

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

BYE, GOFF, ROHDE & SKOW, LTD.,

Plaintiff,

v.

MEMORANDUM AND ORDER
07-C-003-S

CASEY, GERRY, SCHENK, FRANCAVILLA,
BLATT & PENFIELD, LLP, f/k/a CASEY,
GERRY, REED, SCHENK LLP, DAVID S.
CASEY, JR., and ALISA CHRISTENSEN,

Defendants.

Plaintiff Bye, Goff, Rohde & Skow, Ltd. commenced this action in St. Croix County Wisconsin Circuit Court for breach of contract. Defendants Casey, Gerry, Schenk, Francavilla, Blatt & Penfield, LLP, David S. Casey, Jr., and Alisa Christensen removed the case to this Court on January 3, 2007. Jurisdiction is pursuant to 28 U.S.C. §1332 based on diversity of citizenship and the amount in controversy.

The matter is presently before the Court on defendants' motion to dismiss for lack of personal jurisdiction or, alternatively to transfer venue to the Southern District of California. The following facts are undisputed for purposes of these motions.

FACTS

Plaintiff Bye, Goff, Rohde & Skow, Ltd. (BGRS) is a law firm located in River Falls, Wisconsin that represents clients who suffer personal injury from accidents, product liability or professional negligence. Defendant Casey, Gerry, Schenk, Francavilla, Blatt & Penfield, LLP f/k/a Casey, Gerry, Reed, Schenk, LLP (Casey Gerry) is a law firm in San Diego, California. Defendant David Casey, Jr., is an attorney and principal of Casey Gerry. At all times material to this action defendant Alissa Christensen resided in Los Angeles, California and now resides in Oregon.

On or about October 11, 2002 defendant Christensen who was residing with her parents in Duluth, Minnesota contacted BGRS at a toll free number seeking legal advice and spoke with Attorney C.M. Bye. Christensen informed Bye she had sustained serious burn injuries on December 30, 2001 while camping in the Mojave Desert in the vicinity of Needles, California when her sleeping bag caught fire. The sleeping bag had been purchased in Northridge, California. Christensen expressed dissatisfaction with certain of the medical care she had received following her injuries.

On October 17, 2002 Christensen met with BGRS in Minnesota and signed a fee agreement with BGRS relating to her medical negligence and product liability claims. The agreement provided attorney fees

in the amount of 40% of the amount recovered. Christensen agreed to provide BGRS a lien under Wisconsin law to secure its services.

BGRS determined that Christensen's product liability claim might be subject to a one-year statute of limitations under California law. With Christensen's permission, BGRS contacted defendants Casey Gerry and David S. Casey to join in handling Christensen's product liability claim because the case had to be filed in California. BGRS selected this law firm from Martindale Hubbell and an ATLA Member Directory. Casey Gerry has never maintained an office or branch in the State of Wisconsin and none of its attorneys are licensed to practice law in Wisconsin.

By letter dated October 21, 2002 BGRS provided Casey Gerry with investigation materials concerning the claim. The firms agreed to share fees and costs on a 50-50 basis. BGRS expressed its intention to stay actively involved in the investigation, preparation and trial of the case although Casey Gerry was to act as lead trial counsel. This agreement was confirmed in writing on December 17, 2002 and included in the 40% fee agreement.

After signing the agreement Casey Gerry undertook direct communications with defendant Christensen. A lawsuit was commenced in California to preserve Christensen's product liability claim.

In February 2003 C.M. Bye sent Casey Gerry a letter suggesting that Christensen be advised that her costs would not exceed 10% of

the gross recovery and that any reference to Wisconsin in the fee agreement be changed to California where the lawsuit was filed.

On March 11, 2003 Christensen sent a letter to BGRS purporting to terminate her relationship with BGRS. Christensen then signed a contract with Casey Gerry who represented her for three and a half years and obtained a settlement of the product liability claim in excess of \$1.5 million. The 40% attorney fees of the recovery amounts to more than \$600,000.00.

Defendants refused to pay BGRS its agreed share of the attorney fees for the product liability claim on which defendant Casey-Kerry obtained a settlement for Christensen.

MEMORANDUM

Defendants moves to dismiss for lack of personal jurisdiction or, alternatively, to transfer the matter to the Southern District of California. Because personal jurisdiction is not required to transfer an action pursuant to 28 U.S.C. § 1404, Coté v. Wadel, 796 F.2d 981, 985 (7th Cir. 1986), and because the facts strongly favor transfer to the Southern District of California, the Court now grants the motion to transfer without resolving the motion to dismiss for lack of personal jurisdiction.

A motion for change of venue is governed by 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.

Under this section the district court has broad discretion to transfer the case. Id.

Venue in civil actions founded solely on diversity of citizenship is governed by 28 U.S.C. § 1391(a). Venue is proper in a judicial district where any defendant resides, if all defendants reside in the same state, a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred or a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.

The defendants Casey Gerry and Christensen no longer reside in the same state. The second basis for venue is the place where a substantial part of the events or omissions giving rise to the claim occurred. While defendant Christensen resided in Minnesota she contacted BGRS, a Wisconsin law firm by a toll free number. BGRS met with Christensen in Minnesota. She sought representation in a medical malpractice claim in Minnesota and agreed to have BGRS represent her in a product liability claim as well. This product liability claim arose from incidents occurring in California.

BGRS unilaterally contacted a California law firm, defendant Casey Gerry, to join in handling Christensen's product liability

claim which needed to be filed in California. Casey Gerry signed the agreement in California with BGRS to co-represent Christensen. The agreement was for legal services to be rendered in California. Plaintiff alleges defendant breached this agreement by not paying him his attorney fees after a settlement was reached in the case filed in California. The events giving rise to Christensen's product liability claim arose in the Southern District of California. But more importantly the breach of the agreement giving rise to the claim in this case arose in the Southern District of California because the agreement was allegedly breached by the law firm in California. Venue is proper in the Southern District of California pursuant to 28 U.S.C. § 1391(a).

The Court then addresses "the convenience of parties and witnesses, in the interest of justice" pursuant to 28 U.S.C. § 1404(a). In ruling on this transfer motion 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 (7th Cir. 1986).

Two of the defendants reside in California and one resides in Oregon. Plaintiff resides in Wisconsin. A California forum would be more convenient for the defendants and less convenient for the plaintiff. Documents and files concerning defendant Casey Gerry's representation of defendant Christensen are in California.

Consideration of the convenience of potential non-party witnesses does not necessarily favor transfer since the parties are the pertinent witnesses. Defendant Christensen's brother who would be a non party witness resides in Oregon.

The interest of justice factor weighs heavily in favor of transfer. Defendants' pending motion to dismiss for lack of personal jurisdiction over defendant suggests that the interest of justice would benefit from a transfer of venue. Personal jurisdiction may exist for defendant Christensen because she availed herself of services in Wisconsin by hiring a Wisconsin attorney. Personal jurisdiction of defendants Casey Gerry and David Casey, however, is very questionable because plaintiff unilaterally contacted defendant Casey Gerry and there is no evidence that defendant Casey Gerry solicited plaintiff's business concerning defendant Christensen's claims. Further, the services that defendant Casey Gerry performed pursuant to the agreement with BGRS were performed in California.

In Coté v. Wadel, 796 F. 2d at 984 the Court found that Wisconsin did not have personal jurisdiction of a Michigan attorney for alleged malpractice concerning a case filed in Michigan. The Court found that all the pertinent acts occurred in Michigan. The instant case is similar to Coté because the defendant Casey Gerry agreed to perform services in California on a case filed in California and did not perform any acts in Wisconsin.

Conservation of judicial resources and avoidance of unnecessary legal expenses are advanced by a transfer from a forum in which there is a question of personal jurisdiction to a district in which there are no such uncertainties. 15 C. WRIGHT, A. MILLER AND E. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3854 at n. 31 and accompanying text (1986).

In addition, the agreement which plaintiff contends defendants breached was for services to be performed in California. Plaintiff's February 2003 letter to defendants suggests changing references to Wisconsin in the fee agreement to California where the suit has been filed. This correspondence implies that California is the proper forum for any contract or fee disputes and that California law would govern the breach.

Accordingly, the interest of justice compels the transfer of this matter to the Southern District of California.

ORDER

IT IS ORDERED that this matter be transferred to the United States District Court for the Southern District of California pursuant to 28 U.S.C. § 1404(a).

Entered this 2nd day of May, 2007.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge