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1995 U.S. Dist. LEXIS 21980, *

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**JAMES ILLIUS, et al., Plaintiffs v. GREYHOUND BUS LINES, INC., et al.,
Defendants**

Case No.: 1:95 CV 1140

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
OHIO, EASTERN DIVISION**

1995 U.S. Dist. LEXIS 21980

September 14, 1995, Decided

September 15, 1995, Issued

DISPOSITION: [*1] Defendant, Greyhound Bus Lines, Inc.'s (Greyhound), motion to transfer venue for consolidation granted.

COUNSEL: For JAMES ILLIUS, TEODORE J KRAWEC, plaintiffs: Robert J. Fedor, Jr., Esq., Law Offices Of Mark E. Gammons & Associates, Rocky River, OH.

For GREYHOUND BUS LINES INC., defendant: Deborah A. Coleman, Esq., Hahn, Loeser & Parks, Cleveland, OH.

JUDGES: Solomon Oliver, Jr., UNITED STATES DISTRICT JUDGE.

OPINIONBY: Solomon Oliver, Jr.

OPINION:

MEMORANDUM AND ORDER

This memorandum and order addresses Defendant, Greyhound Bus Lines, Inc.'s (Greyhound), motion to transfer venue for consolidation and Plaintiffs', James Illius and Theodore J. Krawec's, response thereto. Greyhound attached affidavits and certified court documents to its motion. Plaintiffs' memorandum in response had no supporting documents attached. For the reasons herein stated, the court grants Greyhound's motion.

I.

On May 22, 1995, Plaintiffs filed claims alleging violation of Section 20(a) of The Securities and Exchange Act of 1933 and Section 10(b) and 12(2) of the 1934 Securities Act against Greyhound Bus Lines, Inc. and individuals Frank J. Schmieder and J. Michael Doyle. Plaintiffs allege they purchased Greyhound [*2] stock in 1994 and saw the price of that stock plummet as a result of false and misleading information conveyed through Greyhound's public filings, press releases and other publications. Plaintiffs' Complaint, at P10 and P11. Plaintiffs also allege that Schmieder and Doyle were officers or directors of Greyhound and by virtue of their positions directly participated in the management and day-to-day operations of the company. They maintain that these individual Defendants were privy to confidential proprietary information concerning Greyhound, its operations, finances, financial condition, products and present and future business prospects. *Id.* Plaintiffs further maintain that Defendants were involved in drafting, producing, reviewing and/or disseminating the statements Plaintiffs allege are false and misleading. *Id.* Plaintiffs also allege that these Defendants were aware that the allegedly false and misleading statements were being issued regarding Greyhound and approved or ratified the statements in violation of federal securities laws. *Id.*

Prior to the filing of this action, seven similar actions were filed in the United States District Court for the Northern District [*3] of Texas, Dallas Division, against Defendant Greyhound and various individual Defendants including Doyle and Schmieder. Plaintiffs concede that the cases pending in the Texas court present

similar federal securities issues as the issues presented in the case before this court and that those actions are against Greyhound and other parties who took part in the scheme alleged in this complaint (Plaintiff's Response to Defendant Greyhound Bus Lines, Inc.'s Motion to Transfer Venue for Consolidation, at 4).

On July 17, 1995, Greyhound filed a motion for change of venue seeking an order transferring the within case to the United States District Court for the Northern District of Texas, Dallas Division, for consolidation with the seven (7) similar consolidated actions pending there.

II.

The legal standard applicable to a motion to transfer venue is found in 28 U.S.C. § 1404(a) which states: "for the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district where it might have been brought." 28 U.S.C. § 1404(a). Therefore, the first step in determining whether to grant Greyhound's motion to transfer is [*4] for the court to decide whether the action "might have been brought" in the Northern District of Texas, Dallas Division. *Weltmann v. Fletcher*, 431 F. Supp. 448, 450 (N.D. Ohio 1976) citing *Continental Grain Co. v. Barge FBL-585*, 364 U.S. 19, 22, 80 S. Ct. 1470, 4 L. Ed. 2d 1540 (1960). In this case, Plaintiffs concede, and the court finds that this action could have originally been brought in the Northern District of Texas, and therefore, that element is satisfied. Plaintiffs' Response to Defendant Greyhound Bus Lines, Inc.'s Motion to Transfer Venue For Consolidation, at 4-5. This court has federal question jurisdiction under 28 U.S.C. § 1331 and § 1337. Venue would be appropriate under 28 U.S.C. § 1391(a)(2) as "a substantial part of the events or omissions giving rise to the claim[s] occurred" in the Northern District of Texas.

Since this suit originally met the jurisdictional and venue prerequisites for filing in the Northern District of Texas, this court has discretion to order the suit transferred to that forum. 431 F. Supp. at 451, citing *Continental Grain Co.*, *supra* at 22 and *Hoffman v. Blaski*, 363 U.S. 335, 343-44, 4 L. Ed. 2d 1254, 80 S. Ct. 1084 (1960). Greyhound urges this court to [*5] exercise its discretion to transfer this case to Texas so that it may be joined with the seven similar cases pending in that district.

Greyhound accurately points out and Plaintiffs concede that once the court has made the threshold determination that the suit could have been brought in the district court to which transfer is sought, the court must balance various factors, some explicit and other implied in § 1404, to determine whether transfer is proper. *International Union v. Aluminum Co. of Am.*, 875 F. Supp. 430, 431-35 (1995); *Roberts Metals v.*

Florida Properties Marketing, 138 F.R.D. 89, 91-95 (N.D. Ohio 1991); *DeMoss v. First Artists Prod. Co.*, 571 F. Supp. 409, 412-414 (N.D. Ohio 1983); *Weltmann v. Fletcher*, 431 F. Supp. 448, 451 (N.D. Ohio 1976). If these factors weigh in favor of transfer by a preponderance of the evidence, then a motion to transfer should be granted. *Roberts Metal v. Florida Properties Mktg.*, 138 F.R.D. at 93. The court will analyze each factor.

A. Convenience of the Parties and the Witnesses

Rule 1404 provides that two of the factors the court should consider in deciding whether to transfer is the convenience of the parties [*6] and the witnesses. Greyhound is required to show that the "'forum to which [it] desires to transfer the litigation is the *more convenient one vis a vis* the plaintiffs' initial choice.'" *Roberts Metals v. Florida Properties Mktg. Group*, 138 F.R.D. at 93 quoting *Mead Corp v. Boldt Constr. Co.*, 508 F. Supp. 193, 198 (S.D. Ohio 1981) (emphasis in the original). Greyhound cannot merely transfer the inconvenience of the chosen venue from the defendants to the plaintiffs. *Intern. Union, U.A.W. v. Aluminum Co. of Am.*, 875 F. Supp. 430, 433 (N.D. Ohio 1995).

Greyhound argues that transfer to the Texas court would be more convenient to all of the parties. Greyhound notes that although the two individual Plaintiffs may be located in Ohio, all three Defendants are located in the Northern District of Texas. Greyhound also argues that its corporate headquarters, its key personnel, all of its relevant documents and records, and virtually all other persons with knowledge of the matters alleged in the complaint are located in Dallas, Texas. n1 Additionally, Greyhound asserts that it would be most disruptive to have to defend essentially identical actions in different jurisdictions [*7] given that document, witness and deposition discovery will be almost identical. It would increase the convenience for all parties to confine the action to the jurisdiction of the Northern District of Texas.

n1 Greyhound argues that its principal place of business is Dallas, Texas. Plaintiffs claim that Greyhound's principal place of business is in Cleveland, Ohio. Defendant offers support for its position by way of affidavit while the Plaintiffs offer no similar support for their position. There is no reason to decide this issue, however because it is undisputed that Greyhound's corporate headquarters, its key personnel, all of its relevant documents and records, and the employees likely to be called as witnesses are in Dallas, Texas.

Greyhound further argues that a motion to transfer venue should be granted for the convenience of the potential witnesses because almost all witnesses are Texas residents. Plaintiffs' concede that "almost all witnesses are Texas residents". Plaintiffs' Response to Greyhound's Motion [*8] to Transfer Venue for Consolidation, at 4. Plaintiffs' also concede that unwilling witnesses residing in Texas are beyond the reach of compulsory process in Ohio n2. *Id.* However, Plaintiffs contend that because several of the witnesses are Greyhound employees they "should come forward". *Id.* Plaintiffs' offer no support for its position beyond the general claim that fairness and efficiency require the case not be transferred. Plaintiffs' arguments are not well taken.

n2 Greyhound indicates that Doyle and Schmieder have not been served in this case and that neither Doyle nor Schmieder believe sufficient contact exists with the State of Ohio for personal jurisdiction to be exercised over them in their individual capacity. The court will not attempt to resolve this issue of whether it has personal jurisdiction over Doyle and Schmieder, in light of its conclusion reached herein.

Courts consider the relative ease of access to sources of proof in deciding the issue of convenience of parties. Greyhound argues [*9] that the majority of the allegations in the Plaintiffs' complaint involve disclosure or non-disclosure of information about Greyhound's public offering, Greyhound's financial results and serious problems it had with its computer reservation system, TRIPS. Greyhound claims that all of its financial records and documents regarding the TRIPS system are located at its headquarters in Dallas, Texas. Greyhound also claims Doyle and Schmieder and all potential witnesses are in Dallas. Therefore, Greyhound claims that virtually all its sources of proof are located in Dallas. Plaintiffs contend that they will be the only witnesses called on their behalf and that the depositions of Greyhound's officers, directors, and employees will be minimal because Plaintiffs' plan to rely most heavily on documents filed with the Securities and Exchange Commission. Therefore, maintaining this suit here in Ohio creates no source of proof problem. The court does not find Plaintiffs' position to be persuasive.

The availability of compulsory process for attendance of unwilling witnesses is also a factor to be considered in determining the issue of convenience of the parties. Rule 45(b) of the Federal Rules of [*10] Civil Procedure state that witnesses cannot be required to attend a deposition, hearing, trial, production, or

inspection unless they live within 100 miles of the place of the deposition, hearing, trial, production, or inspection. Greyhound argues that all of its relevant witnesses, including its current employees and Doyle and Schmieder are in the Northern District of Texas and the non-party witnesses cannot be compelled to appear in this court. Greyhound claims that there are multiple allegations regarding the conduct of the Defendants, and that the Defendants will need to call multiple live witnesses during both pretrial proceedings and trial. Greyhound voices concern over the ability to have live testimony at trial if this case remains in the Northern District of Ohio. Again, Plaintiffs have conceded that most of the witnesses reside in the Northern District of Texas and that those witnesses are probably beyond compulsory process.

The cost of obtaining testimony from willing witnesses for Greyhound and other Defendants may also be considered by the court in reaching its decision. Greyhound argues that the witness list for it as well as for Doyle and Schmieder are likely to be [*11] quite large and that the cost of transporting and housing the witnesses who will be willing to travel from Texas to the Northern District of Ohio will be enormous.

Considering the respective positions of the parties, the court finds that Defendant Greyhound's argument regarding the convenience of the parties is well taken. It would be substantially more inconvenient to the Defendants to defend here than it would to the Plaintiffs to proceed in Texas given that almost all of the documents and potential witnesses are in Dallas and that this court has no subpoena power over the non-party witnesses residing outside of Ohio.

The court also finds that the Defendant's argument is also well taken regarding the convenience of the witnesses since it is conceded that virtually all of the potential witnesses reside outside of Ohio.

B. Interest of Justice

Another factor in the court's determination of whether transfer should occur is whether the interest of justice will be served by transferring the case. Greyhound argues that the desire to avoid multiple lawsuits arising from a single litigation militate in favor of transfer to Texas. Greyhound, Doyle, and Schmieder are already defending [*12] against virtually identical litigation in the seven suits pending in the Northern District of Texas and argue that the interest of justice and judicial economy urge that this case be transferred so that it might be consolidated with the other seven pending cases. Plaintiffs maintain that the case should remain in this court because it would be efficient to do so. Plaintiffs also contend that because the litigation is in its

early stages and because the majority of the evidence to be relied upon is documentary and on file with the Securities and Exchange Commission, it is practical for the case to remain in Ohio.

Greyhound argues that the pendency of a similar action in the transferee court is a universally recognized reason for granting a change of venue. *431 F. Supp. at 451*, citing *Continental Grain Co., supra at 26* ("To permit a situation in which two cases involving precisely the same issues are simultaneously pending in different District Courts leads to the wastefulness of time, energy, and money that § 1404(a) was designed to prevent."). Plaintiffs have conceded that their case presents federal securities issues similar to those presented in the pending Texas cases. Plaintiffs' [*13] Response to Defendant Greyhound Bus Lines, Inc. Motion to Transfer Venue For Consolidation, at 4. Greyhound argues that the factual and legal issues raised by Plaintiffs are identical to those in the pending Texas cases. Greyhound's Memorandum in Support of its Motion To Transfer Venue For Consolidation, at 2.

The court finds that the interest of justice weigh in favor of granting the transfer because judicial economy and fairness would be served by the transfer:

C. Plaintiffs' Choice of Forum

Another factor considered by the courts, though not explicitly mentioned in § 1404, is plaintiff's choice of forum. A recent decision by a judge on this court held that Plaintiff's choice should be given "minimal weight" and that it is "one factor to be weighed equally with other relevant factors" *International Union, U.A.W. v. Aluminum Co. Of Am., 875 F. Supp. 430, 433 (1995)*. Clearly where, as in this case, the operative facts did not occur in the forum, no more than equal weight should be given to Plaintiff's choice. *DeMoss v. First Artists Prod. Co., 571 F. Supp. 409 at 413 (N.D. Ohio)*; *800 Flowers, Inc. v. Intercontinental Florist, Inc., 860 F. Supp. 128, 135 (S.D. N.Y. [*14] 1974)*.

D. Conclusion

Giving Plaintiffs' choice of forum equal weight with the other factors, the court concludes that the transfer motion should be granted. The other factors weigh heavily in favor of transfer. This case is hereby transferred to the United States District Court for the Northern District of Texas.

IT IS SO ORDERED.

Date: 9/14/95

Solomon Oliver, Jr.

UNITED STATES DISTRICT JUDGE