

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

BERNABEL SALVADOR ZURITA LEON,)	
)	
Plaintiff,)	
)	CIVIL ACTION FILE
v.)	NO. 19EV003769
)	
UNITED PARCEL SERVICE, INC.,)	
)	
Defendant.)	

ORDER GRANTING DEFENDANT’S MOTION TO DISMISS

Before the Court is Defendant United Parcel Service, Inc.’s Motion to Dismiss based on the doctrine of *Forum Non Conveniens*.¹ UPS requests this commercial motor vehicle negligence action be dismissed so it may be re-filed in Prince George’s County, Maryland, the site of the accident. Having considered the pleadings, evidence of record, and applicable case law, the Court finds as follows:

BACKGROUND

This case arises out of a tractor trailer accident that occurred on or about June 1, 2019 in Prince George’s County, Maryland between Maryland residents Jeffrey Brian Griggs and Bernabel Salvador Zurita Leon (Leon). For the purposes of this Order, the following are relevant and undisputed facts necessary for the resolution of the issue²: Griggs was driving a tractor trailer southbound on Interstate-95 in Prince George’s County, Maryland and stopped his tractor trailer in lane two due to a mechanical malfunction. *Compl.* ¶¶ 1, 16-18; *Ans.* ¶¶ 1, 16, 18. Leon

¹ United Parcel Service, Inc. (UPS) and Jeffrey Brian Griggs (Griggs) filed their Motion to Dismiss contemporaneously. On September 6, 2019, the Court granted the Consent Motion to Dismiss Jeffrey Brian Griggs. Accordingly, Leon’s case remains against only UPS.

² See *Collier v. Wehmeier*, 313 Ga. App. 421, 422-23, 721 S.E.2d 421 (2011).

alleges Griggs failed to use any warning or emergency equipment. *Compl.* ¶¶ 1, 20. Leon was driving his truck behind Griggs and collided with Griggs's stopped tractor trailer. *Id.*; *Ans.* ¶¶ 1, 19. Leon suffered injuries, including the amputation of both legs. *Id.* At the time of the accident, Griggs was a UPS employee operating in the course and scope of his employment. *Compl.* ¶ 14; *Ans.* ¶¶ 3, 14-15.

On July 19, 2019, Leon filed his case against UPS and Griggs alleging claims for: (1) negligence (*Compl.* ¶¶ 32-37); (2) *respondeat superior* of UPS (*Id.* ¶¶ 38-41); (3) independent negligence of UPS (*Id.* ¶¶ 42-47); (4) combined and concurring negligence (*Id.* ¶¶ 48-50); and (5) punitive damages (*Id.* ¶¶ 51-53). Leon is a Maryland citizen and resident. *See, e.g.,* Ex. A to *Def. Reply (Maryland State Police Incident Report)*. Griggs is a Maryland citizen and resident. *Compl.* ¶ 2. Leon alleges Fulton County, Georgia is a proper venue because *inter alia* UPS is headquartered in Fulton County; UPS admits it has a corporate office in Fulton County. *Id.* ¶ 3; *Ans.* ¶ 9. UPS argues Leon's case should be dismissed so that it may be re-filed in Prince George's County, Maryland.

STANDARD OF REVIEW

In deciding a motion to dismiss or to transfer under the doctrine of *forum non-conveniens*, this Court must apply the standard set forth in O.C.G.A. § 9-10-31.1 which includes seven (7) factors to be considered by the Court. *Wang v. Liu*, 292 Ga. 568, 569, 740 S.E.2d 136 (2013). UPS carries the burden of proving the seven (7) factors support transfer of the case; the trial court's decision on the motion is discretionary. *See, e.g., R.J. Taylor Mem. Hosp. v. Beck*, 280 Ga. 660, 662, 631 S.E.2d 684 (2006); *Andrews v. Blue Ridge NH Assoc., LLC*, 2019 Ga. App. LEXIS 667, 836 S.E.2d 197, 207-8 (2019); *Collier*, 313 Ga. App. at 422-23.

(1) **Relative Ease of Access to Sources of Proof**

Leon argues UPS “is simply overstating the importance of certain types of evidence” and provided the Court with “incorrect or misleading” claims regarding sources of proof. Specifically, Leon points to testimony in the Affidavit of the Chief of Staff for the State Police of Maryland (MDSP) that avers: “It would be more convenient for MDSP if MDSP employees were permitted to give their testimony by video at a prearranged and agreed upon time and place at or near the police station, than to require MDSP employees to travel to a courthouse and wait to give live trial testimony in court.” *Hock, Jr. Aff.* ¶ 8 (attached as Ex. B to *Pl. Resp.*). Leon also argues that “the physical location of documentary evidence is simply irrelevant in this digital age, and in particular, in this type of case.” *Pl. Resp.* p. 7.

a. Documentary and physical evidence

The incident giving rise to this suit occurred in Maryland. Documentary and other physical evidence is located in Maryland – e.g. Leon’s and Griggs’s employment records; Leon’s medical records; the policies, procedures, and training materials for Griggs; drivers’ logs; vehicle maintenance records for Leon’s and Griggs’s vehicles; and MDSP and first responder records. Leon’s bald assertion that the physical location of documentary evidence is irrelevant in this digital age is unsupported by fact and law. *See, e.g., Waldon v. Alger*, 352 Ga. App. 496, 499, 835 S.E.2d 312 (2019) (holding the trial court did not abuse its discretion in finding that other than the deference given to the plaintiffs’ choice of forum, the other relevant factors supported dismissal, including, that “most of the evidence related to the [plaintiffs’] breach of fiduciary duty claim arose of the trust agreements that were executed in Florida and pertained to real and personal property, including money deposits and expenditures in Florida....”); *Hawkins v. Blair*, 334 Ga. App. 898, 902, 780 S.E.2d 515 (2015) (affirming that the trial court’s finding on the first

factor in the favor of dismissal was supported by evidence where “aside from the bank and its employees in Atlanta, no other proof would need to be accessed in Fulton County.”).

b. Witnesses

The vast majority of eyewitnesses, first responders, and critical witnesses such as Leon’s medical provider and employer, Griggs’s immediate supervisors at UPS, people who maintained and serviced Griggs’s tractor trailer and Leon’s truck, are located in Maryland. Leon has not shown that any witnesses reside in Georgia or what evidence these witnesses possess that outweighs the ease of access to the vast majority of the witnesses located in Maryland. *Hawkins v. Blair*, 334 Ga. App. at 902 (affirming the trial court’s finding that the first factor favored dismissal where the plaintiffs failed to bring any potential witnesses to the attention of the trial court before the trial court’s decision and it did not explain what evidence these witnesses possessed).

The only connection with Fulton County is UPS’s corporate headquarters. Critical witnesses, evidence, and information are located in Maryland. Leon’s argument that each Maryland-based witness can simply appear via video to allay concerns about travel and inconvenience, is unsupported. *Hawthorn Suites Golf Resorts, LLC v. Feneck*, 282 Ga. 554, 556, 651 S.E.2d 664, 666 (2007) (holding the trial court did not abuse its discretion in finding that because “most of the likely witnesses were located in Louisiana, the relative ease of access to sources of proof favored Louisiana.”). In weighing these factors, the relative ease of access to sources of proof supports dismissal.

(2) Availability and Cost of Compulsory Process for Attendance of Unwilling Witnesses

This factor also weighs in favor of dismissal. Given the absence of the majority of fact witnesses in Fulton County, compulsory process will cost both parties more if the case proceeds

in Fulton County instead of Maryland, where many critical witnesses reside or work. There are significant difficulties with compulsory process for unwilling out-of-state witnesses and other attendant difficulties even for willing witnesses. *Waldon*, 352 Ga. App. at 499 (no abuse of discretion in finding the seven (7) factors supported dismissal, including that “it would be difficult for witnesses from Southern Florida to be compelled to testify in northwest Georgia.”)

The cost of compulsory process supports dismissal. A Maryland court can compel the corporate defendant, UPS, to produce documents and witnesses in Georgia. Even considering that both Maryland and Georgia are signatories and adopted the Uniform Interstate Depositions and Discovery Act, compelling attendance of Maryland fact witnesses at depositions and/or trials will be challenging, expensive, and time-consuming if the case remains pending in Fulton County. *Woodard Events, LLC v. Coffee House Indus., LLC*, 341 Ga. App. 526, 527-28, 801 S.E.2d 322 (2017) (finding the trial court did not err in finding the second factor favored dismissal where the plaintiff had “not shown there [were] any *unwilling* witnesses. In contrast, depositions of [the defendant company] would potentially need to be subpoenaed or negotiated because the witnesses are located outside of Georgia.”).

(3) Possibility of Viewing the Premises

To the extent that a site visit is relevant and justified, the possibility of viewing the site favors dismissal and refiling in Maryland, because the accident occurred there and it is the location of stored evidence.

(4) Unnecessary Expense or Trouble to the Defendants Not Necessary to Leon’s Right to Pursue His Remedy

This factor weighs in favor of dismissal. Although UPS is located in Fulton County, it asserts costs will be less if the case proceeds in Maryland. Unnecessary expense and trouble would inure to all parties and out-of-state witnesses to travel to Fulton County for trial. While it

is possible some of UPS's corporate representatives in Fulton County would be subject to the expense of traveling to Maryland for the litigation, Leon "would not be similarly inconvenienced by pursuing the case" in a Maryland Court. *Feneck*, 282 Ga. at 556.

(5) **Administrative Difficulties for the Forum Courts**

In Georgia, "a tort action is governed by the substantive law of the state where the tort was committed." *Hawkins*, 334 Ga. App. at 903.

The place where the tort was committed, or, the *locus delicti*, is the place where the injury sustained was suffered rather than the place where the act was committed, or, as it is sometimes more generally put, it is the place where the last event necessary to make an actor liable for an alleged tort takes place.

Id. The accident happened in Maryland and Leon sustained injuries in Maryland. Leon alleges UPS breached its "duties and was negligent in connection with hiring, qualifying, training, entrusting, supervising, and retaining Defendant GRIGGS and the maintenance and inspection of the UPS Tractor and Trailers." *Compl.* ¶ 45. UPS hired Griggs in Maryland; UPS provided Griggs's training and supervision in Maryland; and the maintenance and inspection of UPS tractor trailers was in Maryland. UPS's "last events" to make it liable occurred in Maryland. Thus, the long-standing doctrine of *lex locus delicti* expects Georgia courts to apply the law of foreign jurisdictions, which would be an administrative difficulty for this Court. *Hawkins, supra.*

Further, there are significant administrative difficulties for the Court and the parties in compelling numerous out-of-state witnesses to appear for trial in Fulton County. Maryland offers the most direct and least expensive access to evidence. *See, e.g., Feneck*, 282 Ga. at 556.

Further, UPS argues that it has discovered information that Leon and his employer, Renshaw, bear fault for the accident, and UPS will assert claims against Renshaw as a counterclaim or third-party claim. *Def's. Reply* pp. 8-9. UPS states Renshaw is a Maryland

corporation and is not subject to this Court's jurisdiction. *Id.* This factor weighs in favor of dismissal and refiling in Maryland. *Woodard*, 341 Ga. App. at 528-29 (finding no error in the trial court's analysis of this factor favoring dismissal and refiling in California where the defendant company was attempting to serve the plaintiff's corporate entity in the companion case pending in California).

(6) Existence of Local Interest in Deciding the Case Locally

This factor weighs in favor of dismissal. Prince George's County, Maryland is the location where the accident occurred and it has a direct interest in this matter. Although there is local interest in Fulton County regarding the actions of resident corporate defendants, this is outweighed by the local interest of the state and county where the accident happened. *Dowis v. MudSlingers, Inc.*, 279 Ga. 808, 812, 621 S.E.2d 413 (2005).

(7) The Traditional Deference Given to a Plaintiffs' Choice of Forum

As always, this factor weighs against transfer as Leon chose Fulton County as his forum. The Court acknowledges the deference given to Leon's choice, but in light of the totality of the circumstances, this factor is not enough to warrant retaining venue in Fulton County, Georgia. Notably, Leon does not reside in Georgia and the accident did not occur here. *See, e.g., John Hardy Group, Inc. v. Cayo Largo Hotel Assoc.*, 286 Ga. App. 588, 591, 649 S.E.2d 826 (2007) (holding "the trial court was authorized to weigh five of the statutory factors – (1), (2), (3), (5), and (6) – in favor of dismissal. Even considering the traditional deference given to a plaintiff's choice of forum, the trial court's weighing of the five factors in favor of dismissal authorized the determination that in the interest of justice and for the convenience of the parties and witnesses, the lawsuit would be more properly heard in [a foreign jurisdiction].")

After considering and weighing all of the above factors, as applied to the facts of this case, the Court concludes UPS satisfied its burden and dismissal is appropriate. The interests of justice and the convenience of the parties and witnesses would be better served by dismissing this case to permit it to be filed in Maryland. Accordingly,

IT IS HEREBY ORDERED that United Parcel Service, Inc.'s Motion to Dismiss Plaintiff's Complaint is **GRANTED**.

This 19th day of February, 2020.

/s/ Susan E. Edlein
Susan E. Edlein, Judge
State Court of Fulton County