

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(WEST PALM BEACH DIVISION)

CASE NO. 09-80480-CIV-HURLEY/HOPKINS
(Ancillary Proceeding to U.S.D.C. Case No. 08-81565-CIV-HURLEY/HOPKINS)

<p>JONATHAN E. PERLMAN, Esq., as court appointed Receiver of Creative Capital Consortium, LLC, et al.,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>DOROTHY DELISFORT-THEODULE, an individual, WEALTH BUILDERS CIRCLE, LLC, a Georgia limited liability company, CARIBBEAN AIRWAYS, LLC, a Florida limited liability company, DONNA HAVER, INC., a Florida limited liability company, GOOD BUY HOMES, INC., a Florida corporation, INTERNATIONAL DEVELOPMENT ENTREPRENEURS OF AMERICA, INC., a Florida corporation, and COMPLETE AUTO REPAYMENT SOLUTIONS, INC., a Georgia corporation,</p> <p style="text-align: center;">Defendants.</p> <hr style="width: 30%; margin-left: 0;"/>	
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PLAINTIFF’S RESPONSE AND OBJECTION TO DEFENDANT DOROTHY DELISFORT-THEODULE’S MOTION FOR CHANGE OF VENUE

The Plaintiff, Jonathan E. Perlman, Esq., the court-appointed Receiver (the “Receiver”) of Creative Capital Consortium, LLC, A Creative Capital Concept\$, LLC, United Investment Club, LLC, Reverse Auto Loan, LLC, Wealth Builders Circle, LLC, The Dream Makers Capital Investment, LLC, G\$ Trade Financial, Inc. and Unity Entertainment Group, Inc., hereby files this Response And Objection To Defendant Dorothy Delisfort-Theodule’s Motion For Change Of Venue and states as follows:

INTRODUCTION

On March 23, 2010, just two days prior to the calendar call for trial in this case, the Defendant, Dorothy Delisfort-Theodule (“Delisfort”) filed a Motion for Change of Venue (D.E. #38), seeking a change in forum to the United States District Court in Georgia. Delisfort, a resident of Georgia, claims that she will be unduly prejudiced by the trial of this matter in the Southern District of Florida, alleging that travel to Florida for trial will result in unwarranted financial hardship.

Although not referenced in Delisfort’s motion, a request for change in venue is governed by the provisions of 28 U.S.C. § 1404. Case law interpreting §1404 suggests that this Court must weigh all private and public factors affected by a potential change in venue when considering the most appropriate and convenient forum for proceeding with the subject litigation. As set forth below, Delisfort has failed to demonstrate that any alleged hardship she may suffer by virtue of a trial in Florida would in fact be alleviated by a change in venue to Georgia. Furthermore, a change in venue is unwarranted in light of the strong presumption favoring the Receiver’s choice of forum in South Florida and the public interest considerations attendant thereto. The Motion for Change in Venue should therefore be denied.

LEGAL ARGUMENT

I. The Receiver’s Choice of Forum Should Be Maintained.

A request for a change in venue is governed by 28 U.S.C. §1404(a) which provides:

§ 1404. Change of venue

(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought¹.

28 U.S.C. §1404(a).

¹ The Receiver concedes that that the claims against Ms. Delisfort might have been brought in Georgia.

The burden of demonstrating that convenience and the interests of justice warrant a transfer venue is upon Delisfort as the moving party. This burden must be met by a preponderance of the evidence. In re: Ricoh Corp., 870 F.2d 570, 573 (11th Cir.1989); Thermal Technologies, Inc., v. Dade Service Corp., 282 F.Supp.2d 1373, 1375 (S.D.Fla.2003.) The decision to transfer venue is completely within the discretion of the trial court. The court has broad discretion in this regard based upon the totality of facts and circumstances related to the case in which a change of venue is sought. England v. ITT Thompson Industries, Inc., 856 F.2d 1518, 1520 (11th Cir.1988.)

The Court should consider all relevant factors in reaching a decision on a motion for change of venue, including both private and public interests protected by the language of § 1404(a). Gulf Oil v. Gilbert, 330 U.S. 501, 508, 67 S.Ct. 839, 91 L.Ed.10 55 (1947); Doe v. Sun Intern Hotels, Ltd., 20 F.Supp.2d 1328, 1330 (S.D.Fla.1998.) Examining whether the balance of justice and convenience favors transfer requires consideration of a broad range of factors, including (1) convenience of the parties; (2) convenience of the witnesses; (3) relative ease of access to sources of proof; (4) availability of process to compel presence of unwilling witnesses; (5) cost of obtaining presence of witnesses; (6) plaintiff's choice of venue; and (7) the public interest.

Unless the balance of private and public interest factors *strongly* favors the defendant, the plaintiff's choice of forum should be maintained. A rebuttable presumption exists against disturbing the plaintiffs' initial forum choice. Gilbert, 330 U.S. at 508, 67 S.Ct. 839; Doe v. Sun Intern Hotels, Ltd., 20 F.Supp.2d at 1330. This presumption is further strengthened when considered in the context of the statutory receivership proceedings giving rise to the commencement of this case. The Receiver's authority to serve process nationwide bestowed

under 28 U.S.C. §§ 754 and 1692 suggests that “*Congress intended a federal receiver's choice of forum to carry particular weight.*” Terry v. Walker, 369 F. Supp. 2d 818, 822 (W.D. Va. 2005) (emphasis added); Cf. SEC v. Electronics Warehouse, Inc., 689 F.Supp. 53, 74 (D.Conn.1988) (holding that plaintiff's choice of forum is to be given particular weight where the choice was made under a special venue statute.) As set forth below, Delisfort fails to overcome the presumption that venue should be maintained here in Florida.

II. The Balance of Interests of Interests Favors Venue in Florida.

Delisfort fails to assert or otherwise establish sufficient evidence to overcome the presumption that venue should be maintained here in Florida and fails to provide sufficient reasons for the Court to transfer this case to Georgia. Close scrutiny of the arguments asserted by Delisfort in support of her request for change of venue reveal their inherent transparency.

Delisfort alleges significant financial hardship if this case remains in Florida given expenses associated with travel necessary to defend against the Receiver's claims. However, it is important to note that Delisfort has filed her Motion for Change of Venue on the eve of trial. The litigation of the claims in this case is approaching its end. All that remains is the trial on the merits, the length of which is anticipated at 3 days. Accordingly, it appears likely that only one more trip to Florida (for trial) remains for Delisfort prior to the conclusion of this case. Delisfort is employed full-time as a nurse, and expense of limited travel from Georgia associated with the trial does not appear to be an undue financial burden upon her.²

Delisfort also claims that she cannot afford to retain counsel in Florida. However, no reasons are provided regarding why retaining counsel here in Florida would be any more costly than retaining counsel in Georgia. Delisfort's alleged financial incapability to retain counsel

² Delisfort seems to imply in her motion that trial in Florida would involve time taken out of work. However, trial in Georgia would require the same burden.

does not appear to be in any way dependent upon the venue for trial in this case.

Finally Delisfort argues that trial in Florida would infringe upon her accessibility to fact witnesses residing in Georgia who might otherwise be unable to travel to Florida for trial. However, Delisfort fails to identify those witnesses to whom she is referring, and fails to indicate how their proposed testimony might be material to her defense³. Mere conclusory allegations that trial where suit was brought would cause great expense and require importation of witnesses are insufficient to support a change in venue. A moving party must show what helpful testimony these distant witnesses would provide. See Wright & Miller, Federal Courts, § 44, p. 169 and cases cited therein.

In contrast, substantial public interests weigh in favor of this Court retaining jurisdiction over this lawsuit. The receivership proceedings giving rise to this case arise from the operation of an alleged Ponzi scheme undertaken in Florida by Delisfort's husband, George Theodule ("Theodule.") This Court is the forum in which the main receivership proceedings are pending. This is the Court in which many interrelated lawsuits and motions are pending, raising numerous factual and legal issues germane to all cases, including the facts and circumstances regarding Theodule's Ponzi scheme upon which the Receiver's claims against Delisfort are based.

Maintaining venue before this Court ensures uniformity of decision regarding findings of fact and determinations of law, promotes judicial efficiency, and facilitates a cost-effective resolution of this case for the receivership estate and for the victims of Theodule who are its beneficiaries. Public policy mitigates against allowing Theodule's misconduct in concealing and transferring assets to friends and family throughout the United States to result in requiring the Receiver to litigate asset recovery actions in multiple forums. See Steinberg v. Barclay's

³ This Court should note that Delisfort has failed in every respect to disclose *any* witnesses to the Receiver as required by this Court's Pretrial Order, and by Fed.R.Civ.P. Rules 26(a)(1) and 26(a)(3). The Receiver therefore intends to object to the introduction of any witnesses by Delisfort at trial.

Nominees (Branches) Ltd., not reported in F.Supp.2d 2008 WL 4601042 (S.D.Fla.2008.)

CONCLUSION

WHEREFORE, for the reasons set forth above, the Receiver requests that Delisfort's Motion for Change of Venue be denied.

Dated: March 26, 2010
Miami, Florida

Respectfully submitted,

By: /s/ David Lemoie
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CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2010, the foregoing document was served this day to Dorothy Delisfort, *pro se* defendant, 2108 New London Place, Snellville, Georgia by U.S. Mail and by e-mail.

/s/ David Lemoie

David Lemoie, Esq.

Florida Bar No. 188311