

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Lothrop v. Western Trails Charters & Tours

Lothrop · No. 24-cv-07964-AMO · Decided June 30, 2025

OPINION

Lothrop v. Western Trails Charters & Tours

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 SZAMANTHA LOTHROP, Case No. 24-cv-07964-AMO 8 Plaintiff,

ORDER DENYING MOTION TO

9 v. DISMISS

10 WESTERN TRAILS CHARTERS & Re: Dkt. No. 26

TOURS, et al., 11 Defendants. 12 13 This action arises out of a bus accident that occurred in Tremonton, Utah on December 12, 14 2022. Defendants Western Trails Charters & Tours, doing business as Salt Lake Express, and 15 Robert Todd Boggs move to dismiss this action on the grounds of forum non-conveniens. ECF 16 26. Plaintiff Szamantha Lothrop opposes. ECF 31. Defendants have elected to forgo a reply, 17 which was due June 6, 2025. See ECF 26; Civil L.R. 7-3(c). Now that briefing is closed, the 18 Court deems the matter suitable for disposition without hearing pursuant to Civil Local Rule 7- 19 1(b) and DENIES the motion for the reasons set forth below. 20 To the extent Defendants seek dismissal on the basis of forum non-conveniens, their 21 motion is DENIED. “Dismissal under forum non conveniens requires that an alternative forum be 22 available in [a] foreign country.” *Concat LP v. Unilever, PLC*, 350 F. Supp. 2d 796, 809 (N.D. 23 Cal. 2004) (citation omitted); see *Rutter Group Prac. Guide Fed. Civ. Pro. Before Trial Ch. 4-L 24 ¶ 4:835* (2025) (“Forum non conveniens remains viable in federal courts where the proposed 25 alternative forum is a foreign country. But where it is a different federal district, forum non 26 conveniens has been replaced by 28 USC § 1404(a), which allows transfer from one district to 27 another[.]”). 1 United States District Court for the District of Utah under 28 U.S.C. § 1404(a), their motion is 2 DENIED for failure to justify transfer under the relevant factors. Transfer pursuant to Section 3 1404(a) lies within the discretion of the district court and depends on the facts of each particular 4 case. *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000). The Court must first 5 determine whether the case could have been brought in the district where transfer is sought before 6 assessing the convenience of parties and witnesses and the interest of justice. See *State of Cal. v. 7 Bureau of Land Mgmt.*, 286 F. Supp. 3d 1054, 1059 (N.D. Cal.

2018). In deciding whether 8 transfer is warranted, the Court may consider several factors, including: “(1) the location where 9 the relevant agreements were negotiated and executed, (2) the state that is most familiar with the 10 governing law, (3) the plaintiff’s choice of forum, (4) the respective parties’ contacts with the 11 forum, (5) the contacts relating to the plaintiff’s cause of action in the chosen forum, (6) the 12 differences in the costs of litigation in the two forums, (7) the availability of compulsory process 13 to compel attendance of unwilling non-party witnesses, and (8) the ease of access to sources of 14 proof.” Jones, 211 F.3d at 498-99 (footnote omitted). “[T]he presence of a forum selection clause 15 is [also] a ‘significant factor’ in the court’s § 1404(a) analysis,” and “the relevant public policy of 16 the forum state, if any, is at least as significant a factor in the § 1404(a) balancing.” Id. (footnotes 17 omitted). 18 “The burden is on the party seeking transfer to show that when these factors are applied, 19 the balance of convenience clearly favors transfer.” Lax v. Toyota Motor Corp., 65 F. Supp. 3d 20 772, 776 (N.D. Cal. 2014) (citation omitted). “The defendant must make a strong showing of 21 inconvenience to warrant upsetting the plaintiff’s choice of forum.” Decker Coal Co. v. 22 Commonwealth Edison Co., 805 F.2d 834, 843 (9th Cir. 1986). “It is not enough for the defendant 23 to merely show that it prefers another forum, and transfer will also not be allowed if the result is 24 merely to shift the inconvenience from one party to another.” Lax, 65 F. Supp. 3d at 776 (citation 25 omitted). 26 There being no argument from Lothrop that this action could not have been filed in the 27 District of Utah, see generally Opp., the Court turns to the relevant factors, beginning with those 1 agreements were negotiated and executed – favors Lothrop. Lothrop declares that she “purchased 2 a bus ticket online while located in and residing in Alameda County, California, with a scheduled 3 departure from Oakland, California, and a destination of Cheyenne, Wyoming. The incident 4 giving rise to this action occurred during this trip.” ECF 33 (“Lothrop Decl.”) ¶ 4. The fact that 5 the initial transaction with Defendants took place in California and that Lothrop’s purchased 6 transit originated in the state weighs against transfer. See Jones, 211 F.3d at 499 (factors “ ‘clearly 7 demonstrated that California was [the] more appropriate’ forum where the agreements giving rise 8 to the plaintiff’s claims were negotiated and executed in California). 9 The third factor – the plaintiff’s choice of forum – also favors Lothrop. She declares that 10 she was born in Vallejo, California, has resided in California “continuously for [her] entire life[,]” 11 and intended to return to California after her trip to Wyoming. Id. ¶¶ 2-5. She was therefore a 12 California resident at the time she purchased her bus ticket and at the time of the accident. In 13 addition, California has a strong public policy in protecting consumers and regulating common 14 carriers doing business in the state.¹ See, e.g., Cal. Bus. & Profs. Code §§ 17550(a)(4) (“The 15 public welfare requires regulation of sellers of travel in order to eliminate unfair advertising, sales, 16 and business practices, to establish standards that will safeguard the people against financial 17 hardship, to encourage competition, fair dealing, and prosperity in the travel business, and to 18 provide certain and reliable funding for the seller of travel registration program and enforcement 19 by the office of the Attorney General of this article.”). In light of this, Lothrop’s choice of

forum 20 is entitled to substantial deference. See Jones, 211 F.3d at 499 (the plaintiff's choice of forum – 21 California – was “supported by [the state's] strong public policy to provide a protective local 22 forum for local franchisees.”). 23 The fourth factor – the respective parties' contacts with the forum – and the fifth factor – 24 the contacts relating to the plaintiff's cause of action in the chosen forum – also favor Lothrop. 25 Lothrop purchased her bus ticket while in California, Lothrop Decl. ¶ 4, the trip originated in the 26 27 1 Defendants assert that both California and Utah “are equally interested in seeing their citizens get 1 state, id. ¶ 6, and while Defendants are non-California residents, they directed their activities to 2 the forum to avail themselves of the benefits of doing business here. In addition, Lothrop is being 3 treated by physicians based in California for the “chronic, debilitating spinal pain” she experiences 4 as a result of being “propelled through the front windshield of the bus” during the accident, and 5 her Medi-Caid health coverage is administered by the California Department of Health Care 6 Services. Id. ¶¶ 9-29. These substantial contacts with California weigh in favor of permitting the 7 case to proceed here, particularly in light of the fact that, on this record, Lothrop's contacts with 8 Utah stem solely from the accident occasioned by Defendants' alleged negligence. See Jones, 211 9 F.3d at 499 (that the plaintiff's claims “arose out of the construction and initial operation of the 10 store located in LaVerne, California[]” weighed in favor of keeping the case in the state). 11 The eighth factor – the ease of access to sources of proof – also favors Lothrop. She is 12 receiving care from physicians in California, Lothrop Decl. ¶¶ 8-24, and these will be critical 13 witnesses with knowledge of the extent of Lothrop's injuries who cannot be compelled to testify at 14 trial in Utah. In addition, Lothrop's injuries make travel “physically burdensome” as it 15 “exacerbates [her] symptoms.” Id. ¶ 26. She “cannot sit or remain in a static position for 16 extended periods without significant discomfort.” Id. The location of Lothrop's current medical 17 team and the travel limitations resulting from her injuries would significantly hamper Lothrop's 18 ability to litigate elsewhere. Though, as discussed below, Defendants' ability to litigate is also 19 somewhat constrained if forced to litigate in California, the financial and medical circumstances 20 unique to Lothrop tip this factor in her favor. 21 The sixth and seventh factors – the differences in the costs of litigation in the two forums 22 and the availability of compulsory process to compel attendance of unwilling non-party 23 witnesses – inconvenience both parties equally regardless of the forum in which this action 24 proceeds. With respect to the costs of litigation, Defendants have provided no specifics as to the 25 expenses associated with litigation in California as opposed to Utah, see generally Mot., ECF 26-1 26 (“Walker Decl.”), ECF 26-2 (“Strong Decl.”), and they offer no basis on which this Court can find 27 that those expenses should be allocated to Lothrop, whose declaration establishes that she is 1 she did not choose. 2 With respect to compelling attendance of unwilling non-party witnesses, Defendants 3 indicate that Lothrop received initial treatment in Utah for two weeks after the accident occurred, 4 and that accident investigations were conducted by local law enforcement. See Strong Decl. ¶ 12. 5 These individuals, if unwilling to testify, could not be compelled to testify at trial in California. 6

See Fed. R. Civ. P. 45(c) (“A subpoena may command a person to attend a trial . . . (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or (B) 8 within the state where the person resides, is employed, or regularly transacts business in person, if 9 the person (i) is a party or a party’s officer; or (ii) is commanded to attend a trial and would not 10 incur substantial expense.”). But transferring the case to Utah would impose the same limitations 11 on Lothrop. She would be unable to compel testimony not only of her physicians, but of her 12 “aunt, all of [her] former employers, close co-workers, friends, and other social and professional 13 connections[,]” who Lothrop describes as the “individuals . . . in the best position to have 14 observed [her] and interacted with [her] prior to the incident and, in some cases, following the 15 incident.” Lothrop Decl. ¶¶ 30-31. Indeed, while Defendants note that keeping the case in 16 California means that they cannot compel non-party witnesses to testify in the case, they also 17 acknowledge that “[a]lternatively, Plaintiff cannot compel her witnesses to appear in Utah.” Id. 18 Accordingly, transfer would not be in the interest of justice as it would merely shift inconvenience 19 from Defendants to Lothrop. See Lax, 65 F. Supp. 3d at 776. 20 The weight of the remaining factor – the state that is most familiar with the governing 21 law – does not compel transfer. Defendants represent that “the law in the District of Utah provides 22 remedies that are identical or comparably similar to those available in California[,]” and that the 23 Utah District Court “is familiar [with] applying the Federal Rules of Civil Procedure” Mot. 24 at 7, 10; Strong Decl. ¶¶ 9-11. Defendants’ proffer makes this factor neutral at best in the overall 25 balancing. 26 That Lothrop’s is the sole case pending in California does not shift the overall balance of 27 factors in favor of Defendants. They indicate that “nearly all the lawsuits against [them] have 1 consolidated in the First District Court of Utah[,]” and that three cases are pending in Texas, one 2 || of which was filed by three plaintiffs who moved there after previously living in Utah. Mot. at 5; 3 Strong Decl. J] 2-8. While Defendants assert that “[a] separate trial of Plaintiffs claims in 4 California from those nine (9) cases in Utah, against the same Defendants, for the same factual 5 information that caused their alleged injuries and damages, could lead to fragmented litigation, 6 || inconsistent rulings, and findings[,]” transfer does not eliminate these risks. They persist even if 7 || Lothrop’s action is transferred from this district court to a federal court in Utah, in which no other 8 action is pending. The pendency of these other actions thus does not favor transfer. 9 For the reasons set forth above, Defendants’ motion is DENIED. 10 IT IS SO ORDERED. 11 Dated: June 30, 2025 12 □)

ARACELI MARTINEZ-OLGUIN

14 United States District Judge 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28