

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 19-CV-22842-DPG**

SUCESORES DE DON CARLOS
NUÑEZ Y DOÑA PURA GALVEZ,
INC., d/b/a BANCO NUÑEZ,

Plaintif,

vs.

SOCIÉTÉ GÉNÉRALE, S.A., d/b/a
SG AMERICAS, INC., *et al.*,

Defendants.

PLAINTIFF'S UNOPPOSED MOTION TO TRANSFER VENUE

Pursuant to 28 U.S.C. § 1404(a), Plaintiff moves to transfer this action to the United States District Court for the Southern District of New York (“SDNY”). Defendant Societe Generale (“SG”) does not oppose the transfer, without prejudice to any and all substantive, procedural or other rights of SG including its pending motion to dismiss.

BACKGROUND

1. This is a Helms-Burton action in which Plaintiff alleges that SG trafficked in its confiscated property by profiting from SG’s banking relationship with Banco Nacional de Cuba (“BNC”). *See* ECF No. 16 (“Am. Compl.”), ¶¶ 12.

2. SG accepted service of process on July 31, 2019, without prejudice to its other defenses. *See* ECF No. 7. In its October 29, 2019 Motion to Dismiss the Amended Complaint, SG argued that it is not subject to general or specific jurisdiction in Florida. *See* ECF No. 29, p.

3. Plaintiff responded on December 13, 2019 and argued that this Court could exercise “federal long-arm jurisdiction” over SG pursuant to Rule 4(k)(2). *See* ECF No. 37, pp. 13-16. In its

January 10, 2019 Reply in support of dismissal, SG argued that that Rule 4(k)(2) does not apply in this case because SG is subject to specific personal jurisdiction in New York. *See* ECF No. 41, p. 2 (citing *Barrocos of Fla., Inc. v. Elmassian*, Case No. 11-CV-22393, 2012 WL 1622988, at *6 (S.D. Fla. May 9, 2012) (A “defendant who wants to preclude use of Rule 4(k)(2) has only to name some other state in which the suit could proceed.”)).

3. Given SG’s acknowledgement that for this case it is subject to specific personal jurisdiction in New York, Plaintiff moves this Court to transfer this entire proceeding to the SDNY.

ARGUMENT

4. Pursuant to 28 U.S.C. § 1404(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 brought or to any district or division to which all parties have consented.”

5. In determining whether a transfer of venue is proper, courts in this District follow a two-part analysis. The court first inquires whether the action could have been brought in the venue in which transfer is sought; next, the court inquires whether convenience and the interest of justice require a transfer. *See Thermal Techs., Inc. v. Dade Serv. Corp.*, 282 F. Supp. 2d 1373, 1376 (S.D. Fla. 2003).

Whether the Action Could Have Been Brought in the SDNY

6. This action could have initially been brought against SG in the SDNY. This question “depends on whether [SG] is subject to jurisdiction in [New York], whether venue is appropriate in [New York] and whether [SG] is amenable to service of process in [New York].”

Aasi Beneficiaries' Trust by and Through Welt v. AVX Corp., Case No. 16-CV-23691, 2017 WL 3503400, at *2 (S.D. Fla. June 14, 2017).

7. SG has stated that is subject to specific personal jurisdiction in New York for this case. *See* ECF No. 41, p.2.

8. Venue is proper in the SDNY based on Plaintiff's allegation that SG "used New York banking institutions including SG's New York branch" to engage in banking transactions alleged to be relevant to Plaintiff's claim against SG. *Id.*, p. 3.

9. SG has already accepted service in this case.

Convenience and the Interest of Justice Require a Transfer

10. To determine whether the convenience of the parties and witnesses and the interest of justice favors a transfer, courts in the Eleventh Circuit weigh nine factors: (1) the convenience of the witnesses; (2) the location of relevant documents and the relative ease of access to sources of proof; (3) the convenience of the parties; (4) the locus of operative facts; (5) the availability of process to compel the attendance of unwilling witnesses; (6) the relative means of the parties; (7) a forum's familiarity with the governing law; (8) the weight accorded a plaintiff's choice of forum; and (9) trial efficiency and the interests of justice, based on the totality of the circumstances. *See Aasi*, 2017 WL 3503400, at *2 (citing *Manuel v. Convergys Corp.*, 430 F.3d 1132, 1135 n.1 (11th Cir. 2005)).

11. Convenience of the Witnesses. The location of the relevant witnesses has not yet been established. This factor is neutral.

12. Location of Relevant Documents. "Since the predominance of electronic discovery in the modern era, most courts have recognized that the physical location of relevant

documents is no longer a significant factor in the transfer inquiry.” *Trans Am*, 2018 WL 3090394, at *9. Accordingly, this factor is neutral.

13. Convenience of the Parties. SG has no offices in Florida. *Bourrinet Dec.*, ¶ 4. It is equally as inconvenient for SG to travel to New York as to Florida. Although Plaintiff has no offices in New York, Plaintiff is consenting to a transfer to New York.

14. Locus of Operative Facts. In determining the locus of operative facts, the court must look at “the site of events from which the claim arises.” *Gubarev v. BuzzFeed, Inc.*, 253 F. Supp. 3d 1149, 1165 (S.D. Fla. 2017). Plaintiff alleges that its claim arises, in part, from wire transfers that passed through the U.S. banking system in New York. This factor favors a transfer to New York.

15. Availability of Process to Compel the Attendance of Unwilling Witnesses. The identity of the witnesses, and whether any are unwilling, has yet to be established. This factor is neutral.

16. Relative Means of the Parties. The parties have not put forth any evidence as to their relative means; therefore, this factor is neutral.

17. A Forum’s Familiarity with the Governing Law. Of the 20 Helms-Burton lawsuits filed, 16 are pending in Florida; 1 in the District of Columbia; 1 in Washington; and 1 in Delaware. Given that Title III of Helms-Burton only became effective on May 2, 2019, no one forum has any greater expertise than another; therefore, this factor is neutral.

18. Weight Accorded a Plaintiff’s Choice of Forum. Plaintiff consents to jurisdiction in New York.

19. Trial Efficiency and the Interests of Justice. Given that New York is the only forum in which SG consents to jurisdiction, the interests of justice support a transfer to New

York. No discovery or trial preparation has occurred in the Southern District of Florida proceeding that could negate factors supporting a transfer.

Unserved Parties

20. Plaintiff requests the entire case be transferred to the SDNY, and the “convenience of unserved parties is not a factor in this Court’s determination whether transfer is appropriate.” *Copperhead Agric. Prods., LLC v. KB Ag Corp., LLC*, Case No. 18-CV-4127, 2019 WL 1233180, at *7 (D.S.D. Mar. 14, 2019).

21. Three defendants: The Bank of Nova Scotia, d/b/a Scotia Holdings (US) Inc., a/k/a The Bank of Nova Scotia, Miami Agency (“Scotiabank”); The National Bank of Canada, d/b/a National Bank of Canada Financial Group, Inc. (“NatBC”); and Banco Bilbao Vizcaya Argentaria, S.A., d/b/a BBVA, USA (“BBVA”) (together, the “Remaining Defendants”) have not yet been properly served. Plaintiff has already translated the Amended Complaint and corresponding Summonses to be served on each of the Remaining Defendants.

22. After this case is transferred, Plaintiff will request the Clerk of Courts for the SDNY serve the Remaining Defendants by mail, in a form that requires a signed receipt, in conformance with Federal Rule of Civil Procedure 4(f)(2)(C)(ii) and Article 10 of the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents. *See In re Coudert Brothers LLP*, Case No. 16-CV-8237, 2017 WL 1944162, at *8 (S.D.N.Y. May 10, 2017) (“Article 10 of the Hague Convention ... ‘allows’ service of process via mail ... Service may therefore be effected under Rule 4(f)(2), subject to the conditions set forth in that rule.”).

23. Even if the Remaining Defendants were before this Court, the SDNY is likely a convenient forum for Scotiabank and NatBC “as their subsidiaries’ principal places of business are there.” *MPH Techs. OY v. Zyxel Commc’ns Corp.*, Case No. 10-CV-684, 2010 WL 2836734,

at *4 n.2 (N.D. Ill. Jul. 16, 2010); *see also* Am. Comp., ¶¶ 21-22. Moreover, there is no indication that the Southern District of Florida would be a more convenient forum for any of the Remaining Defendants, thus “the presence of unserved parties in this suit does not argue against transfer.” *Id.*

CONCLUSION

For the reasons set forth above, Plaintiff requests that this Court enter the proposed Order attached hereto as **Exhibit A** transferring this case from the Southern District of Florida to the SDNY.

CERTIFICATE OF GOOD FAITH CONFERENCE

Pursuant to Local Rule 7.1(a)(3), Plaintiff’s counsel certifies it conferred with counsel for SG, which does not oppose the relief requested herein. Plaintiff’s counsel also certifies it conferred with counsel for Scotiabank, which does not consent to the motion to transfer, but will not file an appearance to oppose the motion. Plaintiff’s counsel has never been contacted by counsel for BBVA or NatBC regarding this matter.

Dated: January 29, 2020.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been served via transmission of Notice of Electronic Filing generated by CM/ECF on January 29, 2020, as filed with the Clerk of the Court using CM/ECM.

By: /s/ Javier A. Lopez

Javier A. Lopez, Esq.

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Defendants.

[PROPOSED] ORDER

THIS CAUSE comes before the Court on Plaintiff's Unopposed Motion to Transfer Venue pursuant to 28 U.S.C. § 1404(a) [ECF No. ____].

Based on the Motion, record, and proceedings in this case,

IT IS HEREBY ORDERED and **ADJUDGED** that Plaintiff's Unopposed Motion to Transfer Venue pursuant to 28 U.S.C. Section 1404(a) [ECF No. ____] is **GRANTED**. This action is **TRANSFERRED** in its entirety to the United States District Court for the Southern District of New York.

This action is **CLOSED** in this District.

DONE and **ORDERED** in chambers at Miami, Florida, this ____ day of January, 2020.

DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE