

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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MARK MCCRAW,

Plaintiff,

MEMORANDUM AND ORDER

v.

06-C-0086-S

LINDA S. MENSCH, LINDA S. MENSCH, P.C.,  
and ILLINOIS STATE BAR ASSOCIATION  
MUTUAL INSURANCE COMPANY,

Defendants.

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Plaintiff Mark McCraw commenced this action in Dane County Circuit Court for monetary relief against defendants Linda S. Mensch, Linda S. Mensch, P.C., and the Illinois State Bar Association Mutual Insurance Company alleging: (1) negligence; (2) strict responsibility misrepresentation; and (3) negligent misrepresentation. Defendants removed this action pursuant to 28 U.S.C. §§ 1441, 1446 citing 28 U.S.C. § 1332 as grounds for removal. The matter is presently before the Court on defendants' motion to transfer venue to the United States District Court for the Eastern District of Wisconsin pursuant to 28 U.S.C. § 1404(a). The following facts relevant to defendants' motion to transfer venue are those most favorable to plaintiff.

BACKGROUND

Plaintiff Mark McCraw is a Wisconsin resident. Defendant Linda S. Mensch is a resident of Illinois and defendant Linda S. Mensch, P.C. an Illinois professional service corporation with its

principal place of business in Chicago, Illinois. Defendant Illinois State Bar Association Mutual Insurance Company is a mutual insurance company that provides professional liability insurance to attorneys practicing in the State of Illinois.

Plaintiff served as personal manager for the rock band known as the BoDeans from on or about 1986-2003; alleging that in 1986 he formed a music publishing company known as Lla-Mann for the purpose of owning copyrights to all the BoDeans' songs. Plaintiff asserts that he formed Lla-Mann along with Kurt Neumann (hereinafter Neumann) and Samuel Llanas (hereinafter Llanas) who were both singers and songwriters for the BoDeans. Plaintiff further alleges that he served as an administrative partner in Lla-Mann from its inception in 1986 through approximately May of 2003; alleging that he was a shareholder in the corporation known as Keshaw, Inc. which was formed in 1985 for the purposes of touring and promoting the BoDeans. Neumann and Llanas were also shareholders in the Keshaw, Inc. corporation. Keshaw, Inc. and Lla-Mann are both headquartered in Milwaukee, Wisconsin and plaintiff is listed as the registered agent for Lla-Mann with the Wisconsin Department of Financial Institutions.

Defendant Linda S. Mensch (hereinafter Mensch) is an entertainment law attorney and member of the Illinois State Bar. She formed defendant Linda S. Mensch, P.C. (hereinafter Mensch, P.C.) focusing on entertainment and media transactions. Plaintiff

alleges defendants Mensch and Mensch, P.C. represented and advised him and the BoDeans cpmcermomg various business affairs including the formation of Lla-Mann and Keshaw, Inc.

BoDeans terminated plaintiff as its manager in 2003 and a dispute subsequently arose concerning his rights. Part of the dispute involved the scope of plaintiff's rights and interests under the Lla-Mann partnership. Accordingly, Neumann and Llanas commenced an action against plaintiff in Milwaukee County Circuit Court entitled Kurt Neumann et al. v. Mark McCraw et al. case number 03-CV-8195 which was tried to a jury in 2005. Plaintiff alleges he suffered damages as a result of the orders and judgments entered in said action.

On or about January 20, 2006 Neumann, Llanas, and Keshaw, Inc. commenced an action against these defendants in Milwaukee County Circuit Court (Milwaukee action) alleging: (1) legal malpractice; (2) breach of fiduciary duty; and (3) theft. The allegations set forth in said action arise from the same series of transactions that plaintiff alleges occurred in this action. Defendants removed the Milwaukee action to the United States District Court for the Eastern District of Wisconsin on or about February 21, 2006 where it has been assigned case number 2006-C-217. On or about March 6, 2006 plaintiffs filed a motion to remand the Milwaukee action which is currently pending in the United States District Court for the Eastern District of Wisconsin.

# MEMORANDUM

Defendants argue that this action should be transferred to the United States District Court for the Eastern District of Wisconsin where it can be consolidated with the aforementioned action. Defendants assert that the potential for inconsistent results exist because both pending actions involve the same defendants and arise from the same series of transactions. Accordingly, defendants argue transfer is warranted pursuant in the interest of justice under 28 U.S.C. § 1404(a).

Plaintiff argues defendants' motion to transfer venue should be denied because they have failed to establish that the convenience of the parties and witnesses require a transfer, especially considering the fact that plaintiff resides in Madison located in the Western District of Wisconsin. Additionally, plaintiff asserts the interest of justice factor weighs against transfer because: (1) there is no assurance that this action would be consolidated with the action pending in the Eastern District; and (2) a motion to remand the Milwaukee action has been filed in the Eastern District of Wisconsin which if granted would undermine any justification for transfer.

A district court may transfer any civil action "to any other district or division where it might have been brought" where convenient to the parties and witnesses and is in the interest of justice. 28 U.S.C. § 1404(a). There is no question that this

action might have been brought in the United States District Court for the Eastern District of Wisconsin. Accordingly, the Court's inquiry focuses solely on "the convenience of parties and witnesses, in the interest of justice." Id.

In deciding to transfer the Court must consider all circumstances of the case using the three statutory factors as place holders in its analysis. Coffey v. Van Dorn Iron Works, 796 F.2d 217, 219 (7<sup>th</sup> Cir. 1986) (citations omitted). Defendants bear the burden to establish by reference to particular circumstances that the transferee forum is clearly more convenient. Id. at 219-220 (citations omitted). Defendants have met this burden.

#### **A. Convenience of the parties**

Plaintiff resides in Madison, Wisconsin. Defendant Mensch resides in Chicago, Illinois. Defendant Mensch, P.C. is an Illinois professional service corporation with its principal place of business in Chicago, Illinois. Finally, defendant Illinois State Bar Association Mutual Insurance Company has its principal place of business in Chicago, Illinois. Accordingly, the Western District of Wisconsin is plaintiff's home forum which demonstrates that it is clearly more convenient for him to litigate this action in Milwaukee. However, neither the Western District of Wisconsin nor the Eastern District of Wisconsin is the home forum of any defendant and they do not argue that it would be less convenient for them to litigate this action in Madison rather than Milwaukee. The convenience of the parties factor weighs against transfer.

## **B. Convenience of the witnesses**

Live testimony cannot be compelled when third party witnesses are distant from the forum court. Merrill Iron & Steel, Inc. v. Yonkers Contracting Co., Inc., No. 05-C-104-S, 2005 WL 1181952 at 3 (W.D.Wis. May 18, 2005). Accordingly, the existence of such witnesses is frequently an important consideration in a transfer motion analysis. Id. However, the party seeking a transfer must clearly specify the key witnesses it intends to call and it must make a general statement of their testimony. Heller Fin., Inc. v. Midwey Powder Co., Inc., 883 F.2d 1286, 1293 (7<sup>th</sup> Cir. 1989) (citations omitted).

Defendants indicate that both this action and the Milwaukee action pending in the Eastern District will require testimony concerning transactions involving Keshaw, Inc. and Lla-Mann as well as plaintiff's management contract and his termination in May of 2003. Plaintiff concedes that members of the BoDeans (Neumann and Llanas) are potential non-party witnesses. According to the amended complaint filed in the Milwaukee action Neumann resides in Austin, Texas while Llanas resides in Glendale, Wisconsin. Neumann is not subject to compulsory process in either the Western or the Eastern Districts of Wisconsin. However, the Eastern District of Wisconsin is Llanas' home forum and while he is also subject to compulsory process in the Western District of Wisconsin it would be clearly more convenient for him to testify in his home forum.

Accordingly, the convenience of non-party witnesses is best served by transferring this action to the Eastern District of Wisconsin.

### **C. Interest of Justice**

The factors considered in an "interest of justice" analysis relate to "the efficient administration of the court system" not to the merits of the underlying dispute. Coffey, at 221. Accordingly, this factor does not concern the private interests of the litigants. Fondrie v. Casino Res. Corp., 903 F.Supp. 21, 24 (E.D.Wis. 1995) (citing Espino v. Top Draw Freight Sys., Inc., 713 F.Supp. 1243, 1245 (N.D.Ill. 1989)). However, the interest of justice factor may often be determinative in a particular case. See Coffey, at 220.

Plaintiff asserts that the relative speed of this Court's docket favors retaining the action in this District. As a general rule a plaintiff's choice of forum is entitled to substantial weight. See Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255, 102 S.Ct. 252, 265-266, 70 L.Ed.2d 419 (1981), *reh'g denied*, 455 U.S. 928, 102 S.Ct. 1296 (1982). Additionally, the relative speed with which an action may be resolved is an important consideration when selecting a venue. Parsons v. Chesapeake & O. Ry. Co., 375 U.S. 71, 73, 84 S.Ct. 185, 187, 11 L.Ed.2d 137 (1963). However, plaintiff's choice of forum can be overcome by a showing that other considerations outweigh the choice of the forum factor. Wausau Benefits, Inc. v. Liming, 393 F.Supp.2d 713, 717 (W.D.Wis. 2005). Such considerations exist in this action.

Related litigation involving the same defendants is currently pending before the United States District Court for the Eastern District of Wisconsin. Although the plaintiffs involved in the action pending before the Eastern District are different from the plaintiff involved in this action the underlying issues are essentially the same in each dispute. Related litigation should be transferred to a forum where consolidation is feasible. Coffey, at 221 (citations omitted). Additionally, permitting two cases involving the same issues to continue in separate districts leads to "the wastefulness of time, energy and money that § 1404(a) was designed to prevent." Cont'l. Grain Co. v. The FBL-585, 364 U.S. 19, 26, 80 S.Ct. 1470, 1474, 4 L.Ed.2d 1540 (1960). Accordingly, the efficient administration of the court system is best served by transferring this action to the Eastern District of Wisconsin a district already familiar with the underlying dispute and the defendants involved.

Plaintiff argues that the interest of justice would not be served by transferring this action because: (1) there is no assurance that the cases would be consolidated in the Eastern District; and (2) there is a motion to remand pending in the Milwaukee action which if granted would undermine defendants justification for transfer. It is not for this Court to speculate whether the United States District Court for the Eastern District of Wisconsin will consolidate this action with the one it has



pending before it or if it will grant plaintiffs' motion to remand. That is for the learned court in the Eastern District to determine. Should the district court grant plaintiffs' motion to remand this Court would continue to preside over the current dispute and affirms the trial schedule previously announced alleviating concerns that a transfer would delay the case and result in a later trial date.

Accordingly, upon consideration of all relevant factors under 28 U.S.C. § 1404(a) this Court finds defendants have met their burden to establish that a transfer of this action to the United States District Court for the Eastern District of Wisconsin is warranted. The motion to transfer venue is granted.

#### ORDER

IT IS ORDERED that defendants' motion to transfer venue to the United States District Court for the Eastern District of Wisconsin pursuant to 28 U.S.C. § 1404(a) is GRANTED.

IT IS FURTHER ORDERED that should case number 2006-C-217 be remanded to Milwaukee County Circuit Court this Court will continue to preside in the Eastern District of Wisconsin case number 06-C-0086-S.

Entered this 17<sup>th</sup> day of March, 2006.

BY THE COURT:

S/

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JOHN C. SHABAZ  
District Judge