

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 09-80480-CIV-HURLEY/HOPKINS

JONATHAN E. PERLMAN,

Plaintiff,

v.

**DOROTHY DELISFORT-THEODULE,
et al.**

Defendants.

ORDER DENYING DEFENDANT'S MOTION TO CHANGE VENUE

THIS CAUSE comes before the court upon defendant Dorothy Delisfort-Theodule's motion to change venue in this case to the United States District Court in Georgia [DE # 38]. Ms. Delisfort-Theodule seeks to change venue because she is a resident of Georgia without any ties to the Southern District of Florida; the majority of her trial witnesses are located in Georgia; and trying this case in Florida would impose an unreasonable financial hardship upon her.

As an initial matter, the court notes that venue is appropriate in this district pursuant to 28 U.S.C. § 754. *See Sec v. Bilzerian*, 378 F.3d 1100, 1107 (D.C. Cir. 2004); *Scholes v. Lehmann*, 56 F.3d 750, 753 (7th Cir. 1995). Further, since Ms. Delisfort-Theodule has not objected to the exercise of personal jurisdiction over her, and the time for doing so has elapsed, the court proceeds under the assumption that Ms. Delisfort-Theodule is subject to personal jurisdiction in Florida. *See Fed. R. Civ. P. 12(h)* (lack of jurisdiction over the person . . . is waived . . . if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a)); *Palmer v. Braun*, 376 F.3d 1254, 1259 (11th Cir. 2004) ("It is well-settled that lack of

personal jurisdiction is a waivable defect, and that a defendant waives any objection to the district court's jurisdiction over his person by not objecting to it in a responsive pleading or a motion to dismiss pursuant to Federal Rule of Civil Procedure 12.").

Section 1404(a) provides that the court may transfer a case to another district in which it might have been brought for: (1) the convenience of parties; (2) the convenience of witnesses; and (3) in the interest of justice. Fed. R. Civ. P. 28 U.S.C. § 1404(a); *see Jasper Corp. v. National Union Fire Ins. Co. of Pittsburgh, Pa.*, No. 98-2532-CIV-T-17E, 1999 WL 781808, at *4 (M.D. Fla. Sept. 3, 1999). A motion for change of venue calls on the district court to make an individualized, case-by-case determination based on principles of fairness and convenience. *See Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988). “[T]he party seeking a change of venue should act with reasonable promptness and [significant] delay may induce the district court to refuse a transfer that otherwise would have been granted had it been sought earlier.” 15 C. Wright, A. Miller, & E. Cooper, *Federal Practice & Procedure* § 3844, pp. 41-42 (3d ed. 2009).

The Eleventh Circuit has articulated a policy of being restrictive in transferring actions, stating that “[t]he plaintiff’s choice of forum should not be disturbed unless the movant can show that it is clearly outweighed by other considerations.” *American Aircraft Sales Int’l, Inc. v. Airwarsaw, Inc.*, 1999 WL 503965, at *3 (M.D. Fla. 1999). The movant has the burden of persuading the trial court that a transfer is appropriate and should be granted. *See Tampa Bay Storm, Inc. v. Arena Football League, Inc.*, 932 F. Supp. 281, 282 (M.D. Fla. 1996). In deciding whether a change in forum is warranted, the court must consider the following factors: 1) plaintiff’s initial choice of forum; 2) convenience of the parties and witnesses; 3) relative ease of access to sources of proof; 4) availability of compulsory process for witnesses; 5) location of relevant evidence; 6)

financial ability to bear the cost of the change; 7) and all other practical problems that make trial of the case easy, expeditious, and inexpensive. *See id.*

Here, Ms. Delisfort-Theodule's motion to change venue must be denied for a couple reasons. For one thing, Ms. Delisfort-Theodule significantly delayed in waiting to file this motion until March 23, 2010 – approximately one year after this case was filed and just two days before calendar call. A transfer of this case would necessarily result in a delay of trial and might impede plaintiff's efforts to recover and avoid alleged fraudulent transfers, something the court is unwilling to allow. *See Peteet v. Dow Chemical Co.*, 868 F.2d 1428, 1436 (5th Cir. 1989), *cert. denied*, 110 S.Ct. 328 (1989) (failure to act with "reasonable promptness" is a factor the court must take into account in assessing whether a transfer is warranted).

In addition, Ms. Delisfort-Theodule has not carried her burden of proving that a transfer is warranted. The court empathizes with Ms. Delisfort-Theodule's concern that trying this case in Florida would be costly. But a change of venue will not eliminate many of the costs identified by Ms. Delisfort-Theodule, such as missing work and finding someone to care for her children, for Ms. Delisfort-Theodule would likely incur these costs no matter where this case is tried. Further, although Ms. Delisfort-Theodule claims that a trial in the Southern District of Florida would be inconvenient for witnesses, she has identified no witnesses who would be unwilling to travel to Florida to testify or who could not be compelled to do so. Finally, the presumption in favor of plaintiff's choice of venue is especially strong in this case, given plaintiff's interest in litigating all related lawsuits, of which there are dozens, before the same court, thus preventing "duplication of effort and incompatible rulings." *Barnett v. Alabama*, 171 F. Supp. 2d 1292, 1294–95 (S.D. Ala. 2001). For these reasons, the court concludes that the costs and inconvenience Ms. Delisfort-

Order Denying Motion to Change Venue
Perlman v. Delisfort-Thoedule, et al.
Case No. 09-80480-CIV-HURLEY/HOPKINS

Theodule may experience is insufficient to overcome the presumption in favor of plaintiff's choice of venue.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** that defendant's motion for change of venue [DE # 38] is **DENIED**

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this 30th day of March, 2010.


Daniel T. K. Hurley
U. S. District Judge

Copies provided to counsel of record