

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOAN L. BREWER) CIVIL NO. 5:91CV00822 JAC
)
Plaintiff,)
)
v.) DEFENDANT'S MEMORANDUM OF LAW
) IN SUPPORT OF
MICROSOFT CORPORATION,) MOTION TO TRANSFER FOR
) CONVENIENCE (28 U.S.C. § 1404(a))
Defendant.)

I. INTRODUCTION

This action was commenced on December 27, 1991 by Joan L. Brewer ("Plaintiff") seeking to vacate or to enjoin enforcement of an Order for Antiharassment issued by the King County District Court, State of Washington, Northeast Division on October 21, 1991.

This is a motion by Defendant Microsoft Corporation ("Microsoft") requesting a transfer of venue under 28 U.S.C. § 1404(a) to the United States District Court for the Western District of Washington at Seattle. All relevant documents and witnesses are located in Washington. In addition, both Microsoft and Plaintiff are located in Washington. Transferring this case to the Western District of Washington at Seattle will

DEFENDANT'S MEMORANDUM OF LAW - 1
NO ORAL ARGUMENT REQUESTED

further the interest of justice because Plaintiff has filed another complaint arising out of her temporary employment with Microsoft in that court. In addition, Connecticut has virtually no interest in or connection with the underlying dispute.

II. STATEMENT OF FACTS

Plaintiff was employed by Kelly Services, a temporary employment service, and was assigned by Kelly to work for Microsoft. Plaintiff began her temporary work assignment at Microsoft in the capacity of Federal Telemarketing Representative on July 26, 1990. Plaintiff was terminated from this position on August 29, 1990 due to ongoing performance concerns. (Declaration of Chris Enslein ("Enslein Declaration"), ¶4).

On October 23, 1990, Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") alleging sexual discrimination. On September 30, 1991, the EEOC determined that the evidence obtained during an investigation of Plaintiff's claim did not establish a violation of Title VII of the Civil Rights Act of 1964 and issued a Notice-of-Right-to-Sue Letter. Plaintiff also filed a complaint with the State of Washington Human Rights Commission (the "Commission") on January 18, 1991 alleging a violation of the Washington State Law Against Discrimination. The Commission made a "no reasonable cause" finding on December 27, 1991. This finding meant that there was not sufficient evidence to show that an unfair employment practice occurred. (Enslein Declaration, ¶6).

During the time period in which Plaintiff filed the above discrimination complaints, Plaintiff continually sent electronic mail ("e-mail") to various officers and employees of Microsoft. The volume of e-mail interrupted the normal course of business at Microsoft and also posed a concern for the health and safety of employees at Microsoft. This concern prompted Microsoft to seek an Antiharassment Order to restrain Plaintiff from harassing its employees and officers. (Enslein Declaration, ¶7). On October 21, 1991, the King County District Court, Northeast Division, entered an Order for Antiharassment, effective until October 21, 1992. (Plaintiff's Complaint, Attachment).

Prior to filing this action in Connecticut, Plaintiff filed an employment discrimination complaint on December 23, 1991 in the United States District Court for the Western District of Washington at Seattle. A certified copy of that complaint is attached hereto as Exhibit B. Plaintiff attached a copy of the King County District Court, State of Washington, Northeast Division antiharassment order to that complaint. (Enslein Declaration, ¶5). Plaintiff stated in that complaint that she resides at 16421 N.E. 92nd #59, Redmond, WA, 98052.

III. LAW AND ANALYSIS

A. Venue in this Case Should be Transferred to the District of Western Washington for the Convenience of the Parties, the Witnesses and in the Interests of Justice.

Microsoft seeks an order granting a transfer of venue under 28 U.S.C. § 1404(a) to the United States District Court for the Western District of Washington at Seattle. 28 U.S.C. § 1404 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.

This action "might have been brought" in the Western District of Washington. The Western District of Washington at Seattle has jurisdiction over Microsoft because Microsoft's principle place of business is in Washington and Plaintiff's claim arises out of her employment in Washington. Venue is proper in the Western District of Washington at Seattle pursuant to 28 U.S.C. § 1391 because Microsoft resides in that district. The Western District of Washington at Seattle has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 since the action arises out of an alleged violation of the Civil Rights Act of 1964, 42 U.S.C. § 1981 et. seq. By the terms of 28 U.S.C. § 1404(a), transfer is appropriate and justified in this case.

Transfer of venue under 28 U.S.C. § 1404(a) is within the broad discretion of the transferring court. Stewart Organization v. Ricoh Corp., 487 U.S. 22, 29, 108 S. Ct. 2239 (1988). The transfer statute:

[r]eflects an increased desire to have federal civil suits tried in the federal system at the place called for in the particular case by consideration of convenience and justice.

Van Dusen v. Barrack, 376 U.S. 612, 616, 84 S. Ct. 805, 809 (1954). Considerations of convenience and fairness weigh heavily in favor of transferring this matter to the United States District Court for the Western District of Washington at Seattle.

Courts generally consider the following factors in determining whether or not transfer is appropriate: (1) the convenience of the parties; (2) the convenience of witnesses; (3) the availability of process to compel the presence of unwilling witnesses; (4) the cost of obtaining willing witnesses; (5) the relative ease of access to sources of proof; (6) where the events at issue took place; (7) practical problems involved indicating where the case can be tried more expeditiously and inexpensively; and (8) the interests of justice. Rackman v. Texas Instruments, Inc., 712 F. Supp. 448, 450 (S.D.N.Y. 1989). In this case, the convenience of the parties, the convenience of witnesses, the ease of access to sources of proof, where the events at issue took place and the interests of justice dictate that this action should be transferred to the Western District of Washington at Seattle.

1. Convenience of Parties.

Under § 1404(a), the first factor that a court must consider is the convenience of the parties. Traditionally a plaintiff's choice of forum is given great deference. The plaintiff's choice of forum, however, has reduced value where the plaintiff is not located in her chosen forum and where the facts giving rise to the litigation bear no material connection to the chosen forum. St. Regis Mohawk Tribe v. State of New York, 774 F. Supp. 185, 188-89 (S.D.N.Y. 1991); Sun Hill Industries, Inc. v. Holiday Trims, Inc., 20 U.S.P.Q. 2d (BNA) 1851 (E.D.N.Y. 1991); Abrahamson v. INA Capital Management Corp., 459 F. Supp. 917 (E.D.N.Y. 1978).

Plaintiff's choice of the Connecticut forum is therefore entitled to little consideration by the court since plaintiff has sued in a district other than the one in which she is located. The most recent correspondence from the Western District of Washington to Plaintiff at her Redmond, Washington address, dated January 22, 1992, indicates that Plaintiff is located in Redmond, Washington. A certified copy of that correspondence is attached hereto as Exhibit D.

The proper forum for this action is undoubtedly the Western District of Washington. Plaintiff's claim arises out of and is in connection with Plaintiff's former temporary employment as an independent contractor with Microsoft in Redmond, Washington. Any records pertaining to Plaintiff's temporary employment are located in Redmond, Washington as are all important witnesses.

2. Convenience of Witnesses.

Convenience of the witnesses is another critical factor that must be considered in a § 1404(a) motion to transfer venue. Plaintiff's cause of action relates solely to Plaintiff's temporary employment relationship with Microsoft. Since Plaintiff was temporarily employed by Microsoft in Redmond, Washington, all of the witnesses with relevant testimony as to the nature and scope of events underlying the issuance of the Order for Antiharassment are within the Western District of Washington. (Enslein Declaration, ¶7). These Washington witnesses are the only witnesses who are likely to provide material and important testimony regarding the matter at issue.

It will be much easier and far less expensive to have these witnesses testify at both depositions and trial in Washington rather than in Connecticut. To require these witnesses, all of whom reside in Washington, to travel to the opposite side of the country "would exact a considerable toll in terms of travel cost, disruption of normal business operations, and interference with personal and family lives." Islamic Republic of Iran v. Boeing Co., 477 F. Supp. 142, 143 (D.D.C. 1979).

Given the relatively substantial testimony of those individuals residing in Washington, and the burdens created by requiring those witnesses to travel to this forum, the convenience of the witnesses justifies the transfer of this case to the more appropriate forum in the Western District of Washington.

3. The Interest of Justice.

The "interest of justice" is the final criterion to be applied under § 1404(a) and is a "term broad enough to cover the particular circumstances of each case, which in sum indicate that the administration of justice will be advanced by a transfer." Schneider v. Sears, 265 F. Supp. 257, 263 (S.D.N.Y. 1967).

Considerations of judicial economy favor transferring this case to the United States District Court, Western District of Washington. Four days before Plaintiff filed this action, she filed an employment discrimination complaint against Microsoft in the United States District Court, Western District of Washington. (Enslein Declaration, Exhibit B). Plaintiff has

submitted an application for court-appointed counsel to the United States District Court, Western District of Washington in connection with the employment discrimination claim. (Enslein Declaration, Exhibit C). Both the employment discrimination claim and the present action arise out of Plaintiff's temporary employment relationship with Microsoft.

Because these two suits arise from an identical factual background, "the concurrent prosecution of these suits would defeat the public and private interests in the most expeditious and inexpensive litigation." Air Express International Corporation v. Consolidated Freightways, Inc., 586 F. Supp. 889, 892-93 (D. Conn. 1984). Indeed, before Plaintiff even filed this action in Connecticut, Plaintiff incorporated the Order for Antiharassment at issue in this action into the allegations filed in the Western District of Washington. The Western District of Washington will be able to consider the possibility of consolidation if both actions are before it. See Computer Assistance, Inc. v. Morris, 564 F. Supp. 1054 (D. Conn. 1983). Transferring this action will also allow for more efficient and economic pre-trial discovery. See Id. at 893 n.4.

Courts also consider a forum's familiarity with the governing law in determining whether transfer is warranted. Don King Productions, Inc. v. Douglas, 735 F. Supp. 522, 533 (S.D.N.Y. 1990). Wash. Rev. Code Chapter 10.14, Harassment, governs Plaintiff's claim. Wash. Rev. Code § 10.14.150 (1991) establishes the jurisdiction of the Washington state courts over civil actions brought pursuant to the chapter. Wash. Rev. Code

submitted an application for court-appointed counsel to the United States District Court, Western District of Washington in connection with the employment discrimination claim. (Enslein Declaration, Exhibit C). Both the employment discrimination claim and the present action arise out of Plaintiff's temporary employment relationship with Microsoft.

Because these two suits arise from an identical factual background, "the concurrent prosecution of these suits would defeat the public and private interests in the most expeditious and inexpensive litigation." Air Express International Corporation v. Consolidated Freightways, Inc., 586 F. Supp. 889, 892-93 (D. Conn. 1984). Indeed, before Plaintiff even filed this action in Connecticut, Plaintiff incorporated the Order for Antiharassment at issue in this action into the allegations filed in the Western District of Washington. The Western District of Washington will be able to consider the possibility of consolidation if both actions are before it. See Computer Assistance, Inc. v. Morris, 564 F. Supp. 1054 (D. Conn. 1983). Transferring this action will also allow for more efficient and economic pre-trial discovery. See Id. at 893 n.4.

Courts also consider a forum's familiarity with the governing law in determining whether transfer is warranted. Don King Productions, Inc. v. Douglas, 735 F. Supp. 522, 533 (S.D.N.Y. 1990). Wash. Rev. Code Chapter 10.14, Harassment, governs Plaintiff's claim. Wash. Rev. Code § 10.14.150 (1991) establishes the jurisdiction of the Washington state courts over civil actions brought pursuant to the chapter. Wash. Rev. Code

§ 10.14.180 (1990) establishes the procedure by which a party may seek to modify or terminate an antiharassment order. That section provides:

Upon application with notice to all parties and after a hearing, the court may modify the terms of an existing order under this chapter.

Plaintiff has not sought to modify or terminate the Order of Antiharassment pursuant to this statutory procedure. (Enslein Declaration, ¶5).

In addition, the interest of justice favors the transfer of this case because Connecticut has virtually no connection with or interest in the underlying dispute in this case. All of the events leading up to the issuance of the Antiharassment Order occurred in Washington, and, as mentioned above, all of the relevant evidence and witnesses are found in Washington.

IV. CONCLUSION

When the facts in this case are applied to the principles explained in the statutes and case law above, it is clear that the matter should be transferred to the Seattle Division of the Western District of Washington.

Respectfully submitted this 24th day of February, 1992.

BROWN RUDNICK FREED & GESMER

By 

Mark S. Baldwin (ct #01363)
On Behalf of Defendant
Brown, Rudnick, Freed & Gesmer, P.C.
90 State House Square
Hartford, Connecticut 06103
(203) 525-8008

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOAN L. BREWER)

Plaintiff,)

v.)

MICROSOFT CORPORATION)

Defendant)

CIVIL NO. 5:91CV00822 JAC

FEBRUARY 24, 1992

DECLARATION OF CHRIS ENSLEIN
IN SUPPORT OF MOTION TO
TRANSFER FOR CONVENIENCE (28
U.S.C. § 1404(a))

I, Chris Enslein, hereby declare as follows:

1. I am over 21 years of age, have personal knowledge of and am competent to testify to the facts stated herein.

2. I am employed by Microsoft Corporation ("Microsoft") as a paralegal. I maintain all of Microsoft's legal files related to human resources and employment issues.

3. Microsoft Corporation ("Microsoft") is a Delaware corporation with its principle place of business in Redmond, Washington.

4. I am familiar with the records and files of Microsoft pertaining to the temporary assignment and termination of Joan

L. Brewer ("Plaintiff"). Plaintiff began her temporary assignment at Microsoft on July 26, 1990 and was terminated due to performance concerns on August 29, 1990.

5. On February 20, 1992, Gwen Weld, Manager, Personnel Practices at Microsoft was served with a copy of the employment discrimination lawsuit Plaintiff filed in the United States District Court, Western District of Washington on December 23, 1991. Pursuant to Microsoft's company policy, Gwen Weld has provided me with a copy of the papers with which she was served. Attached hereto as Exhibit A is a copy of these papers, including a copy of the King County District Court, State of Washington, Northeast Division Temporary Order for Antiharassment dated October 7, 1991. Plaintiff has not sought to modify or terminate this Order in the State of Washington.

6. On October 23, 1990, Plaintiff filed a Charge of Discrimination with the Equal Opportunity Employment Commission ("EEOC") alleging sexual discrimination. On September 30, 1991, the EEOC determined that Plaintiff's claim did not establish a violation of Title VII of the Civil Rights Act of 1964 and issued a Notice-of-Right-to-Sue Letter. Plaintiff also filed a complaint with the State of Washington Human Rights Commission ("Commission") on January 18, 1991. The Commission made a "no reasonable cause" finding on December 27, 1991. See also, Exhibit A.

7. All of the individuals who are expected to testify in this matter on behalf of Microsoft reside within the jurisdictional limits of the United States District Court,

Western District of Washington, and the following individuals are employees of Microsoft. The individuals and the nature of their anticipated testimony are as follows:

- a. Nancy Harlowe, Microsoft Human Resources Department, is anticipated to testify as to her contacts with Plaintiff which led to Microsoft's Petition for Order of Antiharassment;
- b. Gwen Weld, Manager, Personnel Practices, is anticipated to testify as to her contacts with Plaintiff which led to Microsoft's Petition for Order of Antiharassment;
- c. John Prumatico, Director, Human Resources, Development and Administration, is anticipated to testify as to his contacts with Plaintiff which led to Microsoft's Petition for Order of Antiharassment;
- d. Susan Sullivan-Sibert, Senior Sales Trainer, is anticipated to testify as to her contacts with Plaintiff which led to Microsoft's Petition for Order of Antiharassment; and
- e. Beth Davis, Recruiting Manager, is anticipated to testify as to her contacts with Plaintiff which led to Microsoft's Petition for Order of Antiharassment.

8. William H. Gates and Mary Gates are anticipated to testify as to telephone conversations and correspondence received from Plaintiff.

9. The above individuals will provide material and important testimony and will all be inconvenienced by a cross-country trip to a Connecticut courtroom.

10. The interests of the justice and the convenience of the parties and witnesses would be served by transferring this action to the United States District Court, Seattle Division of the Western District of Washington court for the following reasons:

a. It would be burdensome and inconvenient for witnesses to attend trial in Connecticut because of the expense of travel and time away from their business and other pursuits;

b. It would serve the interest of justice and the resources of the parties and the courts to hear all claims arising out of Plaintiff's temporary employment with Microsoft in the United States District Court, Western District of Washington;

c. All of the books and records of Microsoft pertaining to Plaintiff's claims are located in the Western District of Washington.

11. Attached hereto as Exhibit B is a certified copy of Plaintiff's employment discrimination complaint filed in the United States District Court, Western District of Washington at Seattle on December 23, 1991.

12. Attached hereto as Exhibit C is a certified copy of Plaintiff's Application for Court-Appointed Counsel in Title VII Action with supporting documentation filed in the United States

District Court, Western District of Washington at Seattle on December 23, 1991.

13. Attached hereto as Exhibit D is a certified copy of correspondence dated January 22, 1992 from the United States District Court, Western District of Washington to Plaintiff at her Redmond, Washington address.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. This Declaration was executed on February 21, 1992 at Redmond, Washington.

2/21/92 Redmond, WA
Date and Place Signed

Chris Enslein
CHRIS ENSLEIN

1
2
3
4 KING COUNTY DISTRICT COURT
5 STATE OF WASHINGTON
6 NORTHEAST DIVISION

6 MICROSOFT CORPORATION,)

7 Petitioner,)

8 vs.)

9 JOAN L. BREWER,)

10 Respondent.)

No. 91-4403

AGREED MODIFICATION TO
ORDER FOR ANTIHARASSMENT

11 ANY WILLFUL DISOBEDIENCE OF THE PROVISIONS OF THIS ORDER WITH
12 ACTUAL NOTICE OF ITS TERMS SHALL SUBJECT THE RESPONDENT TO
13 CRIMINAL PENALTIES. WILLFUL DISOBEDIENCE OF THIS ORDER MAY ALSO
SUBJECT THE RESPONDENT TO BEING FOUND IN CONTEMPT OF COURT.

14 The parties to this order hereby stipulate that the
15 antiharassment order entered on October 21, 1991 shall be modified
16 as follows, and that this modified order for antiharassment shall
17 expire on October 21, 1992.

18 MODIFIED ORDER

19 Based on the stipulation of the parties, the petition, the
20 testimony heard and the case record to date, the court enters this
21 modified order:

22 1.1 Respondent is RESTRAINED from

23 (a) Making any attempts to contact the petitioner,
24 Microsoft Corporation, except as necessary to fulfill her
25 employment obligations related to developing a Power Point
26

AGREED MODIFICATION TO ORDER
FOR ANTIHARASSMENT - 1
(DGN2/798)

MERRICK, HOVSTEDT & LINDBY P.S.
ATTORNEYS AT LAW
710 NINTH AVENUE
SEATTLE, WASHINGTON 98104
682-0310

1 presentation for First Light Productions. Respondent is allowed
2 to contact Microsoft employees Matt Saettler, Jerome Schroeder,
3 Jay Borseth, and Greg Olson, for Power Point and multimedia
4 customer support services.

5 (b) Making any attempts to keep the petitioner under
6 surveillance.

7 (c) Going within 200 yards of the petitioner's
8 workplace, except on official business necessary for the
9 performance of the work assignment with First Light Productions.

10 (d) Seeking from Microsoft a level of product support
11 beyond that which is normally made available to end users of
12 Microsoft products.

13 1.2 Other relief ordered:

14 Respondent is ordered not to contact Microsoft Corp., except
15 as stated in paragraph 1.1 above, including E-Mail or CompuServ,
16 or any other public server. She shall have no contact with any
17 corporate officer, Gwen Weld, Nancy Harlow, the Gates family,
18 including William H. and Mary Gates, Beth Davis, or Susan
19 Sullivan-Sibert. She may contact Microsoft attorney, Peter
20 Miller, through E-Mail or other correspondence.

21 IT IS FURTHER ORDERED THAT:

22 2.1 The Clerk of the Court will forward a copy of this
23 modified order on or before the next judicial day to:

24 THE POLICE DEPARTMENT OF REDMOND.

1 2.2 The above law enforcement agency shall enter this
2 modified order in the appropriate Law Enforcement Information
3 System.

4 2.3 The respondent by signing this modified order
5 acknowledges receipt of this modified order and the original order
6 shall constitute proof of service for all future proceedings.

7 This Agreed Modification to Order for Harassment is effective
8 until October 21, 1992.

9 DONE IN OPEN COURT this _____ day of _____, 1992.

10 _____
11 Judge

12 _____
13 Joan L. Brewer

14 Presented by:

15 MERRICK, HOFSTEDT & LINDSEY, P.S.

16 _____
17 By
18 Nancy K. McCoid, WSBA #13763
19 Of Attorneys for Joan L. Brewer

20 Copy received, approved as to form,
21 and notice of presentation waived:

22 PRESTON, THORGRIMSON, SHIDLER,
23 GATES & ELLIS

24 By _____
25 Jesse Owen Franklin IV, WSBA #13755
26 Of Attorneys for Microsoft Corporation



OFFICE OF THE VICE PRESIDENT

WASHINGTON

September 16, 1993

Ms. Joan L. Brewer
16421 NE 92nd #59
Redmond, Washington 98052

Dear Ms. Brewer:

Thank you for your correspondence to Vice President Gore.

Your letter raises issues which appear to concern the Department of Justice. Accordingly, we have referred your inquiry to the Department of Justice for any appropriate action.

Thank you again, for contacting Vice President Gore.

Sincerely,

A handwritten signature in black ink that reads "Todd Campbell".

Todd J. Campbell
Counsel to the Vice President

Enclosure

TJC:aw