

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
EKATERINA SCHOENEFELD

Plaintiff,

-v-

THE STATE OF NEW YORK et al.,

Defendants.
-----X

NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

USDS SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 4/16/08
--

MEMORANDUM AND ORDER

08 Civ. 3269 (NRB)

Plaintiff Ekaterina Schoenefeld brings this lawsuit alleging that New York Judiciary Law § 470 on its face and as applied violates her rights under the Privileges and Immunities Clause, the Fourteenth Amendment and the Commerce Clause of the U.S. Constitution. Defendants now move to dismiss the complaint for improper venue, pursuant to Rule 12(b)(3) and 28 U.S.C. § 1406(a), or, in the alternative, for an order transferring venue from the Southern District of New York to the Northern District of New York, pursuant to 28 U.S.C. § 1404(a). For the reasons set forth below, we grant the motion to transfer.

BACKGROUND¹

Plaintiff is an attorney admitted to practice law in New York, New Jersey and California. (Compl. ¶ 5.) She resides in Princeton, New Jersey and has her office in Lawrenceville, New Jersey, where she works as a solo practitioner. (Id. ¶ 6; Decl. ¶ 2.) The thirty-six named defendants in this case include twenty-one members of the Committee on Professional Standards, Third Department, eleven justices of the Appellate Division, Third Department, the clerk of the Appellate Division, Third Department, the Attorney General of the State of New York, the New York Supreme Court Appellate Division, Third Department, and the State of New York. (Mem. at 2 n.2.) The individual defendants, all sued in their official capacities, reside in Albany.² (Id. at 6.)

Plaintiff alleges that during a continuing legal education class she attended on June 5, 2007, she "learned for the first time that, according to § 470 of the New York Judiciary Law which is applicable to non-resident New York attorneys only, she

¹ The following facts have been drawn from the Amended Complaint ("Compl."), the Declaration of Ekaterina Schoenefeld in Opposition to Defendants' Motion to Dismiss the Complaint for Improper Venue or, in the Alternative, to Transfer the Matter to the Northern District ("Decl."), and Memorandum of Law on Behalf of Defendants in Support of their Motion to Dismiss the Complaint for Improper Venue or, in the Alternative, to Transfer the Matter to the Northern District and for Related Relief ("Mem.").

² Defendant Attorney General Andrew M. Cuomo also maintains an office in New York City.

may not practice law in the State of New York unless she maintains an office located in the State.”³ (Compl. ¶¶ 16-17.) This statutory provision has not been enforced against plaintiff nor has any party threatened to enforce the law against her. Plaintiff, however, concerned about potential disciplinary action, has declined one or more cases that would have required her to practice in the state courts of New York, including in New York City. (Decl. ¶ 3).

Plaintiff, appearing pro se, filed this lawsuit alleging that Section 470 violates her right to enjoy the privileges and immunities of citizenship as guaranteed in Article IV, § 2 of the U.S. Constitution, because Section 470 effectively imposes a residency requirement on non-resident attorneys but does not impose the same on resident attorneys. (Compl. ¶¶ 21-23.) Plaintiff also asserts that Section 470 requires only non-resident lawyers to maintain an office in New York, thus violating her Fourteenth Amendment equal protection rights. (Id. ¶¶ 25-27.) Finally, plaintiff claims that Section 470 places a burden upon interstate commerce in violation of Article I, § 8. (Id. ¶ 29.) Plaintiff seeks the following relief: (1) an order permanently enjoining defendants from enforcing Section

³ N.Y. Judiciary Law § 470 states:

A person, regularly admitted to practice as an attorney and counsellor, in the courts of record of this state, whose office for the transaction of law business is within the state, may practice as such attorney or counsellor, although he resides in an adjoining state.

470 and declaring it to be unconstitutional, (2) attorney's fees and costs of the lawsuit, and (3) "such other and further relief as this Court deems meet and just." (Id. ¶¶ A-C.)

DISCUSSION

Section 1404(a) of Title 28 permits a court to transfer a civil action to any other district or division where it might have been brought. The statute has a broad purpose: "to prevent the waste 'of time, energy and money' and 'to protect litigants, witnesses and the public against unnecessary inconvenience and expense.'" Van Dusen v. Barrack, 376 U.S. 612, 616 (1964) (quoting Continental Grain Co. v. Barge FBL-585, 364 U.S. 19, 26 (1960)).

Where the transferee district is a proper venue, as plaintiff concedes is the case here (Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Dismiss the Complaint for Improper Venue or, in the Alternative, to Transfer the Matter to the Northern District ("Opp.") at 16), motions for transfer lie within the broad discretion of the district court and are determined upon "notions of convenience and fairness on a case-by-case basis." In re Cuyahoga Equip. Corp., 980 F.2d 110, 117 (2d Cir. 1992). In determining whether to transfer venue, a court should consider: (1) the convenience of the parties; (2) the convenience of the witnesses; (3) the relative

means of the parties; (4) the locus of the operative events; (5) the relative ease of access to sources of proof; (6) the weight accorded to plaintiff's choice of forum; (7) the availability of process to compel unwilling witnesses; (8) the forum's familiarity with the governing law; and (9) trial efficacy and the interests of justice based upon the totality of the circumstances. See, e.g., Iyalla v. TRT Holdings, Inc., No. 04 Civ. 8114(NRB), 2005 WL 1765707, at *4 (S.D.N.Y. July 25, 2005); Schauder v. Int'l Knife & Saw, Inc., No. 02 Civ. 8361(NRB), 2003 WL 1961611, at *2 (S.D.N.Y. Apr. 29, 2003). We find that the totality of the circumstances in this case favors transfer to the Northern District.

The convenience of party and non-party witnesses is the most important consideration in a Section 1404(a) motion. See Mitsui Marine & Fire Ins. Co. v. Nankai Travel Int'l Co., 245 F. Supp. 2d 523, 526 (S.D.N.Y. 2003); TM Claims Service v. KLM Royal Dutch Airlines, 143 F. Supp. 2d 402, 405 (S.D.N.Y. 2001). Here, it is undisputed that all individual defendants reside in the Northern District. Further, because any disciplinary proceeding against plaintiff for violating Section 470 would likely occur in the Third Judicial Department in Albany, where plaintiff is registered, any witness relevant to such a proceeding is likely also in Albany. (Mem. at 11.) This also

means that any relevant document or other "source of proof" probably would be located in Albany.

In response to these considerations, plaintiff argues that litigating in the Northern District would be "highly inconvenient" for her because of costs of travel and lodging in Albany. (Opp. at 17.) We find this argument unpersuasive, however, as any inconvenience to plaintiff arising from litigating this case in the Northern District would be multiplied thirty-six fold and shifted to New York taxpayers if the case were to remain in this district. As such, we conclude these factors weigh in favor of transfer.

The location of a lawsuit's operative events also is a "primary factor" in considering a motion to transfer. See Smart v. Goord, 21 F. Supp. 2d 309, 316 (S.D.N.Y. 1998). Because no proceeding has been brought against plaintiff for violating Section 470,⁴ the closest thing to a focal "event" that has occurred here was, presumably, the New York legislature's enactment of Section 470, which occurred in Albany.⁵ As such, we

⁴ The absence of any precipitating disciplinary proceeding against plaintiff would seem to raise serious justiciability questions here since it is not clear that plaintiff has sufficiently alleged a real and immediate "injury in fact." See, e.g., Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). However, the question of standing under Article III has not yet been raised, so we do not reach it in our analysis above.

⁵ Some courts have held that "suits challenging official acts may be brought in the district where the effects of the challenged regulations are felt even though the regulations were enacted elsewhere." Emison v. Catalano, 951 F. Supp. 714, 722 (E.D. Tenn. 1996); see also Farmland Dairies v. McGuire, 771 F. Supp. 80, 82 n.3 (S.D.N.Y. 1991). Here, the effects of the challenged

find this factor also weighs in favor of transfer to the Northern District.

Of the remaining factors, only two -- plaintiff's choice of forum and the relative means of the parties -- favor the Southern District.⁶ However, while we acknowledge that plaintiff's choice of venue must be accorded substantial consideration, such deference is diminished where, as here, the suit is brought outside the plaintiff's home forum. See Heyco, Inc. v. Heyman, 636 F. Supp. 1545, 1550 (S.D.N.Y. 1986). Similarly, while the relative means of the parties is a factor in considering a motion to transfer, and while we acknowledge that plaintiff is of obviously lesser financial means than the State of the New York and its employees named as defendants here in their official capacities, this factor has "rarely been a dispositive reason to grant or deny a transfer motion" and is not so here. Thomas America Corp. v. Fitzgerald, No. 94 Civ. 0262(CBM), 1994 WL 440935, at *5 (S.D.N.Y. Aug. 11, 1994).

statute would be felt at the plaintiff's residence or place of work, both of which are in New Jersey -- not in this district.

⁶ We agree with plaintiff that "the availability of process to compel unwilling witnesses" and "the forum's familiarity with the governing law" are neutral and do not weigh in favor of transfer. (Opp. at 18.) "Trial efficacy and the interests of justice based upon the totality of the circumstances," a factor that "relates primarily to a question of judicial economy," Schauder, 2003 WL 1961611, at *4 (quoting Virgin Enters. Ltd. v. Am. Longevity, No. 99 Civ. 9854(CSH), 2001 WL 34142402, at *12 (S.D.N.Y. Mar. 1, 2001), also is neutral, because either court is capable of trying plaintiff's case efficiently, and apart from deciding this motion, significant judicial resources have thus far not been spent on this litigation.


Considering the totality of these factors -- particularly the most important factors of convenience to the parties and witnesses and the location of operative events -- we find that application of 28 U.S.C. § 1404(a) clearly supports transferring venue. We believe that this transfer creates nothing approaching an insurmountable burden on plaintiff, however, as a round-trip journey between the Southern District courthouse in Manhattan and the Northern District courthouse in Albany can be accomplished by car comfortably in a single day.

CONCLUSION

For the reasons set forth above, defendants' motion to transfer venue is granted.⁷ The Clerk of the Court is respectfully directed to transfer this case to the Northern District of New York, pursuant to 28 U.S.C. § 1404(a).

IT IS SO ORDERED.

Dated: New York, New York
April 16, 2009



NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

⁷ Given this ruling, we do not reach defendants' alternate motion to dismiss the complaint for improper venue.

Copies of the foregoing Memorandum and Order have been mailed on this date to the following:

Ekaterina Schoenefeld, Esq.
3371 U.S. Highway 1, Suite 105
Lawrenceville, New Jersey 08648

Charles F. Sanders, Esq.
Kate Burson, Esq.
Office of the Attorney General
120 Broadway, 24th Floor
New York, New York 10271