United States District Court
Southern District of Texas
ENTERED
January 21, 2022
Nathan Ochsner, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SERGIO VALDIVIESO,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. H-21-2214
	§	
SOUTHERN CAT, INC., *et al.*,	§	
	§	
Defendants.	§	

ORDER

Pending before the Court are Plaintiff's Renewed Motion to Remand (Document No. 26), Defendant SWS Environmental Services, Inc.'s Motion to Dismiss for Lack of Personal Jurisdiction (Document No. 34), Southern Cat, Inc.'s Motion to Dismiss for Lack of Personal Jurisdiction (Document No. 35), Emergency Response Group, LLC's Motion to Dismiss for Lack of Personal Jurisdiction or, Alternatively, Motion to Transfer Venue (Document No. 37), and Unopposed Motion to Extend the Discovery and Motions Cut-Off Deadlines (Document No. 82). Having considered the motions, submissions, and applicable law, the Court determines Emergency Response Group, LLC's motion should be granted in part and the case transferred to the United States District Court for the Northern District of Florida. The Court makes no determination as to the issue of personal jurisdiction or any other issue pending before it.

I. BACKGROUND

This case arises from alleged personal injuries sustained by Plaintiff Sergio Valdivieso ("Valdivieso") on a fishing boat (the "Vessel") in Bataria Bay in Louisiana state territorial waters. The Vessel was assisting in the cleanup of oil from the explosion of BP's Deepwater Horizon drilling rig in the Gulf of Mexico. Valdivieso allegedly was performing duties as a deckhand on the Vessel, including hoisting, holding, and pulling an oil-absorbing boom from the main deck of the Vessel. On June 9, 2010, while performing these duties, Valdivieso allegedly sustained injuries due to the Vessel's lack of a crane or the right hoisting equipment.

On March 1, 2012, Valdivieso filed this case in the 164th Judicial District Court for Harris County, Texas, asserting Jones Act and general maritime claims. On April 3, 2012, Defendants BP Products North America, Inc. and BP America, Inc. (collectively, "BP Defendants") removed the case to this Court pursuant to federal question jurisdiction allegedly conferred by the Outer Continental Shelf Lands Act of 1953 ("OCSLA"). On April 9, 2012, the Court granted BP Defendants' motion to stay this case. On April 19, 2012, Valdivieso moved for remand. On August 6, 2012, the Court transferred the case to the court handling the multidistrict claims related to the Deepwater Horizon explosion (the "MDL Court"). The MDL Court eventually granted BP Defendants' motion for summary judgment and accordingly dismissed BP Defendants from the case. The MDL Court did not,

however, dismiss the Jones Act or general maritime claims against the other defendants. The MDL Court granted Valdivieso's motion to refer this case back to the Panel on Multidistrict Litigation (the "Panel") with Valdivieso's request the Panel remand the matter back to this Court. On July 7, 2021, the Panel remanded the matter back to this Court. On July 26, 2021, Valdivieso moved again to remand. On August 16, 2021, both Defendant SWS Environmental Services, f/k/a Eagle-SWS, Inc., a/k/a Progressive Environmental Services, Inc. ("SWS") and Defendant Southern Cat, Inc. ("Southern Cat") moved to dismiss for this Court's lack of personal jurisdiction. Also on August 16, 2021, Defendant Emergency Response Group, LLC ("ERG") moved to dismiss for lack of personal jurisdiction or, alternatively, transfer venue. Also on August 16, 2021, SWS and Southern Cat joined in ERG's motion to dismiss or transfer. On September 21, 2021, Valdivieso filed an amended complaint. On January 18, 2022, ERG, SWS, and Southern Cat moved for an extension of discovery and motion cut-off deadlines. The remaining Defendants are ERG, SWS, Southern Cat, Marine Spill Response Corporation ("MSRC"), and Disaster Response Group, LLC.

II. LAW & ANALYSIS

The Court begins by addressing ERG's motion to transfer. ERG, SWS, and Southern Cat move to transfer to the United States District for the Northern District of Florida on the grounds this venue is more convenient for the parties and witnesses.

Valdivieso contends that the Court should transfer the case if the Court does not remand the case to state court.

Federal courts are courts of limited jurisdiction and, accordingly, possess only the power conferred upon them by the Constitution and by federal statute. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Typically, when jurisdiction is disputed, as a threshold matter federal courts resolve the jurisdictional questions. *Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 431 (2007). However, courts do have leeway to choose among threshold grounds when denying audience to a case on the merits. *Id.* (citing *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 585 (1999)). This is especially true where subject-matter jurisdiction or personal jurisdiction is difficult to determine. *See id.* at 436.

One such ground is choosing to dismiss or transfer a case on the basis of *forum non conveniens*, when considerations of convenience, fairness, and judicial economy so warrant. *Id.* at 432. "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district . . . where it might have been brought . . . ." 28 U.S.C. § 1404(a). If the court determines the transferee district is one in which the case could have originally been brought, the court must analyze whether a transfer would serve the interest of "convenience," the determination of which "turns on a number of public and private factors, none of which can be said to be of dispositive weight." *Action Indus., Inc. v. U.S. Fid. &*

Guar. Co., 358 F.3d 337, 340 (5th Cir. 2004). "The private interest factors are: '(1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance of willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious, and inexpensive.' " *In re Volkswagen of Am.*, 545 F.3d 304, 315 (5th Cir. 2008). "The public interest factors are: '(1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws [or in] the application of foreign law.' " *Id.* Courts may also consider, as an additional public interest factor, the unfairness of burdening with jury duty a community which has no relation to the litigation. *See Bascom v. Maxim Integrated Prods., Inc.*, 534 F. Supp. 2d 700, 705 (W. D. Tex. 2008) (Sparks, J.) (citing *Koehring Co. v. Hyde Constr. Co.*, 324 F. 2d 295, 296 (5th Cir. 1963)). A party moving to transfer bears the burden of demonstrating to the Court that a transfer is warranted. *Time, Inc. v. Manning*, 366 F.2d 690, 698 (5th Cir. 1966). A court should not deny transfer where "only the plaintiff's choice weighs in favor of denying the transfer and where the case has no connection to the transferor forum and virtually all of the events and witnesses regarding the case . . . are in the transferee forum." *In re Radmax, Ltd.*, 720 F.3d 285, 290 (5th Cir. 2013).

It is undisputed in this case Valdivieso could have brought this action in the Northern District of Florida. Accordingly, the only relevant inquiry for the Court is whether the parties have met their burden in showing the public and private convenience factors weigh in favor of transfer.

In this case, Valdivieso and all his physicians are located in Florida. There is no evidence any Defendant besides MSRC, who was only added when Valdivieso amended his complaint on September 21, 2021, are residents of Texas. The alleged injury did not take place in Texas or even in the territorial waters of Texas. The Court thus finds the ease of access of sources of proof factor weighs in favor of transfer to Florida. Neither side presents evidence either way with regard to any of the other public interest factors. Accordingly, the Court finds the public interest factors weigh in favor of granting the motion for transfer.

In light of the absence of any factual connection to Texas, and the fact multiple parties in this suit are undisputedly residents of Florida, the Court finds the local interest in adjudicating local disputes weighs in favor of transfer to Florida. This same absence of factual connection to Texas weighs in favor of transfer to Florida on the unfairness of jury duty in an unrelated forum factor. Neither side presents evidence either way with regard to the other private interest factors. Accordingly, the Court finds the private interest factors weigh in favor of granting the motion to transfer. The Court thus finds, in light of the fact both public and private interest

factors weigh in favor of transfer, the motion for transfer to the United States District Court for the Northern District of Florida is granted. The Court makes no determination as to the issue of its personal jurisdiction over any of the Defendants, the issue of its subject-matter jurisdiction, or the motion to extend discovery and the motion deadlines.

III. CONCLUSION

Accordingly, the Court hereby

ORDERS that Emergency Response Group, LLC's Motion to Dismiss for Lack of Personal Jurisdiction or, Alternatively, Motion to Transfer Venue (Document No. 37) is **GRANTED IN PART**. The Court further

ORDERS that this case be **TRANSFERRED** to the United States District Court for the Northern District of Florida.

SIGNED at Houston, Texas, on this 21 day of January, 2022.

DAVID HITTNER
United States District Judge