

EXHIBIT H

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

UNITED STATES OF AMERICA, THE]
STATES OF CALIFORNIA, DELAWARE,]
FLORIDA, GEORGIA, HAWAII, ILLINOIS,]
INDIANA, IOWA, MASSACHUSETTS,]
MINNESOTA, MONTANA, NEVADA,]
NEW JERSEY, NEW MEXICO, NEW YORK,]
NORTH CAROLINA, RHODE ISLAND,]
TENNESSEE, VIRGINIA, AND THE]
DISTRICT OF COLUMBIA,]

Civil Action No.: 3:13cv1223

Plaintiffs,]

Ex rel. LAURENCE SCHNEIDER,]

Plaintiff-Relator,]

v.]

J.P. MORGAN CHASE BANK, NATIONAL]
ASSOCIATION, J.P. MORGAN CHASE &]
COMPANY, and CHASE HOME]
FINANCE LLC,]

Defendants.]

MEMORANDUM IN SUPPORT OF MOTION TO TRANSFER VENUE

I. Introduction

Plaintiff-Relator Laurence Schneider (hereinafter “Relator”) filed this False Claims Act case under seal on behalf of the United States of America and the states of California, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Massachusetts, Minnesota, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, Rhode Island, Tennessee, Virginia, and the District of Columbia on May 6, 2013. Between January 13, 2014 and January 16, 2014, the United States of America and the remaining states filed documents declining to intervene in this matter. On January 23, 2014, this Court unsealed the action and directed that Relator serve the

Complaint. (Dkt. Doc. No. 39.) The Court extended the service deadline until May 27, 2014. (Dkt. Doc. No. 54.) Relator has served his Complaint in compliance with the Court's directives and now seeks an Order transferring this action to the United States District Court for the District of Columbia and makes this motion in the interests of justice.

II. Factual Background

As set forth in the Complaint, in April, 2012, the United States District Court for the District of Columbia approved a settlement between the Federal Government, the States, the Defendants and other banks, which resulted in a consent judgment (the "Consent Judgment" or "Agreement"). The Consent Judgment contains, among other things, Consumer Relief provisions. The Consumer Relief provisions require Defendants to provide over \$4 billion in consumer relief in the form of loan forgiveness and refinancing. Under the Consumer Relief provisions of the Consent Judgment, Defendants receive "credits" towards its Consumer Relief obligations by forgiving or modifying loans that they service. (Complaint ¶ 4.) These credits offset or reduce Defendants' financial obligations to the United States pursuant to the Consent Judgment (Complaint ¶¶ 30-32.).

Before entering into the Consent Judgment, Defendants, eager to get distressed assets off its books, sold a significant amount of its mortgage obligations to avoid the burden of bad publicity associated with the residential foreclosure process. Between 2006 and 2010, Relator bought the rights to thousands of mortgages owned and serviced by Chase. Numerous borrowers with mortgages Chase had sold to the Relator received loan forgiveness letters from Chase. Relator is aware that some 48,000 loan forgiveness letters were sent to consumers between September 13, 2012 and January 31, 2013, notifying consumers that pursuant to the national mortgage settlement agreement, they were discharged from their obligations to make further

payments on the mortgage, which Defendants had forgiven. These loans were not individually reviewed by Defendants to ensure they actually owned the mortgages, but instead were “robo-signed” by “Patrick Boyle” who identified himself as a Vice-President at Chase. (Complaint ¶ 4.) Because Defendants did not own the loans previously purchased by Relator and others included in the 48,000 loans receiving forgiveness letters between September 13, 2012 and January 31, 2013, Defendants were not entitled to claim those loans for credit towards loan forgiveness and offset its financial obligation towards the United States. (Complaint ¶ 5.)

Relator filed this action asserting this Court had subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 31 U.S.C. § 3732. Venue remains proper in this district pursuant to 31 U.S.C. § 3732(a) because Defendants transacted business that is the subject matter of this lawsuit in the District of South Carolina and that numerous acts proscribed by 31 U.S.C. § 3729 occurred in the District of South Carolina. Relator, who now stands in the shoes of the United States, now seeks to transfer this action to the United States District Court for the District of Columbia and seeks to have this action marked as related to the national mortgage settlement, United States v. Bank of America, 12cv361-RMC, pending before the Honorable Rosemary M. Collyer. In the Consent Judgment, attached as Exhibit A to this Motion (without corresponding attachments), Judge Collyer retained jurisdiction to enforce the terms of the settlement agreement. (Exhibit 1 at 6, ¶ 13.) Because the Consent Judgment was entered in the District of Columbia and because the parties to the Consent Judgment, including the United States, must seek to enforce the Consent Judgment before Judge Collyer, Relator seeks transfer of this action pursuant to 28 U.S.C. § 1404(a).

III. Argument

A. As an initial matter, this Court may transfer venue to the District of Columbia because venue is proper there.

In deciding a Motion to Transfer Venue, a Court must first determine whether the transferee forum is a proper venue. 28 U.S.C. § 1404(a); Fairchild Semiconductor Corp. v. Nintendo Co., Ltd., 810 F. Supp., 173, 174 (D.C.C. 1992). This case could have been brought properly in the District of Columbia because that is where the Consent Judgment, from which the alleged False Claims Act violations flow, was entered into in the District of Columbia before the Judge Collyer. Accordingly, this Court may properly transfer this case to the District of Columbia.

B. This action would more conveniently proceed and the interests of justice would be better served by transfer to the District of Columbia.

28 U.S.C. § 1404(a) permits the transfer of a case to a more convenient forum, even though venue is proper in the forum where the action was commenced. Wright v. American Flyers Airline Corp., 263 F. Supp. 865, 867 (D.S.C. 1967). The burden of proof upon a movant pursuant to section 1404 need not rise to the level of the burden by the common law doctrine of *forum non-conveniens*. Piper Aircraft Co. v. Reyno, 454 U.S. 235, 253, 102 S. Ct. 252, 265, 70 L. Ed. 2d 419 (1981); DeLay & Daniels, Inc. v. Allen M. Campbell Co. General Contractors, Inc., 71 F.R.D. 368 371 (D.S.C. 1976). Thus, the District Court has more discretion to transfer than dismissing for *forum non-conveniens*. This Court is vested with broad and liberal discretion to transfer venue pursuant to 28 U.S.C. § 1404(a) and must consider all relevant factors to determine whether the litigation would be best suited in an alternative forum. DeLay & Daniels, Inc., 71 F.R.D. at 372.

The following factors generally are considered in determining whether to transfer venue pursuant to section 1404(a): (a) convenience of the parties; (b) convenience of the witnesses; (c) the location of operative events; (d) the location of documents and/or evidence; (e) the plaintiff's

choice of forum; and (f) the interests of justice. DeLay & Daniels, Inc., 71 F.R.D.at 372. These factors support transfer to the District of Columbia.

1. The convenience of the parties favors transferring this action to the District of Columbia.

The convenience of the parties is an important consideration in determining whether to grant a transfer of venue request. Penntube Plastics Co. v. Fluorotex, Inc., 336 F. Supp. 698, 705-707 (D.S.C. 1970). Here, this action is based on the Defendants' alleged violation of the Consent Judgment entered by Defendants before the United States District Court for the District of Columbia. Defendants will not be inconvenienced by transfer as they already submitted to the jurisdiction of that Court for any potential violations of the Consent Judgment. Relator, who for all intents and purposes, is the federal government, also will not be inconvenienced, as the United States of America also consented to the jurisdiction of that Court for potential violations of the Consent Judgment.

2. All or almost all of the anticipated key witnesses, including the Court-Appointed Monitor, reside outside the State of South Carolina and beyond this Court's subpoena power.

The convenience of the witnesses has been declared "the most powerful factor governing the decision to transfer a case." In re Eastern District Repetitive Stress Injury Lit., 850 F. Sup. 188, 194 (E.D.N.Y. 1994); Bennett v. Bally Manufacturing Corp., 785 F. Supp. 559, 562-63 (D.S.C. 1992). In the present case, this factor weighs in favor of transfer. Although most of the witnesses will likely be from Defendants' corporate offices in New York, Ohio, and New Jersey, the Settlement Monitor, Joseph A. Smith, maintains his office in Raleigh, North Carolina. He will likely be a key witness, and although he is beyond the subpoena power of this Court, his filings before the District of Columbia pursuant to the Consent Decree make him subject to being called as a witness before that Court. None of the key witnesses reside in South Carolina to

Relator's knowledge. With the Monitor being a critical witness to establish the submission of fraudulent claims, this factor weighs in favor of transfer to the District of Columbia.

3. Many of the operative events giving rise to this action occurred in the District of Columbia.

The location of operative facts that give rise to the litigation also is relevant in determining whether a change of venue is warranted. Bridgeman v. Bradshaw, 405 F. Supp. 1004, 1007 (D.S.C. 1975). Relator has set forth facts that establish the basis for the false claims in that the claims are purported violations of the Consent Judgment and the submission to the Monitor, who in turn filed reports to the District of Columbia, constitute a substantial portion of the operative facts occurring in the District of Columbia. As set forth in the Complaint, operative facts took place throughout the United States. The reports of the Monitor, however, make the District of Columbia a more appropriate forum than the District of South Carolina under this factor.

4. The location of documents and evidence in this action likely is a neutral factor in transfer.

The location of the documents which must be used or produced by the parties in this case must be considered. DeLay & Daniels, 71 F.R.D. at 371. Here, the documents and data are predominately electronic, making this a neutral consideration regarding transfer.

5. Relator's choice of forum, based upon the initial venue of the Syzmoniak¹ case is no longer entitled to deference, as Relator now represents the United States, as the United States is the real party in interest.

While a plaintiff's choice of forum generally is given deference, the significance of that choice is attenuated in a representative action. See In re Warrick, 70 F.3d 736, 741 n. 7 (2d Cir. 1995)(for purposes of deciding a motion for change of venue, plaintiff's choice of forum is less

¹ Relator's prior counsel was counsel in Syzmoniak and made the ultimate decision to file in South Carolina as related to that matter.

significant in class action as opposed to an individual action.) Like the class being the real party in interest in In re Warrick, the “United States is the real party in interest in any False Claims suit, even where it permits a *qui tam* relator to pursue the action on its behalf.” United States ex rel Milam v. Univ. of Tex. M.D. Anderson Cancer Ctr., 961 F.2d 46, 50 (4th Cir. 1992). Because the Government consented to the District of Columbia to have enforcement over the Consent Judgment, transfer to the District of Columbia is most appropriate in this regard.

6. The interests of justice would be better served if this action was transferred to the District of Columbia.

Here, the United States declined to intervene, making Relator’s allegations that Defendants violated the Consent Judgment left to the prosecution by Relator. In this regard, the familiarity of the District of Columbia with the Consent Judgment, including its terms and the filings of the Monitor, make the District of Columbia the forum that best serves the interests of justice. Moreover, transfer is also in the interests of judicial economy, as the District of Columbia is intimately familiar with the Consent Judgment, the settlement procedures, and the filings of the Monitor. This Court has held that the venue considerations of diversity actions include the forum state’s familiarity with the state law to be applied. Yeager v. Maryland Casualty Co., 868 F. Supp. 141, 143 (D.S.C. 1994). While not completely analogous, the District of Columbia’s familiarity with the Consent Judgment and related filings that Relator contends was violated causing harm to the public fisc weighs in favor of transfer. Accordingly, the interests of justice would be better served by transferring this action.

C. To the extent the Court questions whether it has subject matter jurisdiction, transfer is appropriate pursuant to 28 U.S.C. § 1631.

Relator does not concede that this Court is without subject matter jurisdiction, as this Court has subject matter pursuant to 28 U.S.C. § 1331. However, to the extent that the Court

considers the Consent Judgment to deprive it of subject matter jurisdiction, section 1631 permits transfer to the District of Columbia in the interests of justice. In Grimsley v. United Engineers and Constructors, Inc., 818 F. Supp 147, 149 (D.S.C. 1993), this Court concluded that transfer under section 1631 was in the interests of justice where the Court lacked subject matter jurisdiction and dismissal would result in the Plaintiff's case being barred by the statute of limitations. Specifically, the Court examined the statute of limitations in Pennsylvania and determined that dismissal for lack of subject matter jurisdiction would result in the action being barred by the applicable statute of limitations. The Court found that dismissal "would be a tremendous prejudice to Grimsley. Therefore, the court finds that a transfer would be in the interests of justice." Grimsley, 818 F. Supp, at 149.

In the case *sub judice*, dismissal and refiling in the District of Columbia could result in dismissal arguments as to whether the public disclosure of the Complaint would bar the action. Like in Grimsley, dismissal would prejudice Relator and would be against the interests of justice. Thus, if the Court determines that the Consent Judgment deprives it of subject matter jurisdiction, then transfer pursuant to section 1631 is in the interests of justice.

IV. Conclusion

For the reasons set forth herein, Relator's Motion to Transfer Venue should be granted. This Court should transfer this action to the United States District Court for the District of Columbia.

RESPECTFULLY SUBMITTED, this 27th day of May, 2014.

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