

Mikkilineni v. Gibson-Thomas Eng'g Co.

United States District Court for the District of Columbia
March 31, 2003, Decided
Civil Action No. 02-1118 (RMU)

Reporter: 2003 U.S. Dist. LEXIS 5754; 2003 WL 1846047

M.R. MIKKILINENI, Plaintiff, v. GIBSON-THOMAS ENGINEERING COMPANY et al., Defendants.

Subsequent History: Writ of mandamus denied [In re Mikkilineni, 2003 U.S. App. LEXIS 12360 \(D.C. Cir., June 18, 2003\)](#)

Disposition: Plaintiff's motion for hearing or deposition on issues of personal jurisdiction and venue denied. Action transferred.

Core Terms

interest of justice, venue, choice of forum, convenience

Case Summary

Procedural Posture

Plaintiff engineer filed an action pro se against defendants, an engineering company, two individuals, a town, a transit authority, and county commissioners alleging violation of civil rights, breach of contract, and tort claims. Defendants filed a motion, treated as a motion for change of venue under [28 U.S.C.S. 1404](#), because of similar claims pending in another court. Plaintiff sought a hearing or a deposition.

Overview

Plaintiff filed an action against defendants alleging breach of contract, intentional infliction of emotional distress, fraud, and other claims arising out of contracts that plaintiff's company allegedly had with defendants, and further asking the U.S. Attorney General to investigate a fraud upon the court. Plaintiff had filed similar earlier claims in a federal district court in Pennsylvania, and all defendants, except for the Attorney General, were residents of Pennsylvania. The court held that the interest of justice supported keeping the claims in plaintiff's pending actions together and transferring the entire action to the Western District of Pennsylvania. The court found that plaintiff was for the most part forum shopping because the Pennsylvania court had summarily dismissed a number of plaintiff's claims. Balancing plaintiff's forum choice, the interest of justice, and the

convenience of the parties and witnesses, the court found that most factors weighed in favor of transferring the matter.

Outcome

The court ordered the matter transferred and consolidated with similar matters that were pending in Pennsylvania. The court denied plaintiff's motion for a hearing or deposition.

LexisNexis® Headnotes

Civil Procedure > Preliminary Considerations > Venue > General Overview
Civil Procedure > ... > Venue > Federal Venue Transfers > General Overview
Civil Procedure > ... > Venue > Federal Venue Transfers > Convenience Transfers
Civil Procedure > ... > Venue > Motions to Transfer > Choice of Forum

HN1 For the convenience of the parties and witnesses, in the interest of justice, a district court may transfer a case to any other district where the plaintiff could have brought the complaint. [28 U.S.C.S. § 1404\(a\)](#). Generally, a strong presumption exists in favor of the plaintiff's choice of forum. However, transfer away from the plaintiff's venue of choice serves the interest of justice when it would prevent a litigant from using one district as a "safe haven" from the lawful orders of another.

Civil Procedure > ... > Venue > Motions to Transfer > General Overview

HN2 While a court generally gives significant weight to a plaintiff's choice of forum, the court gives less weight to the plaintiff's choice of forum where the plaintiff is forum shopping.

Counsel: [*1] M R Mikkilineni, PLAINTIFF, Pro se, Washington, DC USA.

For Gibson-Thomas Engineering Co, Edward Schmitt, Mark Gera, Derry Township Municipal Authority, Indiana County Transit Authority, Indiana County Commissioners, DEFENDANTS: James Vincent Irving, Becker, Hadeed, Kellogg & Berry, PC, Springfield, VAUSA.

For Lindsay McCabe & Lee, DEFENDANT: Aaron L Handelman, Eccleston & Wolf, Washington, DC USA.

For Zimmer Kunz, DEFENDANT: Craig A Koenigs, Hall, Estill, Hardwick, Gable, Golden & Nelson, Washington, DC USA.

For Commonwealth of Pennsylvania, DEFENDANT: Devon M Jacob, Pennsylvania Office of Attorney General, Harrisburg, PA USA. Victoria S Freimuth, Office of Attorney, General Litigation Section, Harrisburg, PAUSA.

For United States of America, FEDERAL DEFENDANT: Robert Ernest Leidenheimer, Jr, US Attorney's Office, Washington, DC USA.

Judges: Ricardo M. Urbina, United States District Judge.

Opinion by: Ricardo M. Urbina

Opinion

MEMORANDUM ORDER

DENYING THE PLAINTIFF'S MOTION FOR A HEARING OR DEPOSITION;

TRANSFERRING THE CASE TO THE WESTERN DISTRICT OF PENNSYLVANIA

I. INTRODUCTION

This civil rights, contract, and tort case comes before the court on the motion [*2] to dismiss or transfer for lack of venue submitted by defendants Gibson-Thomas Engineering Co., Edward Schmitt, Mark Gera, Derry Township Municipal Authority, Indiana County Transit Authority, and Indiana County Commissioners (collectively, "the Gibson defendants").¹ Because the Western District of Pennsylvania has already ruled multiple times on similar claims filed by this *pro se* plaintiff, the court concludes that transferring this action to that district best serves the interest of justice.

[*3] II. BACKGROUND

The *pro se* plaintiff's 44-page, mostly single-spaced complaint alleges countless facts relating to his now-defunct engineering company, MRM Engineers, and the Gibson defendants' alleged breaches of 1990-91 contracts with MRM Engineers. *See generally* Compl. The complaint also details prior litigation, relating to the alleged contract breaches, in Pennsylvania state court, the United States District Court for the Western District of Pennsylvania, and the United States Court of Appeals for the Third Circuit. *E.g., id.* at 19, 21, 29. In the pending complaint, the plaintiff alleges that the Gibson defendants and their attorneys committed "fraud upon the court" during the course of the prior litigation. *E.g., id.* Also in the pending complaint, the plaintiff sues the state and federal judges who presided over and dismissed the plaintiff's prior claims against the Gibson defendants, and the judges' law clerks. *Id.* at 5, 35-36. The plaintiff alleges that the judges cited incorrect facts and law and discarded evidence with malice. *E.g., id.* at 24-25, 28, 30, 32, 35-36, 38.

Overall, the plaintiff's counts allege breach of contract, intentional [*4] infliction of emotional distress, fraud, violations of the *Federal Tort Claims Act*, civil rights violations, and various other violations of the Constitution. *Id.* at 39-42. The plaintiff seeks monetary damages, declaratory relief, and a writ of mandamus compelling the United States Attorney General to investigate the "fraud on the courts" committed by the judges and law clerks. *Id.* at 42-44.

As the plaintiff himself explains, the instant action is one of many that he or his corporation have filed against the Gibson defendants. *E.g., id.* at 5, 24-25, 28, 30, 32, 38. The Gibson defendants describe eight of the plaintiff's prior actions against them in the Western District of Pennsylvania and 11 of his appeals relating to these actions. Gibson Defs.' Mot. at 7-11.

III. ANALYSIS

HNI "For the convenience of the parties and witnesses, in the interest of justice," a district court may transfer a case to any other district where the plaintiff could have brought the complaint. *28 U.S.C. § 1404(a)*; *McSheffrey v. Hawk-Sawyer*, 2003 U.S. App. LEXIS 1285, 2003 WL 179850, *1 (D.C. Cir. Jan. 24, 2003) (stating that transfer to the district where a number of the relevant [*5] events occurred was appropriate) (citing *28 U.S.C. §*

¹ The Gibson defendants' motion to dismiss or transfer for lack of venue pursuant to *28 U.S.C. § 1406* fails to discuss whether this court could assert pendant venue over the plaintiff's claims against them, as explained in *Beattie v. United States*, 244 U.S. App. D.C. 70, 756 F.2d 91, 100-02 (D.C. Cir. 1984) and *Dooley v. United Techs. Corp.*, 786 F. Supp. 65, 81 (D.D.C. 1992). Additionally, the parties' submissions regarding venue include issues relevant to a change of venue pursuant to *28 U.S.C. § 1404*. Consequently, and for reasons discussed herein, treating the Gibson defendants' motion to dismiss or transfer for lack of venue as a motion to change venue best serves the interest of justice. *See Mikkilineni v. United States*, No. 01-314, slip op. at 1 (D.D.C. May 1, 2001). This conversion does not prejudice the plaintiff's ability to argue against a change of venue because the plaintiff has already done so in his opposition to the defendants' motion to dismiss or transfer venue and in his motion for a hearing. Pl.'s Opp'n at 9-10; Pl.'s Mot. for Hr'g at 3-5. His arguments specify why this district is more convenient to him, and why he believes his interests are served better here than in Pennsylvania. *Id.*

[1391\(b\)\(2\), \(e\)\(2\)](#)); see also [In re O'Leska](#), 2000 U.S. App. LEXIS 35401, 2000 WL 1946653, at *1 (D.C. Cir. Dec. 7, 2000) (adding that the interest of justice supports a transfer of the entire action rather than splitting the claims or defendants between two different venues). Generally, a strong presumption exists in favor of the plaintiff's choice of forum. [Piper Aircraft Co. v. Reyno](#), 454 U.S. 235, 255, 70 L. Ed. 2d 419, 102 S. Ct. 252- 56 (1981). However, transfer away from the plaintiff's venue of choice serves the interest of justice when it would prevent a litigant from using one district as a "safe haven" from the lawful orders of another. [In re Tripati](#), 267 U.S. App. D.C. 58, 836 F.2d 1406, 1407 (D.C. Cir. 1988) (affirming transfer of a case to the district that had heard the plaintiff's earlier cases and had barred the plaintiff from filing additional complaints without leave).

The Gibson defendants argue that the court should "either dismiss the instant case or, if it be in the interest of justice, transfer the case to a district where venue is proper, pursuant to [28 U.S.C. § 1406\(a\)](#)." Gibson Defs.' Mem. [*6] at 11. The Gibson defendants correctly state that all of the defendants named in the complaint, except for the Attorney General, reside in the Western District of Pennsylvania and all of the relevant facts occurred there. *Id.* These facts are consistent with the plaintiff's complaint. See generally Compl.; see also Pl.'s Opp'n. Thus, venue is proper in the Western District of Pennsylvania pursuant to both [28 U.S.C. § 1391\(b\)and \(e\)](#).

The plaintiff argues that venue is proper in the District of Columbia pursuant to [28 U.S.C. § 1391\(e\)\(3\)](#) because he and the United States (presumably the Attorney General) reside in this district. Pl.'s Opp'n at 9-10; Compl. at 3. The plaintiff further asserts that venue is improper in the Western District of Pennsylvania "due to the 'situation that exist' there" and because he lacks the funds needed to travel there. Pl.'s Opp'n at 9; Compl. at 3.

The interest of justice supports keeping the claims in the plaintiff's pending action together and transferring the entire action to the Western District of Pennsylvania. [In re Tripati](#), 836 F.2d at 1407; [In re O'Leska](#), 2000 U.S. App. LEXIS 35401, 2000 WL 1946653, [*7] *1. The court bases its decision largely on the plaintiff's admission that he is avoiding a district that has repeatedly dismissed at least some of the claims currently before this court. For example, the plaintiff states, about his litigation in the Western District of Pennsylvania, that "no court has ever decided MRM's claims on merits during the past 10-years, despite his *filing/refiling* of suit(s) about 8-times (involving 3-separate contracts plus a surety contract)." Pl.'s Opp'n at 3-4 (emphasis added). The plaintiff bluntly asserts why he wants the case to remain in the District of Columbia:

The venue is *improper* in the US Court in Pittsburgh, due to the 'situation that exist' there: record show continuing acts of 'bad faith' against Mikkilineni by Defendants and the court officers up until the present time. That makes it an impermissible forum for MRM to pursue his claims there.

Pl.'s Opp'n at 9-10 (all emphasis in original); Pl.'s Mot. for Hr'g at 4; Compl. at 1-2, 24, 30-32. Contrary to the plaintiff's argument, the interest of justice supports preventing prolific plaintiffs from using new districts as "safe havens" from already existing orders. [In re Tripati](#), 836 F.2d at 1407. [*8]

In addition, the court considers that *HN2* courts generally give significant weight to a plaintiff's choice of forum. [Piper Aircraft](#), 454 U.S. at 255-56. The court gives less weight to the plaintiff's choice of forum in this instance because the plaintiff is forum shopping. [Prof'l Managers' Ass'n v. United States](#), 245 U.S. App. D.C. 337, 761 F.2d 740, 744 (D.C. Cir. 1985) (discussing Congress' disdain for forum shopping). Furthermore, the relevant facts occurred in Pennsylvania and all of the parties except for the plaintiff and the Attorney General reside in Pennsylvania (or did at the time of the events described in the complaint), making Pennsylvania more convenient for the witnesses and the parties. [Dooley v. United Techs. Corp.](#), 786 F. Supp. 65, 82 (D.D.C. 1992) (stating that in deciding whether to transfer an action, the court should weigh the plaintiff's choice of forum against the convenience of the parties and witnesses and the interest of justice). In conclusion, the balancing of the plaintiff's forum choice, the interest of justice, and the convenience of the parties and witnesses weigh in favor of transferring the case to the [United States District \[*9\] Court for the Western District of Pennsylvania](#). [In re Tripati](#), 836 F.2d at 1407; [Dooley](#), 786 F. Supp. at 82.

Accordingly, it is this 31st day of March, 2003,

ORDERED that the plaintiff's motion for a hearing or deposition on the issues of personal jurisdiction and venue is **DENIED**; and it is

FURTHER ORDERED that the Clerk **TRANSFER** this action to the United States District Court for the Western District of Pennsylvania.

SO ORDERED.

Ricardo M. Urbina

United States District Judge