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The Exits Are Here, Here and Here: Motions to Transfer Venue in Federal Court

Just like fleeing from a burning building, out-of-state defendants sued in federal court should have multiple case exit strategies. While defense counsel should start with a motion to dismiss for lack of jurisdiction or failure to state a claim – having a backup plan is always prudent. Enter the motion to transfer venue pursuant to 28 U.S.C. § 1406(a). In appropriate factual circumstances, this underutilized provision may offer the court a palatable alternative to outright dismissal because it offers something to everyone: The defendant is allowed to litigate on home turf, the plaintiff is not forced to revise, refile, and reserve the complaint, and the court gets a case, which probably should not have been filed there in the first place, off its docket. A recent decision from United States District Court for the Southern District of New York, White Plains Division, serves as a valuable reminder to defense counsel that a motion to dismiss is not necessarily the only exit route.

The Case: *LS Parry, Inc. v. Tepeyac, LLC & Guzman*

In *LS Parry, Inc. v. Tepeyac, LLC & Guzman*, No. 18-CV-11808 (NSR), 2020 WL 5026589 (S.D.N.Y. Aug. 25, 2020), the plaintiff brought a breach of contract action in New York federal court against Tepeyac, LLC, an Ohio corporation, and its CEO, Guzman, who also resided in Ohio. The corporate parties were signatories to an agreement in which the plaintiff agreed to perform business development outreach and marketing strategies for the defendants. The defendants filed a motion to dismiss for lack of personal jurisdiction, improper venue, and failure to state a claim, or in the alternative, to transfer venue per 28 U.S.C. § 1406(a).

On the venue issue, the court began with the federal venue statute, 28 U.S.C. § 1391(b). Venue is proper in: 1) a judicial district in which any defendant resides, if all defendants are residents of the [s]tate in which the district is located; 2) a judicial district in which a substantial portion of the events giving rise to the claim occurred; or 3) any judicial district in which any defendant is subject to the court's personal jurisdiction. The court concluded the plaintiff failed to make a prima facie showing of venue because there were insufficient allegations that the defendants' actions occurred in New York or that a substantial part of the acts or omissions giving rise to the claim occurred within the judicial district in New York.

However, instead of dismissing the case outright, Judge Román exercised his discretion under [28 U.S.C. § 1406\(a\)](#) to transfer the case to the Southern District of Ohio. The court found the plaintiff had been diligent in pursuing its claims, and so should not suffer the severe penalty of dismissal, and transfer would not prejudice the defendants, who would be able to defend the action in their home court.

Takeaway

A motion to transfer venue can prove to be an invaluable device that allows the court to move the case off its docket without effectuating a complete dismissal. While it is not the grand slam win of a dismissal for defendants, it can be a worthy Plan B to defending a case in an out-of-state forum. Defense counsel would be wise to consider making a motion in the alternative to a motion to dismiss when the facts support transfer. When the facts support keeping a case in the plaintiff's chosen venue, plaintiff's counsel should be prepared with specific evidence to counter the defendant's inconvenient forum arguments.