

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

FATHI YUSUF)	Case No. ST-2015-CV-344
)	
Plaintiff)	ACTION FOR DISSOLUTION
v.)	AND OTHER RELIEF
)	
PETER'S FARM INVESTMENT)	
CORPORATION, SIXTEEN PLUS)	
CORPORATION, MOHAMMAD A.)	
HAMED, WALEED M. HAMED,)	
WAHEED M. HAMED, MUFEED M.)	
HAMED, and HISHAM M. HAMED,)	
)	
Defendants.)	
)	
<hr style="width:45%; margin-left:0;"/>		

ORDER

Before the Court is Defendants' Motion and Memorandum in Support of Motion to Transfer Case This Action [sic] to the Division of St. Croix (the "Motion"), which was filed on September 22, 2015. Plaintiff filed a response in opposition on October 2, 2015, and Defendants filed a reply on October 16, 2015. Defendants' Motion will be denied because the convenience of the parties and witnesses, and the interests of justice do not necessitate a change in venue.

I. BACKGROUND

Defendants request that this Court transfer this case to the Division of St. Croix. Defendants claim that transfer is appropriate because Plaintiff resides on St. Croix, both corporate defendants have their offices and records on St. Croix, four of the five individually-named defendants live on St. Croix, and because one defendant is in ill health, rendering travel to St. Thomas difficult. Defendants also claim that the majority of the property owned by the corporate defendants is located on St. Croix, and that the parties to this suit are already involved in two other lawsuits in St. Croix seeking to divide up two other jointly-owned businesses.

In opposition, Plaintiff argues that there is a strong presumption in favor of the convenience of a plaintiff's chosen forum and that Defendants haven not made a strong enough showing to justify a change in venue. Plaintiff argues that the records of both corporate defendants are minimal, and could easily be transferred to St. Thomas. Plaintiff also argues that the proximity of St. Thomas and St. Croix reduces the burdens of travel, and that Plaintiff can travel to St. Croix to depose the ill defendant and to conduct mediation. Further, Plaintiff observes that the Division of St. Croix was able to oversee the distribution of partnership assets located on both St. Croix and St. Thomas, and concludes that there is no reason why this Court could not do the same. Finally, Plaintiff observes that there is no choice-of-law considerations associated with a change in venue.

II. LEGAL STANDARD

Title 4, Section 78 of the Virgin Islands Code provides in part that, “[f]or the convenience of parties and witnesses and in the interest of justice, a judge of the Superior Court may, with the approval of the presiding judge of such court, transfer any action or proceeding pending in one judicial division to the other judicial division for hearing and determination.”¹ In the context of a civil action, neither the Superior Court nor the Supreme Court of the Virgin Islands has analyzed the factors that should be considered in determining whether a change in venue under 4 V.I.C. § 78(b) is appropriate.

Interpreting the general federal venue transfer statute,² the District Court for the Virgin Islands has recited principles pertaining to changes of venue. Quoting case law from the United States Court of Appeals for the Third Circuit, the District Court has observed that “[o]rdinarily, a strong presumption exists in favor of a domestic plaintiff’s chosen forum, and this presumption may be overcome only when the balance of public and private interests clearly favors an alternative.”³ “The primary public interest factors are the choice of law to be applied and the relationship of the courts and jurors to the case.”⁴ Private interest factors include the preferences of each party, as well as the convenience to both the parties and witnesses.⁵ Because both the United States Code and Virgin Islands Code permit a change of venue for the convenience of the parties and witnesses, and in the interests of justice,⁶ decisions from the District Court interpreting the federal statute provide persuasive guidance for this Court when interpreting the local venue statute.

III. ANALYSIS

The District Court has considered and rejected arguments similar to those now raised by Defendants. The District Court was “unpersuaded by the defendants’ characterization of St. Thomas as a ‘distant location’ from St. Croix,” and has concluded that “[l]itigating [a] matter in St. Thomas simply does not pose the same sort of inconvenience as litigating the matter in a forum outside of the territory.”⁷ The District Court has also rejected arguments concerning inconvenience to witnesses where the defendant did not provide details as to how the witnesses would be inconvenienced.⁸ Finally, the District Court has observed that the location of books and records on St. Croix did not weigh in favor of transferring venue when such records could be copied and transferred to St. Thomas.⁹

¹ 4 V.I.C. § 78(b). As Defendants have not moved to dismiss this case for improper venue, the Court does not consider whether venue is appropriate under 4 V.I.C. § 78(a).

² 28 U.S.C. §§ 1404.

³ *Borghi v. Purple Group, Inc.*, Civil No. 2008-36, 2009 U.S. Dist. LEXIS 42101, at *9–10 (D.V.I. 2009) (quoting *Windt v. Qwest Communications Intern., Inc.*, 529 F.3d 183, 190 (3d Cir. 2008)) (internal quotations omitted).

⁴ *Id.* at *13 (citing *Lacey v. Cessna Aircraft Co.*, 862 F.2d 38, 48 (3d Cir. 1988)).

⁵ *Id.* at *9–13.

⁶ Compare 4 V.I.C. § 78(b) (permitting venue transfer “[f]or the convenience of parties and witnesses and in the interest of justice”), with 28 U.S.C. § 1404(a) (permitting venue transfer “[f]or the convenience of parties and witnesses, in the interest of justice”). The language of each section is nearly identical.

⁷ *Borghi*, 2009 U.S. Dist. LEXIS 42101, at *11.

⁸ *Id.* at *11–13.

⁹ *Id.* at *13.

Mindful of the District Court's observations, this Court is not convinced that the location of the records of the corporate defendants compels a change in venue. To the extent that they are not already on St. Thomas, any records located on St. Croix can be transferred to St. Thomas: Plaintiff has stated that his attorney is in possession of most, if not all of the records of the defendant companies, and one of Plaintiff's attorneys is located on St. Thomas.

Defendants' concern that one of their numbers is in poor health carries more weight, but Plaintiff has stated that "arrangements can be made to hold the mediation in St. Croix and take [the ill defendant's] deposition there." Consequently, the fact that one defendant is in poor health does not justify transferring this matter to the Division of St. Croix. As to the remaining individually-named defendants residing on St. Croix, Defendants have provided no explanation of why litigating this matter in St. Thomas would be burdensome. As such, the fact that four of the five individually-named defendants reside on St. Croix does not persuade this Court that the interests of justice necessitate a venue transfer.

Defendants' argument concerning the location of the property to be distributed is equally unpersuasive. As Plaintiff has observed, the Division of St. Croix has previously overseen the distribution of partnership property located on both St. Thomas and St. Croix. Nothing suggests that the Division of St. Thomas and St. John is incapable of overseeing a similar distribution.

Finally, it should be observed that many of Defendants' concerns can be addressed through comity between the parties, and Plaintiff has already demonstrated some flexibility concerning the location of mediation and depositions. Therefore, the Court is not persuaded that "the convenience of the parties and witnesses and . . . the interests of justice" necessitate a transfer of venue to the Division of St. Croix.

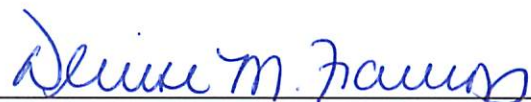
Accordingly, it is

ORDERED that Defendants' Motion and Memorandum in Support of Motion to Transfer Case This Action [sic] to the Division of St. Croix is **DENIED**; and it is further

ORDERED that a copy of this Order be directed to Gregory H. Hodges, Esq., and Nizar A. DeWood, Esq., counsel for Plaintiff, and to Joel H. Holt, Esq., and Carl J. Hartmann III, Esq., counsel for Defendants.

Dated: January 29, 2016

ATTEST:
Estrella H. George
Acting Clerk of the Court



DENISE M. FRANCOIS
Judge of the Superior Court
of the Virgin Islands

By: _____
Donna D. Donovan
Court Clerk Supervisor ____/____/____