersey. Although plaintiff does maintain an office in New York City, that office is staffed solely by one part-time salesman, and will not reduce in any way the cost in travel, lodging or lost work time involved in bringing plaintiff's employees from plaintiff's principal place of business in Rhode Island to New Jersey. Defendant also asserts that plaintiff is a larger company, employing nine hundred people in comparison to defendant's thirty-five, and thus has greater financial ability to pursue an action in a distant forum.

Although relative financial strength may be a factor in venue determinations, Sorrels Steel Co. v. Great Southwest Corp., 651 F.Supp. 623, 631 (S.D. Miss. 1986), it is important primarily where there is a serious question as to the financial ability of a party to appear in the alternate forum. See Aquatic Amusement Assoc., Ltd. v. Walt Disney World Co., 734 F.Supp. 54, 59 (N.D.N.Y. 1990) (relative financial hardship of a particular venue usually a factor only where an individual is suing a large corporation); Sorrels Steel, 651 F.Supp. 623 (defendant's motion to transfer denied where plaintiff claimed it was not able to bear cost and delay of trial in alternate forum); Actmedia, Inc. v. Ferrante, 623 F.Supp. 42, 43 (S.D.N.Y. 1985) (defendant's motion to transfer to District of Oregon granted where "necessity of defending this litigation in New York could bring ruin to defendant" and plaintiff operated nationwide). In short, the relative inconvenience to the parties in this case is approximately equal, and this Court will not transfer to shift the inconvenience from one party to another. See Heller Fin. Inc. v. Midwey Powder Co., 883 F.2d 1286 (7th Cir. 1989); Seagoing Uniform Corp. v. Texaco, Inc., 705 F.Supp. 918 (S.D.N.Y. 1989).

Defendant has also failed to carry its burden of showing that the convenience of the non-party witnesses supports transfer to the District of New Jersey. Defendant correctly notes that the convenience of non-party witnesses is an especially important factor in a motion to transfer, Aquatic Amusements Assoc., 734

F.Supp. at 57, and that transfer is often appropriate when it will ensure the availability of process to compel the attendance of unwilling witnesses. See Austin v. International Brotherhood of Teamsters, 739 F.Supp. 206 (S.D.N.Y. 1990) ("[I]n many situations, the unavailability of compulsory attendance of . . . key witnesses is a compelling reason to transfer."). Defendant asserts that the majority of significant non-party witnesses are associated with Liz Claiborne in Manhattan, and thus would be within the compulsory process of the New Jersey District Court. However, plaintiff identifies a number of witnesses that are or were associated with the jewelry division of Liz Claiborne, located in Rhode Island, and who currently live in this state. Those witnesses are within the subpoena power of this Court, and could not be compelled to testify in the District of New Jersey.

Defendant does provide a longer list of potential witnesses located in the New York/New Jersey area, approximately eighteen as opposed to three witnesses in Rhode Island identified by plaintiff. However, there has been no showing that each of these witnesses is actually significant to the instant case. Defendant simply asserts that, as a group, "these witnesses were closely involved with the design and testing of the completed display product, and its ultimate success or failure in the marketing field. It is they who will testify regarding the actual performance of the product and the alleged damages resulting therefrom." Defendant has not specified the testimony expected to be offered by the individual witnesses. In fact, there is no

indication that more than one of these witnesses will need to be called to elicit this information. A motion to transfer will not be decided on the outcome of a contest as to which party can produce a longer list of potential witnesses in their respective districts. 15 Wright & Miller, Federal Practice and Procedure, § 3851, at 425 (1986). Without a showing that there are a significantly greater number of witnesses with material testimony in the alternate district, defendant has failed to carry its burden of demonstrating that the convenience of the witnesses favors transfer. See Sorreles Steel, 651 F.Supp. at 629 ("The party seeking a transfer must clearly specify the key witnesses and make a general statement of what their testimony will cover.")

Defendant also asserts that transfer to the District of New Jersey would allow a jury view of its factory. The Court is not convinced that a jury view is significant in this case. See 15 Wright & Miller, Federal Practice and Procedure, § 3854, at 462 (1986) ("It seems unrealistic to regard [the possibility of a jury view] as a matter of importance save in the most exceptional circumstances."). Furthermore, the remaining acrylic sheets and sample display cases are being stored in Rhode Island. Access to documentary proof seems to be about equal in the two forums, since both parties possess significant documents, and documents held by Liz Claiborne may be stored at Liz Claiborne in New York or Liz Claiborne Jewelry in Rhode Island. For these reasons,

defendant has completely failed to demonstrate that the private factors justify transfer to the District of New Jersey.

Examination of the public factors also reveals that the District of Rhode Island is as appropriate a forum for this action as the District of New Jersey. Defendant's contention that Rhode Island has no significant contact with this action is clearly mistaken. Rhode Island has a clear interest in deciding the liability of foreign manufacturers who cause injury within its borders. Cf. Paradis v. Dooley, 774 F.Supp. at 82 ("Rhode Island . . . has a strong public interest in seeing that a complaint by a resident corporation against foreign legal counsel is adequately resolved.").

Defendant also asserts that this matter should be transferred in order to allow the New Jersey law at issue to be applied by a court more familiar with that law. However, it is far from clear that New Jersey law would be applied in this case. The question of which law to apply would be decided under Rhode Island conflicts principles even if this action were to be transferred. Van Dusen v. Barrack, 376 U.S. 612, 639, 84 S.Ct. 805, 11 L.Ed.2d 945 (1964). If any preference is to be given for familiarity with the law to be applied, this Court is certainly more familiar with the Rhode Island conflict of law rules than the New Jersey Court. Furthermore, the Court is confident that it is capable of handling whichever state's version of the

Uniform Commercial Code that it finally concludes is applicable to this case.

Finally, the Court finds that there are no administrative reasons to transfer this matter, as the Court's calendar is current.

III. Conclusion and Order

For the reasons stated above, defendant's motion for change of venue is hereby denied.

It is so ordered.



Ronald R. Lagueux
Chief Judge
December 16, 1992