

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

PHILIP CASTLEBERG,

Plaintiff,

v.

COVENANT HEALTHCARE, LLC,
MEADOWLARK HEALTH SERVICES,
LLC, and TOMMY DAVIDSON,

Defendants.

ORDER

02-C-0147-C

This is a civil action for injunctive relief arising out of a dispute over alleged breaches of the operating agreements for defendants Covenant Healthcare, LLC, and Meadowlark Health Services, LLC, and defendant Tommy Davidson's effort to oust plaintiff Philip Castleberg as a member of those companies. The case is before the court on defendants' motion for a change of venue to the United States District Court for the Eastern District of Tennessee. 28 U.S.C. § 1404(a). I conclude that a change of venue is justified in this case for the convenience of the parties and witnesses and that a transfer would promote the interests of justice.

From the record, I find the following facts for the sole purpose of deciding this

motion.

RECORD FACTS

Plaintiff Philip Castleberg is a resident of Florida. He has sued defendants Covenant Healthcare, LLC, Meadowlark Health Services, LLC and Tommy Davidson for three counts of alleged breach of organizational agreements. Plaintiff alleges that defendant Thompson has denied him access to the companies' books, in violation of paragraph 10.1 of the organizational agreements of both companies; that defendant amended the original organizational agreement unilaterally, without deference to plaintiff's dissenter's rights, and then acted pursuant to the amended version of the agreement, contrary to the terms of the original agreement; and that defendant has served plaintiff with notices of a special meeting at which the members will vote on a motion to expel plaintiff from the organization.

Plaintiff alleges that defendant Covenant owns and operates a community based residential facility in Eau Claire, Wisconsin, and that defendant Meadowlark operates a nursing and rehabilitation facility in Eau Claire. He alleges also that he is a member of both limited liability companies, holding a voting interest of 25% and a financial interest of 50% in each. He does not allege in his complaint that any of the allegedly wrongful acts committed by defendants occurred in Wisconsin.

Defendant Thompson is a Tennessee resident. The defendant companies were

organized and have their principal places of business in Tennessee. The agreements provide that they are governed by Tennessee law. The companies' books and records are all in Tennessee. All of the actions complained about took place in Tennessee. These include the actions taken to amend the organizational agreements and the members' meetings. All of the persons with knowledge about the issues raised in the complaint are located in Tennessee.

At trial, plaintiff would try to call as witnesses a number of persons that reside in Wisconsin. He does not say what the subject matter of their testimony would be. There is no showing that any of these proposed witnesses could testify about the allegedly wrongful acts of defendants.

OPINION

28 U.S.C. § 1404(a) permits transfers between courts under certain circumstances: "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." The last phrase is crucial. A court cannot transfer a case to any district in which it could not have been brought, such as one in which venue is improper or the court does not have personal jurisdiction over the parties. The Eastern District of Tennessee is a district in which venue is proper (it is both the district in which all defendants reside and in which the

substantial part of the events giving rise to the claim occurred, 28 U.S.C. § 1391) and in which the court would have personal jurisdiction over defendants, all of whom are residents of the state.

Once it is determined that a case is one that may be transferred, it is within the court's discretion to approve or reject the motion for a change of venue. That decision is informed by a consideration of the convenience of the parties and the witnesses and the interests of justice. It is the moving party's burden to establish that the transferee forum is clearly more convenient. Coffey v. Van Dorn Iron Works, 796 F.2d 217, 219-20 (7th Cir. 1986).

Defendants argue that the parties' convenience is best served by transfer. I agree. The defendants are located in Tennessee, their papers are there and Tennessee was the site of both the negotiations that resulted in the agreements at issue and the actions of which plaintiff complains. Plaintiff has not alleged any special connection to Wisconsin other than having chosen it as his forum. As a resident of Florida, he is closer to a court in eastern Tennessee than to this one in Wisconsin.

The witnesses' convenience seems best served by trial in Tennessee. Although plaintiff has named a number of potential witnesses, he has not explained what relevance any of them has to the lawsuit. They appear to be employees of the Wisconsin facilities; they do not appear to have any connection to the allegedly wrongful acts alleged against

defendants. It seems unlikely, for example, that the person who sold plaintiff's farm in Wisconsin would have any testimony bearing on the legality of the amendment of the organizational agreements in Tennessee. On the other hand, defendants say that all the witnesses that can testify about the agreement, its negotiation and amendment are located in Tennessee.

The situs of the material events seems to be in Tennessee. Plaintiff has alleged no acts in his complaint that took place in Wisconsin. Defendants assert that it would be far easier to locate the relevant documents if the case were being tried in Tennessee, where all the companies' records are kept. They say that it would be a burden to move their documents to Wisconsin for trial. Given the ease of transporting papers, this is less of a consideration. It is not negligible, however.

Plaintiff's choice of forum is entitled to deference. However, other courts have held that if it is not the situs of material events, the choice assumes no more weight than any other factor. I conclude that the convenience of the parties and the witnesses is best served by a transfer of this case to Eastern Tennessee.

A transfer will not disserve the interest of justice. It will make it possible for the case to be tried by a judge familiar with the state law governing the interpretation of the agreements and the legality of defendants' acts. Weighing against that important consideration is the fact that the case would probably come to trial sooner in this district,

which is less burdened with cases than the Eastern District of Tennessee. (The 2000 Annual Report of the Director shows that as of September 30, 2000, there were 1742 civil cases pending in the Eastern District of Tennessee and 300 pending in this district; the average time for disposition of a case in the Eastern District of Tennessee was 11.5 months and the average time for disposition in this district was 4 months.) If there were any reason to retain this case in this district, I would keep it here and avoid adding to the burden of the Eastern District court. In light of all the factors pointing in favor of transfer, however, I cannot justify a denial of the motion for a change of venue.

In summary, I conclude that defendants have met their burden of establishing that the transferee forum is clearly more convenient and that the interest of justice will be served by a transfer.

ORDER

IT IS ORDERED that the motion of defendants Covenant Healthcare, LLC, Meadowlark Health Services, LLC, and Tommy Davidson for a change of venue pursuant to 28 U.S.C. § 1404(a) is GRANTED. This case is transferred to the United States District Court for the Eastern District of Tennessee. The clerk of court is directed to transmit the

file to the United States District Court for the Eastern District of Tennessee.

Entered this 16th day of April, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge