

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

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AQUA FINANCE, INC.,

Plaintiff,

v.

THE HARVEST KING, INC.  
and JOHN T. MADRID,

Defendants.  
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OPINION and ORDER

07-C-015-C

Plaintiff Aqua Finance, Inc. seeks monetary relief from defendants The Harvest King, Inc. and John T. Madrid for breach of contract and misrepresentation. Less than three months before trial, defendants filed the motion presently before the court to transfer venue to the Northern District of Texas pursuant to 28 U.S.C. § 1404(a). The parties do not contest personal jurisdiction and subject matter jurisdiction is present under 28 U.S.C. § 1332.

I conclude that defendants have not met their burden of establishing either that Texas is clearly a more convenient forum than Wisconsin or that the interest of justice would be served by transferring the case. Therefore, I will deny defendant's motion to transfer venue

to the Northern District of Texas.

In a motion to transfer venue brought pursuant to 28 U.S.C. § 1404(a), the moving party bears the burden of establishing that the transferee forum is “clearly more convenient.” Coffey v. Van Dorn Iron Works, 796 F.2d 217, 219-20 (7th Cir. 1986). In deciding whether the moving party has made the necessary showing, the court may rely on the allegations of the complaint and also may receive and weigh affidavits submitted by the parties. Heller Financial, Inc. v. Midwhey Powder Co., Inc., 883 F.2d 1286, 1293-94 (7th Cir. 1989).

Defendants moved for transfer of venue but have declined to submit any affidavits or other evidence demonstrating that transfer is clearly convenient or in the interest of justice. Thus, I draw my facts from plaintiff’s amended complaint and the affidavits plaintiff submitted with its response brief.

#### ALLEGATIONS OF FACT

Plaintiff Aqua Finance, Inc. is a Wisconsin corporation that provides financing for water treatment equipment. Its principal place of business is in Wausau, Wisconsin, which is in the Western District of Wisconsin.

Defendant Harvest King, Inc. is a Texas corporation with its principal place of business in Carrollton, Texas, which is in the Northern District of Texas. Defendant John

T. Madrid is a citizen of Colombia and is president of defendant Harvest King. Defendant Madrid resides in the Northern District of Texas.

Pursuant to a dealer's agreement signed by the parties, plaintiff agreed to purchase consumer credit sale contracts from defendants and defendants agreed to provide several warranties on the consumer contracts. Several problems arose from the assigned contracts, including installation problems and customer dissatisfaction. Plaintiff suffered money losses on the contracts as a result of alleged misrepresentations and fraud in defendant's handling of the assigned contracts.

The parties' agreement specifies that plaintiff will have recourse to defendant Harvest King in circumstances in which defendant breaches "any of the representations or warranties" it made to customers or in which there was any "misrepresentation or fraudulently obtained information, signatures, or consent on the part of the Dealer, Dealer Representative, or customer." Am. Cpt., Ex. A, ¶4.

The formation of the parties' dealer agreement and plaintiff's dealings with defendant occurred in plaintiff's office in Wausau, Wisconsin. The drafting, printing, and shipping of the consumer financing contracts, the approval of consumer credit applications, the assignment of financing contracts to plaintiff, the sending and servicing of consumer contracts and plaintiff's investigation and mitigation of defendants' mistakes also occurred in Wisconsin. (Plaintiff does not specify where in Wisconsin these events occurred.)

## OPINION

In a motion to transfer venue brought pursuant to 28 U.S.C. § 1404(a), the moving party bears the burden of establishing that the transferee forum is “clearly more convenient.” Coffey, 796 F.2d at 219-20. In weighing the motion, a court must decide whether the transfer serves the convenience of the parties and witnesses and will promote the interest of justice. 28 U.S.C. 1404(a); Coffey, 796 F.2d at 219-20; see also Roberts & Schaefer Co. v. Merit Contracting, Inc., 99 F.3d 248, 254 (7th Cir. 1996) (question is whether plaintiff’s interest in choosing forum is outweighed by either convenience concerns of parties and witnesses or interest of justice). The court should view these factors as placeholders among a broader set of considerations and evaluate them in light of all the circumstances of the case. Coffey, 796 F.2d at 219 n.3. Such broader considerations include the situs of material events, ease of access to sources of proof and plaintiff’s choice of forum. Harley-Davidson, Inc. v. Columbia Tristar Home Video, Inc., 851 F. Supp. 1265, 1269 (E.D. Wis. 1994); Kinney v. Anchorlock Corp., 736 F. Supp. 818, 829 (N.D. Ill. 1990).

### 1. Interest of justice

Because defendants have filed this motion to transfer venue so close to trial, I consider first whether transfer would be in the interest of justice. The “interest of justice” includes such concerns as trying related litigation together, having a judge who is familiar

with the applicable law try the case and insuring speedy trials. Coffey, 796 F. 2d at 221; see also Stewart Organization, Inc. v. Ricoh Corp., 487 U.S. 22, 30 (1988) (interest of justice embraces public interest factors of systemic integrity and fairness, rather than private interests of litigants and their witnesses).

Defendant argues that the interest of justice should not be a serious obstacle in transferring this case because the caseload in the Northern District of Texas is only slightly more congested than the caseload in the Western District of Wisconsin. This argument misses the point. Insuring speedy trials is not just about relative caseload congestion, but also about cases in progress. This court has already expended significant judicial resources on this case, including deciding two motions to dismiss filed by defendant. Moreover, this case is nearing the final stages of litigation. The deadline for filing dispositive motions was June 22, 2007, discovery is cut off September 21, 2007 and trial is scheduled for October 22, 2007. Pretrial Conference Order, dkt. # 11. To allow this case to start over in another district would be a waste of judicial resources and would cause undue delay. This would certainly not serve the interest of justice or the need for speedy trials.

## 2. Choice of forum

Defendant fares no better when I consider plaintiff's choice of forum. Generally, the court should give deference to a plaintiff's choice of forum, especially when it is the district

in which the plaintiff resides, Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255-56 (1981), and is the situs of material events, Chicago, Rock Island & Pacific Railroad Co. v. Igoe, 220 F.2d 299, 304 (7th Cir. 1955).

Plaintiff resides in the Western District of Wisconsin and has alleged that material events occurred in this district, including the formation of the governing contract and plaintiff's dealings with defendant. Other material events occurred in Wisconsin, although plaintiff does not specify whether they occurred in this district, including the drafting, assignment and service of the financing contracts defendant used and plaintiff's investigation and mitigation of defendants' mistakes. I conclude plaintiff's choice of forum should be entitled to deference, and "unless the balance is strongly in favor of the defendant," plaintiff's choice of forum should not be disturbed. In re National Presto Industries, Inc., 347 F.3d 662, 664 (7th Cir. 2003); Igoe, 220 F.2d 299, 302 (7th Cir. 1955).

### 3. Convenience of parties

Defendants argue that the convenience of the parties factor could be "slightly in favor of transfer" because "two of the three parties" (the defendants) reside in the proposed transfer district. However, at most, the parties' convenience is a neutral factor. Transferring the case to Texas will be inconvenient for plaintiff; keeping it here will be inconvenient for defendants. "Such a shift in convenience does not generally support a transfer." Heller

Financial, 883 F.2d at 1293. “When plaintiff and defendant are in different states there is no choice of forum that will avoid imposing inconvenience; and when the inconvenience of the alternative venues is comparable there is no basis for a change of venue; the tie is awarded to the plaintiff.” In re National Presto, 347 F.3d at 665 (7th Cir. 2003).

#### 4. Convenience of witnesses

Defendant’s main argument in support of his motion to transfer venue is that the convenience of the witnesses weighs heavily in favor of transfer. According to defendants, their alleged liability is related to 94 separate contracts, involving as many as 94 separate individuals, plus their household members, who reside in states bordering Texas. However, defendants failed to submit any affidavits or other evidence indicating that they would be calling these witnesses. The moving party must “clearly specify the key witnesses to be called” and submit “affidavits, depositions, stipulations, or any other type of document containing facts tending to establish who (specifically) it planned to call or the materiality of that testimony.” Generac Corp. v. Omni Energy Systems, Inc., 19 F.Supp. 2d 917, 923 (E.D.Wis. 1998) (quoting Heller Financial, Inc. v. Midwhey Powder Co., Inc., 883 F.2d 1286, 1293-94 (7th Cir. 1989)). Thus, I do not consider defendants’ unsupported argument. I conclude defendant has failed to show that the convenience of the witnesses weighs in favor of transferring the case to Texas.

Because this case is nearing trial and I defer to plaintiff's choice of forum and because defendants have not adduced evidence showing how their witnesses would be inconvenienced, I conclude that defendants have not met their burden of establishing that a transfer of venue is justified under 28 U.S.C. § 1404(a).

#### ORDER

IT IS ORDERED that

1. The motion by defendants The Harvest King, Inc. and John T. Madrid to transfer this case to the Northern District of Texas is DENIED.

Entered this 11th day of September, 2007.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge