

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

CHRISTOPHER ROLLER,

Plaintiff,

v.

Case No. 05-CV-1297

GE MEDICAL SYSTEMS INFORMATION
TECHNOLOGIES, INC.,

Defendant.

**DEFENDANT’S BRIEF IN SUPPORT OF MOTION TO
TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(a)**

INTRODUCTION

Plaintiff Christopher Roller (hereafter “Plaintiff”) commenced this action in Minnesota state court, claiming that his former employer, GE Medical Systems Information Technologies, Inc. (“GEMS IT”) discriminated against him on the basis of a mental disability. GEMS IT removed this matter to the United States District Court for the District of Minnesota pursuant to 28 U.S.C. § 1446 and, shortly thereafter, filed a motion to dismiss.

While Plaintiff’s complaint does not identify the laws under which he brings his claims, during the course of briefing on GEMS IT’s motion to dismiss, Plaintiff acknowledged that he is only proceeding with a claim pursuant to the South Dakota Human Rights Act. GEMS IT now requests that this Court transfer this matter to the District of South Dakota, Southern Division, pursuant to 28 U.S.C. § 1404(a). While this decision is within the Court’s discretion, the circumstances of this case clearly warrant transfer. To GEMS IT’s knowledge, Plaintiff is the only potential witness having any contact with Minnesota – and that contact occurred after his

employment with GEMS IT ended. Almost all of Defendant's witnesses, and presumably the remainder of Plaintiff's witnesses as well, are located in and around Sioux Falls, South Dakota. Moreover, all of the decisions at issue were made in South Dakota, and the majority of the relevant documentation regarding those decisions and Plaintiff's performance are located there.

Finally, the interests of justice require transfer. This Court recently concluded South Dakota's statute of limitations governs Plaintiff's claim. Accordingly, in order to resolve this matter, a court must consider tolling provisions under the South Dakota statutes of limitations, the definition of mental illness and impact of mental illness on tolling, and administrative prerequisites under the South Dakota Human Rights Act. Thus, the preference for having a local court apply local law applies here. GEMS IT therefore respectfully requests that this case be transferred to the District of South Dakota, Southern Division, pursuant to 28 U.S.C. § 1404(a).

FACTUAL BACKGROUND

I. GE MEDICAL SYSTEMS INFORMATION TECHNOLOGIES, INC.

GEMS IT provides hospitals and healthcare systems with advanced solutions to improve their clinical performance. (Affidavit of Robert E. Moore ("Moore Aff.") ¶ 4). GEMS IT operates several facilities, including one in Sioux Falls, South Dakota. (Id.)

II. PLAINTIFF CHRISTOPHER ROLLER

Plaintiff was hired on or about July 19, 1999 by Micro Medical Systems, Inc. in Sioux Falls, South Dakota. (Moore Aff. ¶ 3). GEMS IT acquired Micro Medical Systems, Inc. in September 2000, and Plaintiff became a GEMS IT employee at that time. (Id. ¶¶ 3 & 5; Affidavit of Rich Adcock ("Adcock Aff.") ¶ 3). While employed by GEMS IT, Plaintiff worked as a Senior Engineer for the User Interface Group. (Moore Aff. ¶ 6). At all times relevant to the

present Complaint, Plaintiff worked in and was a resident of Sioux Falls, South Dakota. (Id. ¶¶ 3, 7 & 8; Adcock Aff. ¶ 9).

Plaintiff's Complaint contains various allegations regarding events that occurred from 2000 through 2002, while he was employed at GEMS IT and, in particular, regarding his alleged termination from employment at GEMS IT in February 2002. (See generally, Plaintiff's Complaint, dated June 8, 2005). GEMS IT's records indicate Plaintiff went out on leave of absence on or about February 18, 2002. (Moore Aff. ¶ 10). On or about April 17, 2002, Plaintiff was offered a Separation Agreement and Release, which he signed. (Id.). Pursuant to the terms of that agreement, Plaintiff's employment with GEMS IT ended on July 26, 2002. (Id.).

Plaintiff never filed a discrimination complaint with any administrative agency regarding his employment at, or separation from, GEMS IT. (See Plaintiff's Memorandum 2 in Opposition to Motion to Dismiss, p. 2, dated September 24, 2005). However, on or about June 8, 2005 – some three years after his separation from GEMS IT – Plaintiff filed suit against GEMS IT in Minnesota state court, alleging “discrimination for mental illness, resulting in loss of job.” (See generally, Plaintiff's Complaint, dated June 8, 2005). GEMS IT removed the present suit to this Court pursuant to 28 U.S.C. § 1446 and subsequently filed a motion to dismiss. During the course of briefing that motion, Plaintiff asserted that he was only pursuing a claim pursuant to the South Dakota Human Rights Act. (See Plaintiff's Memorandum 2 in Opposition to Motion to Dismiss, p. 2, dated September 24, 2005).

III. ANTICIPATED WITNESSES AND DOCUMENTATION

As indicated above, Plaintiff asserts that GEMS IT discriminated against him because of a mental illness. It is anticipated that, in order to respond to these claims, GEMS IT will need to call a number of witnesses. For instance, Bob Moore and Rich Adcock have knowledge regarding Plaintiff's performance problems and disciplinary history, Plaintiff's leave of absence,

and the separation agreement presented to Plaintiff. (Moore Aff. ¶ 9 & 10; Adcock Aff. ¶¶ 7 & 8). GEMS IT may also need to call some of Plaintiff's former co-workers to address Plaintiff's allegations regarding discussions he had with co-workers and comments allegedly made to him while at work. These individuals include Kelly Drake, Kristi Hensley, Troy Wollman, Nate Kruse and Kevin Impehoven, and other current and former GEMS IT employees who were members of Plaintiff's engineering team.

The identified individuals work in Sioux Falls, South Dakota, and live in and around Sioux Falls as well. (Moore Aff. ¶¶ 1, 2, 5 & 14; Adcock Aff. ¶¶ 1, 4, 6; Affidavit of Kevin Impehoven ("Impehoven Aff.") ¶¶ 1 & 2; Affidavit of Nate Kruse ("Kruse Aff.") ¶¶ 1 & 2; Affidavit of Troy Wollman ("Wollman Aff.") ¶¶ 1 & 2.) Not a single one of them has contact with Minnesota on behalf of GEMS IT and their personal contact with Minnesota is very limited. (Moore Aff. ¶¶ 15-16; Adcock Aff. ¶¶ 5, 10 & 11; Impehoven Aff. ¶¶ 2 - 4; Kruse Aff. ¶¶ 2 - 4; Wollman Aff. ¶¶ 2-4).

In addition to witnesses, documentation including Plaintiff's personnel file, certain GEMS IT policies, and documentation regarding Plaintiff's performance will most likely be key evidence in this matter. None of these documents are located in Minnesota. (Moore Aff. ¶¶ 12-13). Indeed, the majority of these documents are still in Sioux Falls, South Dakota. (Id. ¶ 12).

ARGUMENT

GEMS IT requests that the Court exercise its discretionary power and transfer this matter to the District of South Dakota, Southern Division. The circumstances of this case warrant transfer to the District of South Dakota pursuant to 28 U.S.C. § 1404(a) which provides:

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 brought.

The purpose of this statute is “to prevent the waste of time, energy, and money and to protect litigants, witnesses, and the public against unnecessary inconvenience and expense.” Van Dusen v. Barrack, 376 U.S. 612, 616 (1964). Section 1404(a) serves another purpose as well: it minimizes the chance for unfair prejudice or forum shopping because the district court is required to consider the interests of all involved in the litigation when deciding whether to transfer venue. See Wisland v. Admiral Beverage Corp., 119 F.3d 733, 735-36 (8th Cir. 1997). Here, it is clear that this action could have been brought in South Dakota since all of the complained of acts occurred there. See 28 U.S.C. § 1391(a) (stating venue is proper in a judicial district in which a substantial part of the events giving rise to the claim occurred). Thus, the only question is whether the matter should be transferred.

A. Relevant Factors To Be Reviewed Under § 1404(a)

The decision to transfer a case under section 1404(a) is discretionary. Van Dusen, 376 U.S. at 616. Decisions to transfer a matter depend on the particular facts and circumstances of a case. See Terra Int’l v. Mississippi Chem. Corp., 119 F.3d 688 (8th Cir. 1997). The party seeking transfer bears the burden of showing transfer is warranted. Beckley v. Auto Profit Masters, L.L.C., 266 F. Supp. 2d 1001, 1006 (S.D. Iowa 2003). However, while there is a general presumption in favor of a plaintiff’s choice of forum, courts afford that choice significantly less deference when the transaction or underlying facts did not occur in the chosen forum. Nelso v. Soo Line R.R. Co., 58 F. Supp. 2d 1023, 1026 (D. Minn. 1999) (citing Stewart v. Capitol Area Permanent Medical Group, P.C., 720 F. Supp. 3, 5 (D.D.C. 1989); Hoppe v. G.D. Searle & Co., 683 F. Supp. 1271, 1276 (D. Minn. 1988); Rowels v. Hammer Mill Paper Co., 689 F. Supp. 494, 496 (N.D. Pa. 1988)). In this case, the presumption should be ignored because, at the very least, none of the “transaction or underlying facts” occurred in

Minnesota, the forum selected by Plaintiff. Rather, as discussed elsewhere, all facts giving rise to the dispute occurred in South Dakota.

In evaluating a motion to transfer, the court primarily considers three factors: the convenience of the parties, the convenience of the witnesses, and the interests of justice. Terra Int'l, 119 F.3d at 691. The court may consider additional factors, including the location of relevant documents and relative ease of access to sources of proof, the locus of operative facts, the availability of process to compel the presence of unwilling witnesses, and the forum's familiarity with the governing law. See Anadigics, Inc. v. Raytheon Co., 903 F. Supp. 615, 617 (S.D.N.Y. 1995) (citation omitted); Midwest Mech. Contractors, Inc. v. Tampa Constructors, Inc., 659 F. Supp. 526, 532 (W.D. Mo. 1987).

B. Under The § 1404(A) Factors, This Case Should Be Transferred To The District Of South Dakota, Southern Division

Transfer to the District of South Dakota, Southern Division, is appropriate and required. The convenience of the parties, the convenience of the witnesses, and the interests of justice all favor transfer to South Dakota. In contrast, Minnesota's contacts with the case are non-existent.

1. Convenience of the Parties.

Venue in the District of South Dakota, Southern Division, would be significantly more convenient for the parties. GEMS IT maintains offices in South Dakota, including the facility where Plaintiff was employed. (Moore Aff. ¶ 4). GEMS IT has no offices in Minnesota, although it does have some sales and service employees located in Minnesota who work out of their own homes. (Id. ¶ 13).

More importantly, though, the majority of witnesses who will testify about facts underlying Plaintiff's claims are or were employees of GEMS IT in Sioux Falls, South Dakota, where Plaintiff himself was located during his employment with GEMS IT. For instance, GEMS

IT will most likely call as witnesses Bob Moore, Rich Adcock, Kelly Drake, Kristi Hensley, Nate Kruse, Troy Wollman, Kevin Impehoven and other current and former GEMS IT employees who have knowledge regarding GEMS IT's policies, Plaintiff's performance problems and difficulties with co-workers and Plaintiff's leave of absence, and the severance agreement Plaintiff reached with GEMS IT.

Moreover, the decisions Plaintiff claims resulted in his being discriminated against were made in South Dakota. Minnesota's only link to this case is the fact that Plaintiff decided to move to Minnesota after his employment with GEMS IT ended. If Plaintiff had not moved, there would be absolutely no contact with Minnesota.

Because GEMS IT maintains offices in South Dakota and because the majority of Defendant's witnesses reside in South Dakota, and presumably all of Plaintiff's witnesses as well, the convenience of the parties favors transferring this case to the District of South Dakota, Southern Division.

2. Convenience of the Witnesses.

For similar reasons, the convenience of the witnesses strongly favors transfer. Relevant considerations include the number of essential non-party witnesses, their location, and the preferences of courts for live testimony as opposed to depositions. Terra Int'l, 119 F.3d at 696; Coast-to-Coast Stores, Inc. v. Womack-Bowers, Inc., 594 F. Supp. 731. 734 (D. Minn. 1984). Here, almost every single fact witness with any relevant information is located in South Dakota.

As noted above, Defendant will need to call a number of individuals to defend against Plaintiff's claims. Almost all of these individuals are located in South Dakota. In contrast, the only individual located in Minnesota is Plaintiff.

Minnesota courts have recognized that the number and nature of witnesses and documents located in another venue outweigh the presence of one potentially key witness in

Minnesota. See Radiator Specialty Co. v. Pennzoil-Quaker State Co., 2001 WL 1631449 (D. Minn. 2001) (finding venue more appropriate in the Southern District of Texas where only one potential expert witness was located in Minnesota). A similar situation exists here. Simply put, the only potential witness in Minnesota is Plaintiff. All of the other witnesses, including presumably most of Plaintiff's witnesses, reside and work elsewhere – mostly in South Dakota. As such, the convenience of the witnesses favors a transfer to the District of South Dakota, Southern Division.

3. Interests of Justice.

The court must also evaluate whether the interests of justice favor transfer. Terra Int'l., 110 F.3d at 691. This factor is the most important. See I-T-E Circuit Breaker Co. v. Regan, 348 F.2d 403, 405 (8th Cir. 1965). Courts look to matters like judicial economy, obstacles to a fair trial, conflict of law problems, and the advantages of having a local court determine local law. Terra Int'l., 119 F.3d at 691.

Here, the “local court determines local law” factor weighs in favor of transfer. This Court recently concluded the South Dakota statute of limitations applies to Plaintiff's claim, and relying on South Dakota law, this Court denied GEMS IT's motion to dismiss Plaintiff's claim pursuant to Fed. R. Civ. P. 12(b)(6). While this Court is no doubt capable of applying South Dakota law to Plaintiff's claim, there are advantages to having a South Dakota matter decided by a court in the District of South Dakota. South Dakota courts are the authority on South Dakota law, and as South Dakota law governs the present claim, it makes sense to have courts specializing in the application of South Dakota law decide this case. Specifically, the District of South Dakota will be intimately familiar with South Dakota decisions regarding claims of disability discrimination, tolling of statutes of limitations, determinations of mental illness for

tolling purposes, and administrative remedies under the South Dakota Human Rights Act, all issues essential to the resolution of the present matter.

Judicial economy and obstacles to a fair trial also favor transfer. In addition to the “convenience” factors already discussed, Defendant will be prejudiced if it is unable to present live testimony because none of the witnesses are amenable to process in Minnesota. District courts in the Eighth Circuit have repeatedly found that transfer under section 1404(a) comports with the interests of justice where party and witness convenience weigh strongly in favor of transfer. See, e.g., Nelson, 58 F. Supp. 2d at 1027. It is not fair and not in the interests of justice to require all of the relevant witness to have to travel to Minnesota simply because Plaintiff decided to move after his employment with GEMS IT ended. See, e.g., United States v. Harbrodt, 773 F. Supp. 1240, 1243 (S.D. Iowa 1981).

4. Additional Relevant Factors Favor Transfer.

Additional relevant factors supporting transfer include the locus of operative facts, the location of relevant documents, and the ease of access to sources of proof. These factors strongly favor transfer to South Dakota. Plaintiff accepted a job with GEMS IT’s predecessor company and stayed on after GEMS IT acquired the business; he chose to work in Sioux Falls, South Dakota; all of the decisions regarding Plaintiff and his employment were made in South Dakota; and all communications by Defendant with Plaintiff took place in South Dakota. As such, South Dakota is clearly the locus of operative facts, favoring transfer there. Moreover, many of the documents relating to the dispute are located in South Dakota, as are most of the other sources of evidence that shed light on whether or not Plaintiff was discriminated against. Again, there is absolutely no information, no documentary evidence and, other than Plaintiff, no witnesses in Minnesota.

CONCLUSION

Based on the foregoing, GEMS IT requests that this matter be transferred to the District of South Dakota, Southern Division. The circumstances of this case warrant such a transfer under applicable legal principles.

Dated: January 17, 2006.

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CERTIFICATE OF COMPLIANCE WITH WORD COUNT

This certification states that this Memorandum of Law complies with the length limitation of L.R. 7.1(e) and type size requirements of L.R. 7.1(e) and has 2,821 words. The software used for the Memorandum and the word count was Microsoft Word and the count applied included all text, including headings, footnotes and quotations.