

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

JACOBSON DISTRIBUTION
COMPANY,

Plaintiff,

vs.

AMERICAN STANDARD, INC.,

Defendants.

No. 4:07-cv-00208-JAJ

ORDER

This matter comes before the court pursuant to Defendant American Standard Inc.'s ("American Standard") July 10, 2007, motion to dismiss for improper venue or transfer (docket number 4). American Standard presents two contentions in its motion. First, American Standard contends that the Southern District of Iowa is an improper venue for this action under 28 U.S.C. § 1391(a). Therefore, American Standard contends that this court should dismiss the action pursuant to Federal Rule of Civil Procedure 12(b)(3). In the alternative, American Standard contends that this action should be transferred to United States District Court for the Southern District of Ohio, Eastern Division, pursuant to 28 U.S.C. § 1404(a).

Plaintiff Jacobson Distribution Company ("Jacobson") resisted American Standard's motion on August 10, 2007 (docket number 9). Jacobson contends that this judicial district is proper under 28 U.S.C. § 1391(a) and (c), and that this court should deny American Standard's motion to dismiss under Federal Rule of Procedure 12(b)(3). Jacobson also contends that this court should deny a transfer under 28 U.S.C. § 1404(a) because American Standard failed to meet its burden under the doctrine of forum non conveniens. For the reasons set forth below, American Standard's motion to dismiss for improper venue or transfer is denied.

Factual and Procedural Background

On November 6, 2002, American Standard, a Delaware corporation that has its principal place of business in New Jersey, and Bekins Distribution Center Company (“Bekins”), an Iowa corporation that has its principal place of business in Iowa, entered into a written contract for the provision and use of warehouse space. The warehouse is located in Ohio. The contract was for a fixed term ending on November 30, 2007. On February 7, 2005, Jacobson, an Iowa corporation with its principal place of business in Iowa, took an assignment of Bekins’ duties and obligations under the contract. On July 1, 2005, American Standard and Jacobson entered into an amendment to the original contract. The amendment extended the term of the contract to July 1, 2010. American Standard and Jacobson also agreed in the amendment that Key Performance Indicators (“KPIs”) would govern the contract. The parties agreed to annually review and modify the KPIs. The amendment set forth provisions addressing what actions each party would be entitled to take in the event that the other party failed to satisfy a KPI.

On February 12, 2007, American Standard gave written notice to Jacobson that it would terminate the contract in ninety (90) days. American Standard stated that the termination was based on the inability of the two parties to agree on mutually acceptable KPIs for 2007 and Jacobson’s failure to meet KPIs at certain times in 2006. On February 16, 2007, Jacobson notified American Standard in writing that it considered the notice of termination to be a breach of contract, and that American Standard had thirty (30) days to cure by withdrawing the notice of termination. American Standard did not withdraw the notice of termination. On May 14, 2007, Jacobson filed a complaint in this court alleging that American Standard committed a breach of contract. Jacobson seeks from this court a judgment against American Standard for compensatory damages, attorneys fees, court costs, and other appropriate legal and equitable relief.

I. Proper Venue

The issue of proper venue in a federal district court is governed by 28 U.S.C. § 1391. Parts (a) and (c) of 28 U.S.C. § 1391 are applicable. Part (a) provides:

A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is situated, or (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.

Part (c) of 28 U.S.C. § 139 states “a defendant that is a corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced.” 28 U.S.C. § 1391(c). Thus, in order to determine if the Southern District of Iowa is a proper venue for this action, the court must first discover whether or not American Standard was subject to personal jurisdiction in this judicial district on May 14, 2007, the date that this action was filed in federal court.

A. First Basis of Personal Jurisdiction Over American Standard: Minimum Contacts

In determining whether a federal district court has personal jurisdiction, a two-step inquiry is utilized: “(1) whether the facts presented satisfy the forum state’s long-arm statute, and (2) whether the nonresident has ‘minimum contacts’ with the forum state, so that the court’s exercise of jurisdiction would be fair and in accordance with due process.” Soo Line R.R. Co. v. Hawker Siddeley Canada, Inc., 950 F.2d 526, 528 (8th Cir. 1991) (quoting Wines v. Lake Havasu Boat Mfg., 846 F.2d 40, 42 (8th Cir. 1988)). See also Dakota Indus., Inc. v. Best Ever Ltd., 28 F.3d 910, 915 (8th Cir. 1994) (“A federal court

may assume jurisdiction over a foreign defendant only to the extent permitted by the forum state's long-arm statute and by the Due Process Clause of the Constitution.”); Mountaire Feeds, Inc. v. Agro Impex, S.A., 677 F.2d 651, 653 (8th Cir. 1982) (same). Personal jurisdiction in Iowa extends to the fullest extent permitted by the Constitution. Hicklin Eng'g, Inc. v. Aidco, Inc., 959 F.2d 738, 739 (8th Cir. 1992), (citing Newton Mfg. Co. v. Biogenetics, Ltd., 461 N.W.2d 472, 474 (Iowa Ct. App. 1990)). Therefore, “the level inquiry collapses into one” and the court need only determine whether the defendant has sufficient minimum contacts to satisfy the Fourteenth Amendment. EFCO Corp. v. Aluma Sys., USA, Inc., 983 F. Supp. 816, 819 (S.D. Iowa 1997); Hicklin, 959 F.2d at 739.

“Due process mandates that jurisdiction be exercised only if defendant has sufficient ‘minimum contacts’ with the forum state, such that summoning the defendant into the forum state would not offend ‘traditional notions of fair play and substantial justice.’” EFCO, *supra*, quoting International Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L. Ed. 95 (1945). Defendant's contacts with the forum state must be more than random, fortuitous, or attenuated. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475, 105 S. Ct. 2174, 2183, 85 L. Ed.2d 528 (1985). Sufficient minimum contacts exist when “the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.” World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297, 100 S. Ct. 559, 567, 62 L. Ed.2d 490 (1980). “[I]t is essential in each case that there be some act by which the defendant purposely avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” Hanson v. Denckla, 357 U.S. 235, 253 78 S. Ct. 1228, 1240 (1958).

Factors to consider in evaluating whether or not a nonresident's contacts with the forum state are sufficient to impose jurisdiction include: “(1) the nature and quality of the contacts with the forum state; (2) the quantity of contacts with the forum state; (3) the

relation of the cause of action to the contacts; (4) the interest of the forum state in providing a forum for its residents; and (5) the convenience of the parties.” Soo Line R.R. Co., 950 F.2d at 529 (quoting Aaron Ferer & Sons Co. v. Diversified Metals Corp., 564 F.2d 1211, 1215 (8th Cir. 1977)). See also Mountaire Feeds, Inc., 677 F.2d at 654 (same). However, the fourth and fifth factors are only ‘secondary factors’ to be considered and are not determinative. Id.

“We have noted that ‘a contract *alone* cannot automatically establish sufficient contact.’” Cascade Lumber Co. v. Edward Rose Bldg. Co., 596 N.W.2d 90, 92 (Iowa, 1999) (emphasis in original) quoting Hager v. Doubletree, 440 N.W.2d 603, 607 (Iowa 1989) cert. denied, 493 U.S. 934, 110 S. Ct. 325, 107 L. Ed.2d 315 (1989). When a minimum contacts analysis involves a contract, then the court must consider the additional factors of “prior negotiations and contemplated future consequences, along with the terms of the contract and the parties’ actual course of dealing.” Burger King Corp., 471 U.S. at 479, 105 S. Ct. at 2185.

American Standard’s contacts with Iowa satisfy the minimum contacts test. First, American Standard has a valid certificate of authority from the Iowa Secretary of State to transact business in Iowa (docket number 9, exhibit number one). American Standard has continuously maintained its certificate of authority to transact business in Iowa since it was issued to the corporation in 1939 (docket number 9, exhibit number one). Also, American Standard sells its products in Iowa (docket number 4, affidavit of Mary Ann Lemere). By maintaining a certificate of authority to transact business in Iowa, American Standard “purposely avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protection of its laws.” Hanson, 357 U.S. at 253, 78 S. Ct. at 1240 (1958). “The term ‘resident of Iowa’ shall include . . . any foreign corporation holding a certificate of authority to transact business in Iowa.” Iowa Code § 617.3. Under Iowa Code § 617.3., American Standard can, under certain circumstances, sue a

foreign corporation in Iowa courts. “A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided in this chapter is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.” Iowa Code § 490.1505. By maintaining a certificate of authority, American Standard invokes the benefits and protections of Iowa law.

Second, American Standard maintains a registered agent or reserving party in Iowa. The Eighth Circuit Court of Appeals has held that a foreign corporation which operates retail stores in a state and has a registered agent for service of process in a state has sufficient contacts with the state to satisfy the minimum contacts test for personal jurisdiction. See Dever v. Hentzen Coatings, Inc., 380 F.3d 1070, 1075 (8th Cir. 2004). Additionally, other circuits have identified the presence of a registered agent in the state as a factor to consider when determining if personal jurisdiction exists over a non-resident defendant. See Tuazon v. R.J. Reynolds Tobacco Co., 433 F.3d 1163, 1172 (9th Cir. 2006) quoting Bancroft & Masters, Inc. v. Augusta Nat’l Inc., 223 F.3d 1082, 1086 (9th Cir. 2000). American Standard’s maintenance of a registered agent is another way it invokes the benefits and protections of Iowa law.

Next, while authorized to do business in Iowa, American Standard negotiated a contract with Bekins, an Iowa corporation, in 2002 (docket number 1, exhibit number one). In 2005, American Standard negotiated an amendment to the original contract with Jacobson, which is also an Iowa corporation (docket number one, exhibit number one). The term of the amended contract between Jacobson and American Standard was set to expire in 2010 (docket number 1, exhibit number 1). When a foreign corporation maintains a certificate of authority in a forum state and negotiates contracts with citizens of the forum state, it “purposely avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protection of its laws.” Hanson, 357 U.S.

at 253, 78 S. Ct. at 1240 (1958). See Universal Cooperatives, Inc. v. Tasco, Inc., 300 N.W.2d 139, 144 (Iowa, 1981).

Taking into consideration the factors of the minimum contacts test and the American Standard's contacts with Iowa, the court finds that the minimum contacts test is satisfied. American Standard is subject to personal jurisdiction in the Southern District of Iowa on the basis of sufficient minimum contacts with the state. Thus, venue for this action is appropriate in the Southern District of Iowa under 28 U.S.C. § 1391 (a) and (c).

**B. Second Basis of Personal Jurisdiction Over
American Standard: Consent**

The Eighth Circuit has recognized consent as another method available besides minimum contacts for acquisition of personal jurisdiction over a non-resident defendant. Sondergard v. Miles, Inc., 985 F.2d 1389, 1394-95 (8th Cir. 1993); Knowlton v. Allied Van Lines, Inc., 900 F.2d. 1196, 1199 (8th Cir. 1990). Under the consent theory of personal jurisdiction, the Eighth Circuit has held a foreign corporation consents to being subject to personal jurisdiction in a state when the corporation appoints a registered agent for service of process within the state. Knowlton, 900 F.2d at 1199 (“One of the most solidly established ways of giving such consent is to designate an agent for service of process within the State.”); Sondergard, 985 F.2d at 1393 (“[T]his court has presumed that service upon a company’s registered agent is sufficient to confer jurisdiction.”).

The framework of Iowa law governing foreign corporations is almost identical to that of Minnesota and South Dakota, the states out of which the Knowlton and Sondergard decisions arose, respectively. Like Minnesota and South Dakota, Iowa requires foreign corporations that wish to transact business in the state to acquire a certificate of authority from the secretary of state. Iowa Code § 490.1501. In order to acquire a certificate of authority, a foreign corporation must provide, among other information, the address of its

registered office in Iowa and the name of its registered agent at that office. Iowa Code § 490.1503(e). Iowa law state that “a registered agent of a foreign corporation authorized to transact business in this state is the corporation’s agent for service of process, notice, or demand required or permitted by law to be served on a foreign corporation.” Iowa Code § 490.1510(1).

American Standard complied with the above-stated Iowa statutes by maintaining a certificate of authority to transact business in the state of Iowa and designating a registered agent or reserving party (docket number 9, exhibit 1). “Appointment of a registered agent for service is . . . a traditionally recognized and well-accepted species of general consent, possibly omitted from the Supreme Court’s list because of it is of such long standing as to be taken for granted.” Knowlton, 900 F.2d at 1200. Thus, American consented to personal jurisdiction in the Southern District of Iowa because it appointed an agent to accept service in the state.

American Standard is subject to personal jurisdiction in the Southern District of Iowa because it’s actions within the state satisfy the minimum contacts test and it consented to be subject to personal jurisdiction in the state. Thus, venue for this proper for this action in the Southern District of Iowa under 28 U.S.C. § 1391(a) and (c). American Standard’s motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(3) is denied.

II. Forum Non Conveniens

“The principle of forum non conveniens is simply that a court may resist imposition upon its jurisdiction even when jurisdiction is authorized by the letter of a general venue statute.” Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 507, 67 S. Ct. 839, 842 (1947). The doctrine of forum non conveniens presupposes at least two forums in which the defendant is amenable to process, and provides criteria to be used in choosing between them. Id. at 506-507. The burden of persuasion in proving all elements necessary for the court to

dismiss a claim based on forum non conveniens lies with the defendant. Reid-Walen v. Hansen, 933 F.2d 1390, 1393 (8th Cir. 1991); Northrup King Co. v. Compania Productora Semillas Algodoneras Selectas, S.A., 51 F.3d 1383, 1389 (8th Cir. 1995).

In Gilbert, the Supreme Court set forth a series of private and public concerns to be taken into consideration by a trial court in applying the doctrine of forum non conveniens. Gilbert, 330 U.S. at 508-09, 67 S. Ct. at 843. Factors pertaining to a litigant's private interests include the relative ease of access to sources of proof, availability of compulsory attendance of unwilling, and the cost of obtaining attendance of willing witnesses, possibility of viewing any premises at issue in the case, and all other practical problems that make trial of a case easy, expeditious and expensive. Id. at 508, 67 S. Ct. at 843. Public concerns to be considered include administrative difficulties arising from court congestion, the interest of a community in deciding local controversies, the interest in having a trial in a forum that is at home with the governing law, avoiding conflict of laws problems, requiring a court to decipher and apply foreign law, and burdening the citizens of an unrelated forum with jury duty. Id.

Thus, the court's forum non conveniens analysis should proceed in four steps.

As a prerequisite, the court must establish whether an adequate alternative forum exists which possesses jurisdiction over the whole case. Next, the trial judge must consider all relevant factors of private interest, weighing in the balance a strong presumption against disturbing plaintiffs' initial forum choice. If the trial judge finds this balance of private interests to be in equipoise or near equipoise, he must then determine whether or not factors of public interest tip the balance in favor of a trial in a foreign forum. If he decides that the balance favors such a foreign forum, the trial judge must finally ensure that plaintiffs can reinstate their suit in the alternative forum without undue inconvenience or prejudice.

Pain v. United Techs. Corp., 637 F.2d 775, 784-85 (D.C. Cir. 1980), cert denied, 454 U.S. 1128, 102 S. Ct. 980 (1981). See also De Melo v. Lederle Lab., Div. Am.

Cyanamid Corp., 801 F.2d 1058 (8th Cir. 1986) (utilizing four step inquiry in analyzing motion for dismissal pursuant to forum non conveniens).

In balancing these interests, the court must give considerable, but not conclusive, weight to the plaintiffs' choice of forum. Pain, 637 F.2d at 783. "Thus, the plaintiff's choice of forum is more than just one factor that the trial judge must consider when balancing equities between two alternative forums." Id. "[T]here is ordinarily a strong presumption in favor of the plaintiff's choice of forum, which may be overcome only when the private and public interest factors clearly point towards trial in the alternative forum." Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255, 102 S. Ct. 252, 266 (1981). See also Gilbert, 330 U.S. at 508, 67 S. Ct. at 843 ("[U]nless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed.").

A. Adequate Alternative Forum

In a forum non conveniens analysis, a court first must determine if an adequate alternative forum exists in which this dispute could be resolved. An alternative forum is usually considered adequate if the defendant is "amenable to process" in that forum. Gilbert, 330 U.S. at 506-07, 67 S. Ct. at 842. American Standard argues that United States District Court for the Southern District of Ohio, Eastern Division, is an adequate alternative forum for this action. American Standard is amenable to process in that district because the warehouse where American Standard's products are received, distributed, and stored is located there (docket number 1, exhibit number 1). Thus, American Standards would have the requisite minimum contacts with Ohio, and be "subject to jurisdiction of that forum." R. Maganlal & Co. v. M.G. Chemical Co., Inc., 942 F.2d 164, 167 (2nd. Cir., 1991). The first inquiry of a forum non conveniens analysis, whether or not there is an adequate alternative forum, is satisfied.

B. Private Interest Factors

Second, a court conducting a forum non conveniens analysis must balance the private interest factors, giving a strong presumption to the plaintiff's forum of choice. American Standard argues that the private interest factors that support a transfer to Ohio outweigh the strong presumption in favor of Jacobson because the warehouse, relevant evidence, and witnesses are located in Ohio. Also, American Standard argues that Ohio would be a more convenient venue for itself and Jacobson because Jacobson would avoid the cost of transporting its employees who work at the Ohio warehouse to Iowa. Jacobson, however, disagrees with American Standard's characterization of Ohio as a more convenient forum for both parties, arguing that Jacobson's home office as well as its witnesses are located in Iowa. Jacobson argues that while Ohio may be a more convenient forum for American Standard, a transfer would, in effect, shift inconvenience from American Standard to Jacobson, which is an impermissible justification for transfer. Intercoast Capitol Co. v. Wailuku River Hydro-Electric Limited Partnership, WL 290011 *12 (S.D. Iowa 2005).

C. Public Interest Factors

Third, a court conducting a forum non conveniens analysis must balance the public interest factors. In its argument, American Standard relies heavily on a choice-of-law provision in the 2005 amendment that states that Ohio law will govern the contract. American Standard argues that there are clear advantages to having an Ohio court analyze and determine questions of Ohio law. Jacobson, however, argues that the advantages of having a local court apply local law are overstated in this case because basic principles of common law contracts are at issue. Moreover, Jacobson argues that American Standard has not demonstrated that there are any conflicts between Ohio law and Iowa law.

D. Transfer to Ohio Pursuant to Forum Non Conveniens is Inappropriate

A balancing of the private interest factors and public interest factors demonstrates that a transfer pursuant to forum non conveniens is not appropriate in this case. The court finds that the strong presumption in favor of the plaintiff's choice of forum is not outweighed by the factors favoring a transfer. Specifically, the court finds that transferring the action to Ohio would operate to shift the inconvenience from American Standard to Jacobson, which is an impermissible justification for a transfer. Intercoast Capitol Co., WL 290011 *12. Also, while contract designates Ohio law as controlling, the court agrees with Jacobson that basic principles of common law contracts are at issue and that American Standard has not demonstrated why an Ohio court would be more capable than an Iowa court to apply such law.

“The defendant has the burden of persuasion in proving all elements necessary for the court to dismiss a claim based on forum non conveniens.” Northrup King Co., 51 F.3d at 1390 (8th Cir. 1995), quoting Reid-Walen, 933 F.2d at 1393 (8th Cir. 1991). American Standard failed to carry that burden. Thus, American Standard's motion to transfer pursuant to the doctrine of forum non conveniens and 28 U.S.C. 1404(a) is denied.

III. Conclusion

The Southern District of Iowa is proper a proper venue for this action under 28 U.S.C. 1391(a) and (c). American Standard failed to make an adequate showing under 28 U.S.C. 1404(a) that transfer of this action to the Southern District of Ohio, Eastern Division, is proper under the doctrine of forum non conveniens.

Upon the foregoing,

IT IS ORDERED that American Standard's motion to dismiss for improper venue or to transfer (docket number 4) is denied.

DATED this 5th day of September, 2007.



JOHN A. JARVEY
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF IOWA