

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AIRPORT INVESTORS LIMITED)
PARTNERSHIP, INC. and)
RICHARD SNYDER, General Partner,)

Plaintiff)

v.)

Civil Action No. 03-831 GMS

DOUGLAS J. NEATROUR DALILA E.)
NEATROUR and LATINO AMERICAN)
MEDIA ORGANIZATION OF)
PENNSYLVANIA)

Defendants.)

MEMORANDUM

I. INTRODUCTION

On August 25, 2003, the plaintiffs, Richard Snyder (“Snyder”) and Airport Investors Limited Partnership, Inc. (collectively, “Airport”), filed the above-captioned contract action against the defendants Douglas Neatrou, Dalila Neatrou and Latino American Media Organization of Pennsylvania (“LAMO”) (collectively, the “Neatrouns”). Attempting to invoke the court’s diversity jurisdiction, Airport’s complaint seeks specific performance of an alleged agreement between the parties. On December 29, 2003, Airport filed an amended complaint which included an alternative prayer for breach of contract and a damages remedy in the amount of \$750,000.00.

Presently before the court is the defendants’ motion to dismiss this action for lack of subject matter jurisdiction, or, in the alternative, to transfer this action to the United States District Court for the Middle District of Pennsylvania pursuant to 28 U.S.C. § 1404. For the following reasons, the court will grant the Neatrouns’ motion to transfer.

II. BACKGROUND

This case revolves around an alleged contract between Airport and the Neatrouns regarding ownership and control of a Pennsylvania radio station. Airport Investors Limited Partnership, Inc. is a Maryland corporation, and its general partner, Snyder, claims to have been a Delaware resident at the time of the filing the present action. Douglas and Dalila Neatroun are residents of Lebanon, Pennsylvania, and LAMO is a Pennsylvania corporation.

On August 7, 2003, three weeks before the filing of the present action, Airport filed a complaint in the United States District Court for the Middle District of Pennsylvania against the same three defendants, alleging a breach of the same contract. In that complaint, Snyder claims to be a citizen of Maryland.

The Neatrouns contend that the court should dismiss the instant action for lack of subject matter jurisdiction because Airport's initial complaint prayed only for specific performance of the alleged contract and not for any damages, let alone the minimum \$75,000.00 required for the court to exercise its diversity jurisdiction. Alternatively, the Neatrouns move the court to transfer this action to the Middle District of Pennsylvania where Airport first initiated a parallel action to this case. Because Airport subsequently filed an amended complaint as a matter of right,¹ the court finds the Neatrouns' motion to dismiss the initial complaint moot. With regard to the Neatrouns' motion to transfer, however, the court is persuaded that the convenience of the parties and witnesses and

¹Federal Rule of Civil Procedure 15(a) permits a party to file an amended complaint once as a matter of course at any time before a responsive pleading is served. Fed. R. Civ. P. 15(a). Because the Neatrouns' motion to dismiss is not a responsive pleading within the meaning of Rule 15(a), *See, e.g., Kelly v. Del. River Joint Commission*, 187 F.2d 93, 95 (3d Cir. 1951), Airport's amended complaint now governs this action.

interests of justice weigh heavily in favor of transferring the present action to the Middle District of Pennsylvania.

III. DISCUSSION

Section 1404(a) provides that “[f]or convenience of [the] parties and witnesses, in the interest of justice,” the court may transfer a civil action “to any other district . . . where it might have been brought.” 28 U.S.C. § 1404(a). It is the movants’ burden to establish the need for transfer, and “the plaintiff’s choice of venue [will] not be lightly disturbed.” *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879 (3d Cir. 1995) (citations omitted).

When considering a motion to transfer, the court must determine “whether on balance the litigation would more conveniently proceed and the interest of justice be better served by transfer to a different forum.” *Id.* This inquiry requires “a multi-factor balancing test” embracing not only the statutory criteria of convenience of the parties and the witnesses and the interests of justice, but all relevant factors, including “practical considerations that could make the trial easy, expeditious, or inexpensive . . . and the local interest in deciding local controversies at home.” *Id.* at 875, 879-80.

Weighing all the factors involved, it is clear that the present case would be most appropriately litigated in the Middle District of Pennsylvania. In this action, a Maryland corporation seeks specific performance of its contract with a Pennsylvania corporation regarding a Pennsylvania radio station. The litigation has virtually no connection to Delaware. No acts relating to the present dispute took place in Delaware, nor do the parties appear to maintain any facilities or documents in Delaware. In addition, both the present case and the case in the Middle District of Pennsylvania are in the relatively early stages of litigation. Finally, any disparity in court congestion, to the extent there is

any, is not so great as to weigh against transfer due to the action currently pending in the Middle District of Pennsylvania.

Snyder's only credible argument in favor of this court retaining jurisdiction over this action is that he is a resident of Delaware.² Had Snyder not filed an action against the same three defendants regarding the same contract just three weeks earlier in the Middle District of Pennsylvania, the court might have been persuaded by his argument. Nonetheless, because he chose to file a separate action in the Middle District of Pennsylvania, Snyder inevitably will have to travel to that forum to pursue his claims anyway.

Moreover, although not an issue raised or briefed by either of the parties, the court notes that the "first-filed" rule of this Circuit likely dictates transfer of this case to the Middle District of Pennsylvania. Specifically, "in cases of federal concurrent jurisdiction involving the same parties and issues, the court of first-filing must proceed to decide the matter." *Zelenkofske Axlerod Consulting, L.L.C. v. Stevenson*, No. 99-CV-3508, 1999 WL 592399, at *2 (E.D. Pa. Aug. 5, 1999) (citing *EEOC v. University of Pennsylvania*, 850 F.2d 969, 971 (3d Cir. 1988)). Unfortunately for Snyder, his choice to file an action in the Middle District of Pennsylvania against the same parties over the same contract before filing the present action has bound him to that venue in the present dispute.

²Interestingly, three weeks before the filing of this action, Snyder claimed to be a resident of Maryland in the complaint he filed in the Middle District of Pennsylvania.

IV. CONCLUSION

Upon consideration of the Section 1404 criteria and all other relevant factors, the court concludes that the balance of justice and convenience tips heavily in favor of transfer.

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ORDER

For the reasons set forth in the court's memorandum issued contemporaneously herewith,

IT IS HEREBY ORDERED that:

1. The Defendants' Motion to Dismiss (D.I. 3, paras. 1-2) is MOOT;
2. The Defendants' Motion to Transfer (D.I. 3, paras. 3-5) is GRANTED; and
3. The above-captioned case is TRANSFERRED to the United States District Court for the Middle District of Pennsylvania.

Dated: February 3, 2004

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE