

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

J-SQUARED TECHNOLOGIES, INC,)
and J-SQUARED TECHNOLOGIES)
(OREGON) INC.,)
)
Plaintiffs,)
)
v.) Civ. No. 04-960-SLR
)
MOTOROLA, INC.,)
)
Defendant.)

MEMORANDUM ORDER

At Wilmington this 4th day of February, 2005, having considered defendants' motion to transfer and the papers submitted in connection therewith;

IT IS ORDERED that said motion to transfer¹ (D.I. 10) is denied, for the reasons that follow:

1. **Introduction.** On August 20, 2004, plaintiffs J-Squared Technologies, Inc. ("JST") and J-Squared Technologies (Oregon), Inc. ("JSO") sued defendant Motorola, Inc. ("Motorola") alleging: (1) breach of contract; (2) promissory estoppel; (3) negligent misrepresentation; (4) breach of duty of good faith and fair dealing; and (5) violation of Arizona's Consumer Fraud Act. (D.I. 1) Plaintiffs seek compensatory and punitive damages. On September 23, 2004, Motorola moved to transfer the case to the

¹By this motion, defendant also moved to dismiss. This memorandum order addresses only the transfer motion.

District of Arizona or, alternatively, to dismiss pursuant to Fed. R. Civ. P. 9(b) and 12(b)(6). (D.I. 10) Plaintiffs oppose the motion (D.I. 13) and defendant has filed its reply. (D.I. 15)

2. **Background.** Plaintiffs are commissioned sales agents who sell products for various computer manufacturers. JST is a Canadian corporation maintaining its principal place of business in Kanata, Ontario. (D.I. 1) JSO is an Oregon corporation with its principal place of business in Portland, Oregon.

3. Defendant is a Delaware corporation with its headquarters in Schaumburg, Illinois. (D.I. 11) Motorola Computer Group ("MCG"), is business unit of Motorola.² (Id. at A1) MCG manufactures computer boards and other products for use in embedded computing applications. MCG's headquarters is in Tempe, Arizona and most of its employees reside in the state. (Id.)

4. According to Motorola,³ MCG negotiated a Manufacturer's Representative Agreement ("MRA") with JST in October 2002. (Id. at A1) MCG employees were involved in the negotiations with JST. No negotiations occurred in Delaware. In March 2003, MCG negotiated a MRA with JSO. MCG employees negotiated the MRA,

²MCG recently changed its name to "Embedded Communications Computing Group." (D.I. 11, A1)

³Affidavit provided by Julie Blair, a financial analyst for MCG. (D.I. 11, A1)

with nothing occurring in Delaware. (Id.) Both contracts were monitored from Arizona and commissions were tabulated there as well. Two former employees involved in the negotiations still reside in Arizona. (Id.)

5. Plaintiffs indicate that they never traveled to Arizona to negotiate with MCG.⁴ (D.I. 13, Ex. A) All negotiations leading to the MRAs occurred over email and telephone. The MRAs involved the sale of Motorola products in Washington, Oregon, Idaho and Canada. (Id.) After the contracts were executed, Motorola sent its representatives to Canada and Oregon to assist with the work. These Motorola sales management representatives were from San Jose, California and Boston, Massachusetts. The attorneys who represented JST and JSO during contract negotiations reside in Canada, but have indicated that they are willing to testify in Delaware at trial. Commission payments to JST and JSO were made from Motorola. (Id.)

6. In September, Motorola representatives from Boston and the United Kingdom decided not to renew the MRAs during a meeting with JST and JSO. This meeting occurred in Boston. Motorola contends that the decision to terminate the contracts was made in Arizona.

⁴Affidavit of Jeffrey Gibson, chief financial officer for JST and JSO. (D.I. 13, Ex. A)

7. **Standard of Review.** Under 28 U.S.C. § 1404(a), a district court may transfer any civil action to any other district where the action might have been brought for the convenience of parties and witnesses and in the interests of justice. Congress intended through § 1404 to place discretion in the district court to adjudicate motions to transfer according to an individualized, case-by-case consideration of convenience and the interests of justice. Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 29 (1988); Affymetrix, Inc. v. Synteni, Inc., 28 F. Supp.2d 192, 208 (D. Del. 1998).

8. The burden of establishing the need to transfer rests with the movant "to establish that the balance of convenience of the parties and witnesses strongly favors the defendants." Bergman v. Brainin, 512 F. Supp. 972, 973 (D. Del. 1981) (citing Shutte v. Armco Steel Corp., 431 F.2d 22, 25 (3d Cir. 1970)). "Unless the balance is strongly in favor of a transfer, the plaintiff's choice of forum should prevail". ADE Corp. v. KLA-Tencor Corp., 138 F. Supp.2d 565, 567 (D. Del. 2001); Shutte, 431 F.2d at 25.

9. The deference afforded plaintiff's choice of forum will apply as long as a plaintiff has selected the forum for some legitimate reason. C.R. Bard, Inc. v. Guidant Corp., 997 F. Supp. 556, 562 (D. Del 1998); Cypress Semiconductor Corp. v. Integrated Circuit Systems, Inc., 2001 WL 1617186 (D. Del. Nov.

28, 2001); Continental Cas. Co. v. American Home Assurance Co., 61 F. Supp.2d 128, 131 (D. Del. 1999). Although transfer of an action is usually considered as less inconvenient to a plaintiff if the plaintiff has not chosen its “‘home turf’ or a forum where the alleged wrongful activity occurred, the plaintiff’s choice of forum is still of paramount consideration, and the burden remains at all times on the defendants to show that the balance of convenience and the interests of justice weigh strongly in favor of transfer.” In re M.L.-Lee Acquisition Fund II, L.P., 816 F. Supp. 973, 976 (D. Del. 1993).

10. The Third Circuit Court of Appeals has indicated that the analysis for transfer is very broad. Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995). Although emphasizing that “there is no definitive formula or list of factors to consider,” id., the Court has identified potential factors it characterized as either private or public interests. The private interests include: “(1) plaintiff’s forum preference as manifested in the original choice; (2) defendant’s preference; (3) whether the claim arose elsewhere; (4) the convenience of the parties as indicated by their relative physical and financial condition; (5) the convenience of the witnesses but only to the extent that the witnesses may actually be unavailable for trial in one of the fora; and (6) location of books and records

(similarly limited to the extent that the files could not be produced in the alternative forum)." Id. (citations omitted).

11. The public interests include: "(1) the enforceability of the judgment; (2) practical considerations that could make the trial easy, expeditious or inexpensive; (3) the relative administrative difficulty in the two fora resulting from court congestion; (4) the local interest in deciding local controversies at home; (5) the public policies of the fora; and (6) the familiarity of the trial judge with the applicable state law in diversity cases." Id. (citations omitted).

12. **Discussion.** Defendant contends that transfer is warranted because Delaware has no connection to this litigation. (D.I. 11, 15) Specifically, defendant argues that all negotiations and meetings occurred outside the district; the contracts at issue are governed by Arizona law; and the Arizona forum is more convenient for the parties and witnesses.

13. Plaintiffs contend their choice of forum should be afforded deference and that litigating in Delaware is as convenient as litigating in Arizona, given the nature of the transaction and the various locales involved in the transaction. (D.I. 13) Further, plaintiffs assert that defendant's motion to transfer is merely a strategy meant to undermine the litigation.

14. Weighing the arguments against the Jumara balancing test, the court finds that the asserted advantages of moving the

case to the District of Arizona are insufficient to warrant a transfer. Defendant's complaints about litigating here are outweighed by the fact that Motorola has enjoyed the benefits and protections of incorporation in Delaware and that the state has an interest in litigation regarding companies incorporated within its jurisdiction. Moreover, two potential witnesses no longer employed by Motorola have not refused to travel to Delaware for trial. Considering that discovery can be conducted at any location convenient to the parties and their employees, the only event that will take place in Delaware is the trial. The travel expenses and inconveniences incurred for that purpose, by a Delaware defendant conducting world-wide business, is not overly burdensome.

15. **Conclusion.** For the reasons stated, defendant's motion to transfer (D.I. 10) is denied.

Sue L. Robinson
United States District Judge