

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

CONSTRUCTION PRODUCTS
DISTRIBUTORS, LLC,

Plaintiff,

vs.

ONWARD TECHNOLOGIES, INC.,

Defendant.

No. 4:07-cv-00343-JAJ

ORDER

This matter comes before the Court pursuant to Defendant Onward Technologies', Inc., ("Onward") September 19, 2007, motion for change of venue (docket no. 10). Onward presents two contentions in its motion. First, Onward contends that the Southern District of Iowa is an improper venue under 28 U.S.C. § 1391(a). Second, Onward contends that this action should be transferred to United States District Court for the Eastern District of Michigan, Southern Division, pursuant to 28 U.S.C. § 1404(a).

Plaintiff Construction Product Distributors, L.L.C. ("CPD"), resisted Onward's motion on October 12, 2007 (docket no. 14). CPD contends that venue is proper in this judicial district under 28 U.S.C. § 1391(a)(1) and (a)(2). CPD also contends that the Court should deny a transfer under 28 U.S.C. § 1404(a) because Onward failed to meet its burden under the doctrine of forum non conveniens. For the reasons set forth below, Onward's motion for change of venue is denied.

Factual and Procedural Background

On September 1, 2006, R.W. Metals, L.L.C.,¹ an Iowa limited liability company having its principal place of business in Des Moines, Iowa, and Onward Technologies,

¹ The plaintiff in this case, Construction Products Distributors, L.L.C., is the successor to R.W. Metals, L.L.C., the signatory to the relevant contract. The entity's name changed from R.W. Metals, L.L.C., to Construction Product Distributors, L.L.C., pursuant to an October 31, 2006, amendment. CPD is a wholly-owned subsidiary of The Weitz Group, L.L.C., which has its principal place of business in Des Moines Iowa.

Inc., a Delaware corporation having its principal place of business in Bingham Hills, Michigan, entered into a written contract in Des Moines, Iowa. The contract obligated Onward to provide and CPD to pay for steel detailing services for CPD's construction projects.² The contract specified that Onward personnel, either on-site and/or in an offshore facility in India, would complete the steel detailing services for CPD (docket no. 10, exhibit no. 2, ¶ B of "Recitals"). The contract contained a choice of law provision that designated Michigan law to govern the contract. The contract contained a term stating that the contract would be valid for a minimum time period of two years and a maximum time period of five (docket no. 10, exhibit no. 2, ¶ 6(c)). The contract provided for a probationary period during which CPD could evaluate whether Onward's services satisfied CPD's requirements. If CPD demonstrated that Onward provided insufficient services during the probationary period, CPD could terminate the contract without liabilities or extend the probationary period for another project.

The subject of the probationary period was the Shadow Lake Town Center project in Papillion, Nebraska ("Shadow Lake"). Onward employees in the offshore facility in India completed the shop drawings for Shadow Lake (docket no. 10, exhibit no. 1, ¶ 7; docket no. 14, exhibit no. 3, ¶ 19). Pursuant to the contract terms, CPD hired a checker to review Onward's shop drawings. CPD alleges that the majority of shop drawings submitted by Onward contained errors, omissions, and inconsistencies. For Shadow Lake, CPD obtained fabricated steel from five steel fabricators, three based in Iowa, one based in Missouri, and one based in Kansas (docket no. 14, exhibit no. 3, ¶ 13 and 14). Each of the steel fabricators used Onward's shop drawings to fabricate the steel components, and

² Steel detailing services entail the creation of shop drawings. Shop drawings are detailed designs for specific structural steel components of a building. Steel fabricators use shop drawings to manufacture the actual steel components.

each reported to CPD problems with Onward's shop drawings (docket no. 14, exhibit no. 3, ¶ 15).

Pursuant to the contract terms, CPD terminated its relationship with Onward. CPD subsequently filed a lawsuit against Onward on August 6, 2007, in this Court, alleging breach of contract and negligence causes of action. CPD alleges that Onward's insufficient performance caused CPD to endure increased costs, delay, lost wages, and an assessment of damages against it by the general contractor of Shadow Lake. On September 19, 2007, Onward filed in this Court a motion for change of venue. On October, 12, 2007, CPD filed a resistance to Onward's motion for change of venue.

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 Onward was subject to personal jurisdiction in this judicial district on August 6, 2007, the date that this action was filed in federal court.

A. First Basis of Personal Jurisdiction: 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). “Iowa Rule of Civil Procedure 1.306 ‘expands Iowa’s jurisdictional reach to the widest due process parameters allowed by the U.S. Constitution.’” Addision Insurance Co. v. Knight, Hoppe, Kurnik & Knight, L.L.C., 734 N.W.2d 473, 476 (Iowa 2007) (quoting Hammond v. Fla. Asset. Fin. Corp., 695 N.W.2d 1, 5 (Iowa 2005) (internal citations omitted)). 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 Eng’g, Inc. v. Aidco, Inc., 959 F.2d 738, 739 (8th Cir. 1992).

“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, 983 F. Supp. at 819, quoting International Shoe Co. v. Washington, 326 U.S. 310, 316 (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 (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 (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 (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 (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.

Onward’s contacts with Iowa satisfy the minimum contacts test. First, Onward has a valid certificate of authority issued by the Iowa Secretary of State to transact business in Iowa (docket no. 14, exhibit no. 2). Onward has continuously maintained its certificate of authority to transact business in Iowa since it was issued to the corporation in 2001 (docket no. 14, exhibit no. 2). By maintaining a certificate of authority to transact business in Iowa, Onward “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. “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., Onward 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 to transact business in Iowa, Onward invokes the benefits and protections of Iowa law.

Second, Onward maintains a registered agent for service 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)). Onward’s maintenance of a registered agent for service is another way in which it invokes the benefits and protections of Iowa law.

Next, while authorized to do business in Iowa, Onward negotiated a contract with CPD’s predecessor, R.W. Metals, L.L.C.. The contract was executed between the parties in Des Moines on September 1, 2006 (docket no. 14, exhibit no. 3, ¶ 9). The contract contemplated a long-term relationship between the two parties, with a validity period minimum of two years and a maximum of five years (docket no. 14, exhibit no. 2, ¶ 6(c)). 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 (1958). See Universal Cooperatives, Inc. v. Tasco, Inc., 300 N.W.2d 139, 144 (Iowa 1981).

Taking into consideration Onward’s contacts with the state of Iowa, this court finds that Onward “should reasonably anticipate being haled into court there.” World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980). In the summer of 2006, Onward provided steel detailing services for CPD’s projects in Altoona and Pella, Iowa (docket no. 14, exhibit no.3, ¶ 7). During the same time period, two Onward representatives, Pravin Ekbote, Director of Business Development, and Vikas Joshi, Manager of Business Development, made numerous business trips to CPD’s offices in Des Moines, Iowa (docket no. 14, exhibit no. 3, ¶ 8). Joshi’s Onward business card listed an Iowa address as well as two Iowa phone numbers as contact information (docket no. 14, exhibit no. 4). Three out of five steel fabricators that used Onward’s shop drawings for Shadow Lake are located in Iowa. As a part of its second probationary project with CPD, Onward sent its employee, Prakash Kulkarri, to Des Moines for six weeks of training at CPD offices (docket no. 14, exhibit no. 3, ¶ 18). Onward’s contacts with the state of Iowa were more than “random, fortuitous, or attenuated.” Burger King Corp., 471 U.S. at 475.

An analysis of personal jurisdiction under Iowa state law also demonstrates that personal jurisdiction in this Court is proper. CPD served a summons on Onward’s registered agent in Des Moines on August 16, 2007 (docket no. 2). Iowa Rules of Civil Procedure 1.305 and 1.306 provide that CPD’s service of a summons on Onward’s registered agent was a proper method of personal service. The Iowa Supreme Court has held that the state’s long arm statute confers personal jurisdiction over parties to the fullest extent allowed by the Due Process Clause. Addison Insurance Co., 734 N.W.2d at 476. Accordingly, Iowa state law also supports assertion of personal jurisdiction over Onward in this Court.

After evaluating Onward's contacts with Iowa, the Court finds that Onward had sufficient minimum contacts with the state on August 6, 2006, and that Onward was subject to personal jurisdiction in Iowa on that date. As a result of Onward being subject to personal jurisdiction in Iowa on August 6, 2006, Onward was also considered to be a "resident" of Iowa under 28 U.S.C. § 1391(c). Accordingly, venue for this action is appropriate in the Southern District of Iowa because Onward meets the two requirements under 28 U.S.C. § 1391(a)(1) - Onward is the only defendant in this case, and is also a resident of the state of Iowa.

B. Second Basis of Personal Jurisdiction Over Onward: Consent

The Eighth Circuit has recognized consent as another method, besides satisfaction of the minimum contacts test, to acquire 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 states 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).

Onward 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 no. 14, exhibit no. 2). “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, Onward consented to personal jurisdiction in the Southern District of Iowa because it appointed an agent to accept service in the state.

28 U.S.C. § 1391(a) states that venue for a cause of action is proper in any judicial district where a defendant “resides.” 28 U.S.C. § 1391(c) states that a corporation “resides” in any jurisdiction where it is subject to personal jurisdiction. Onward is subject to personal jurisdiction in the Southern District of Iowa on two grounds. First, Onward’s actions within the state satisfy the minimum contacts test for assertion of personal jurisdiction. Second, Onward consented to personal jurisdiction in Iowa by maintaining a registered agent to accept service 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).

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 (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 508-509. 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. 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 (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 (1981). See also Gilbert, 330 U.S. at 508 ("[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 506-507. Onward argues that the U.S. District Court for the Eastern District of Michigan, Southern Division, is an adequate alternative forum for this action. CPD does not dispute that the U.S. District Court for the Eastern District of Michigan, Southern Division, is an adequate alternative forum, but maintains that its choice of venue in this Court is proper, appropriate, and convenient. Based on the facts alleged, specifically that Onward's principal place of business is located in the Eastern District of Michigan, this Court finds that Onward is amenable to process in that district. Thus, the first inquiry of a forum non conveniens analysis, whether an adequate alternative forum exists, is satisfied.

B. Private Interest Factors

A court conducting a forum non conveniens analysis must next balance the private interest factors, giving a strong presumption to the plaintiff's forum of choice. Onward

argues that a transfer to the Eastern District of Michigan, Southern Division, would serve the convenience of both the parties and the witnesses. Onward argues that its document evidence is located in Michigan. Also, Onward argues that it will be inconvenienced by a trial in Iowa because it has no offices nor personnel in Iowa. However, Onward does not identify any witnesses located in Michigan that would be inconvenienced as a result of this action being tried in Iowa. On the contrary, Onward acknowledges that most of its witnesses are located in India. Onward recognizes that, regardless of whether the action is tried in Michigan or in Iowa, both parties may have difficulty obtaining process over witnesses in India.

CPD takes issue with Onward's statement that document evidence relating to the contract were maintained in the Michigan office, alleging that the documents CPD received from Onward were sent from India, not from Michigan. CPD points out that while Onward failed to identify any witnesses located in Michigan, nearly all of CPD's witnesses and evidence are located in Iowa. Thus, CPD argues, a transfer to Michigan would shift the inconvenience from Onward to CPD. CPD argues that Onward will not be inconvenienced by trial of this case in Iowa, as Onward has already retained local counsel in Des Moines.

Taking into consideration the strong presumption in favor of the plaintiff's choice of forum and other factors listed in step two of the four-part analysis, this Court finds that Onward fails to meet its burden under the forum non conveniens test. First, a transfer to the Eastern District of Michigan would not serve the interest of convenience for the witnesses. Onward acknowledges that most of its witnesses are located in India. Onward also acknowledges that obtaining witnesses from India will be difficult and inconvenient, regardless of whether the case is tried in Iowa or Michigan. Onward asserts that both parties have the financial means to transport witnesses in India to the United States. Onward provides no argument as to why it would be more convenient for witnesses in India to travel to Michigan instead of Iowa for trial. Onward failed to identify any witnesses in

Michigan that will be inconvenienced by trying this case in Iowa. To the contrary, CPD is incorporated in Iowa and has its principal place of business in Iowa. CPD alleges that nearly all of its witnesses are located in Iowa. Additionally, three of the steel fabricators that used Onward's shop drawings to perform work on Shadow Lake are located in Iowa. This Court finds that Onward has failed to demonstrate that transfer to the Eastern District of Michigan, Southern Division, would serve the interest of convenience for the witnesses.

Second, a transfer to the Eastern District of Michigan would not serve the interest of convenience for the parties. Onward's argument that it will be inconvenienced by a trial in Iowa fails to overcome the presumption in favor of plaintiff's choice of forum. In light of CPD's production of Joshi's Onward business card and other allegations made by CPD,³ Onward's argument that its sole connection to Iowa is the 2006 contract with CPD is unpersuasive. In the case that Onward's contract with CPD is its only contact with Iowa, Onward acknowledged in its brief that it is a successful business entity whose financial means are undisputed. Onward makes no argument that the financial cost of proceeding with this lawsuit in the Southern District of Iowa would be prohibitively burdensome. Further, Onward has already retained local counsel in Des Moines to handle the lawsuit as it proceeds in the Southern District of Iowa. Onward argues that it will be inconvenienced by a trial in Iowa because its document evidence is located in Michigan. However, document evidence could easily be copied and transported if necessary. See United States v. Hartbrodt, 773 F.Supp. 1240, 1243 (S.D. Iowa 1991) (citing Midwest Mech. Contractors, Inc. v. Tampa Constructors, Inc., 659 F.Supp. 526, 532 (W.D.Mo.

³ Joshi's business card contained two Iowa phone numbers and a Cedar Falls, Iowa, address (docket no. 14, exhibit no. 4). Three out of the five steel fabricators assigned to Shadow Lake, which used Onward's shop drawings, were located in Iowa (docket no. 14, exhibit no. 3, ¶ 13). Onward conducted business with other Iowa corporations (docket no. 14, exhibit no. 3, ¶ 20). An Onward employee attended of six weeks of training in Des Moines (docket no. 14, exhibit no. 3, ¶ 18). Prior to the 2006 contract with CPD, Onward provided steel detailing services for CPD on two other projects in Iowa (docket no. 14, exhibit no. 3, ¶ 7).

1987))(rejecting defendant's argument that location of evidentiary documents in another judicial district is grounds for transfer under the doctrine of forum non conveniens). This Court finds that a transfer to the Eastern District of Michigan would merely shift the inconvenience from Onward to the CPD, which is an impermissible justification for transfer. See Intercoast Capital Co. v. Wailuku River Hydro-Electric Limited Partnership, WL 290011 *12 (S.D. Iowa 2005).

This Court finds that, in the balancing of the private interests of Onward and CPD, Onward fails to overcome the strong presumption in favor of CPD's choice of forum. "[U]nless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed." Gilbert, 330 U.S. at 508. Thus, this Court denies Onward's motion for change of venue pursuant to 28 U.S.C. § 1404(a).

C. Public Interest Factors

While the Court has resolved the motion for change of venue at step two of the four-part forum non conveniens analysis, the Court will nonetheless review the public interest factors of step three. Neither party has made any argument regarding the administrative abilities of this Court to preside over this case. No contested issue exists regarding a conflict of laws as the contract contains a choice of law provision designating Michigan law as controlling of the contract. Both parties agree that this Court is capable of applying Michigan state law. However, Onward urges this Court to grant a transfer to the Eastern District of Michigan, Southern Division, based on the choice of law provision because the Michigan court will be more accustomed to applying Michigan state law than this Court. This Court finds this argument of Onward unpersuasive. In its brief, Onward alludes to "procedural issues [involved] regarding non-parties who/which may have some culpability for the damages in question" as a reason why this Court should grant a transfer to the Eastern District of Michigan, Southern Division. The causes of action in this case, breach of contract and negligence, are based in the common law of contracts. Besides the one sentence in its brief, Onward has not produced any specific facts or citations to the

Michigan code to support its argument that the Eastern District of Michigan, Southern Division, is a more appropriate forum. Accordingly, although it is not required to, this Court finds that the public interest factors do not weigh in favor of a transfer to the Eastern District of Michigan, Southern Division.

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

A balancing of the private interest factors and public interest factors demonstrates that a transfer pursuant to the doctrine of 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 Michigan would operate to shift the inconvenience from Onward to CPD, which is an impermissible justification for a transfer. See Intercoast Capital Co., WL 290011 *12. Also, while contract designates Michigan law as controlling, the court finds that the basic principles of common law contracts are at issue and that Onward has not demonstrated why a Michigan 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)). Onward failed to carry that burden. Thus, Onward'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). Onward failed to make an adequate showing under 28 U.S.C. 1404(a) that a transfer of this action to the Eastern District of Michigan, Southern Division, is proper under the doctrine of forum non conveniens.

Upon the foregoing,

IT IS ORDERED that Onward's motion to change venue (docket no. 10) is denied.

DATED this 6th day of November, 2007.



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