

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

Plaintiff argues that this matter should not be transferred because Minnesota is only four miles from Sioux Falls, South Dakota, and he should not have to burden the expense of litigating this matter in South Dakota, even though he decided to move to Minnesota after his employment with GEMS IT ended. However, Plaintiff does not dispute that Minnesota has no connection with the claims in his complaint, that he is the only potential witness having any contact with Minnesota (and that he had no contact with Minnesota during his employment with GEMS IT), that all of Defendant's witnesses and Plaintiff's witnesses (except Plaintiff) are located in and around Sioux Falls, South Dakota, that all of the decisions at issue were made in South Dakota, and that the relevant documentation regarding those decisions are located there. Based on these factors, GEMS IT's motion to transfer should be granted.

I. PLAINTIFF IGNORES THE INCONVENIENCE CAUSED TO OTHERS

GEMS IT pointed out in its initial memorandum that courts afford plaintiff's choice of forum significantly less deference when the transaction or underlying facts did not occur there. Plaintiff does not attempt to explain how the decision at issue or underlying facts here occurred

in Minnesota as they clearly did not and, thus, there should be no presumption in favor of Minnesota being the forum in which this matter should be decided.

In response to GEMS IT's motion, Plaintiff essentially asserts that GEMS IT will not be inconvenienced by trying this matter in Minnesota, ignoring not only that GEMS IT does very limited business in Minnesota, but that requiring GEMS IT to order a number of employees to appear in Minnesota for trial will cause a disruption to its business. While Sioux Falls may be only four miles from the Minnesota border, the courthouse at which trial in this matter will occur is located over 250 miles away. Moreover, if venue is not transferred, GEMS IT will not be able to call as witnesses at trial employees who no longer work for it, including Rich Adcock, who is identified by name in Plaintiff's complaint and who has submitted an affidavit that he will not voluntarily appear at trial.

In addition, the interests of justice require transfer. Plaintiff is asking this Court to require GEMS IT to shoulder the burden of the inconvenience, and yet this case is only currently venued in Minnesota because of Plaintiff's decision to move after his employment ended. While Plaintiff states that he is willing to depose individuals in South Dakota, all of the potential witnesses will have to come from South Dakota to Minnesota for a multi-day trial – resulting in their losing multiple days of work, and disrupting their personal lives, for a trial that is only occurring in Minnesota because of Plaintiff's decision to move after his employment ended.¹ See United States v. General Motors Corp., 183 F.Supp. 858, 861 (S.D.N.Y. 1960) (discussing inconvenience to witnesses who will be away from work and home for a number of days and granting motion to transfer). Plaintiff is the only one who will have to travel to South Dakota

¹ Contrary to Plaintiff's assertion, the GEMS IT facility at issue is not located in Milwaukee. While GEMS IT's counsel may have to travel regardless of where the litigation is venued, its employees and even Plaintiff's own witnesses, who are all located in South Dakota, will be greatly inconvenienced if this matter remains venued in Minnesota.

from Minnesota. Notably, while he asserts that he cannot afford this expense, he is not proceeding in this matter in forma pauperis and has presented no evidence that his financial condition is so severe that he cannot afford this additional travel (especially when he apparently can afford to travel to South Dakota for depositions, which he states he is willing to do in his opposition to the motion). See Thomas America Corp. v. Fitzgerald, 1994 WL 440935 at *5 (Aug. 11, 1994 S.D.N.Y) (noting that the relative economic ability of the parties to proceed with a case has rarely been a dispositive reason to grant or deny a transfer motion, but instead is only one factor to consider); Coultman v. National Railroad Passenger Corp., 857 F.Supp. 231, 237 (E.D.N.Y. 1994) (granting motion to transfer matter to Virginia in part because locus of facts occurred there and witnesses were located there, even though plaintiff asserted severe financial constraints).

II. THE OTHER FACTORS CITED TO BY PLAINTIFF DO NOT REQUIRE THAT VENUE REMAIN IN MINNESOTA

Plaintiff's other contentions do not outweigh the factors favoring transfer. For instance, while electronic case filing may exist, it will be of no assistance in a trial. Instead, GEMS IT will be required to transport all relevant documentation that may be used at trial from South Dakota to Minnesota.

While Plaintiff may be litigating other matters, he fails to explain why these other matters need to be presided over by the same judge. Plaintiff decided to start the litigation in which he is involved. GEMS IT should not have to shoulder the expense and inconvenience of this litigation in a forum which has no connection to Plaintiff's employment relationship with it, simply because Plaintiff decided to move and to sue a multitude of entities which have no relation to GEMS IT.

III. A SOUTH DAKOTA COURT SHOULD DECIDE PLAINTIFF'S CLAIMS

Finally, GEMS IT did not refer to a South Dakota court's ability to handle this matter because of unhappiness with the Court's decision on the motion to dismiss.² Instead, the "local court determines local law" factor is cited in the case law as an extremely relevant factor in deciding motions to transfer. Notably, Plaintiff does not dispute that the District of South Dakota will be more familiar than this Court 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 of these are issues essential to the resolution of the present matter.

In short, all facts giving rise to the dispute at issue occurred in South Dakota, all of the witnesses (except for Plaintiff) and relevant documents are located in South Dakota, and South Dakota courts are more familiar with the governing law. As a result, GEMS IT's motion should be granted and this case should be transferred to South Dakota.

Dated: February 10, 2006.

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² Indeed, in the Rule 26 report filed on August 10, 2005 (before a decision was rendered on the motion to dismiss) GEMS IT stated it was considering filing such a motion.

CERTIFICATE OF COMPLIANCE WITH WORD COUNT

This certification states that this Reply 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 1,269 words and the original Memorandum of Law in Support of Defendant's Motion to Transfer had 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.

Dated: February 10, 2006.

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