



CHEX SERVICES

2004 | Cited 0 times | D. Minnesota | June 23, 2004

MEMORANDUM AND ORDER

This matter is before the Court on Defendant iGamesEntertainment, Inc.'s Motion to Transfer and on Plaintiff ChexServices' Motion to Remand For the reasons that follow, theMotion to Transfer is granted and the Motion to Remand is deniedas moot.

BACKGROUND

Plaintiff Chex Services, Inc. ("Chex") is a Minnesotacorporation headquartered in Minnetonka, Minnesota. Chex providescash access and financial management systems for casinos andother gambling establishments. In November 2003, Defendant iGamesEntertainment, Inc. ("iGames"), agreed to purchase Chex fromChex's parent company, Equitex. iGames is a Nevada corporationwith its headquarters in King of Prussia, Pennsylvania, andEquitex is a Delaware corporation with its headquarters inEnglewood, Colorado. The parties signed the Stock PurchaseAgreement on November 3, 2003.

In January 2004, iGames approached Equitex and Chex about thepotential to purchase the assets of another company, AvailableMoney, Inc. Chex agreed to lend up to \$4 million to iGames, andthe parties executed a Term Loan Note on January 6, 2004. Thereis a dispute as to what next occurred. Chex contends that iGames failed to makethe interest payment on the first installment of the loan, asrequired by the Note. iGames alleges that Chex refused to makethe second payment on the Note and instead wrongfully terminatedthe Stock Purchase Agreement.

Chex brought this lawsuit in Minnesota state court on March 15,2004. On March 23, 2004, Chex and Equitex brought a lawsuitagainst iGames in Delaware state court alleging a breach of theStock Purchase Agreement. On March 24, 2004, iGames sued Chex andEquitex in federal court in Delaware, alleging breaches of boththe Term Loan Note and the Stock Purchase Agreement. iGamesremoved the instant matter to this Court on April 2, 2004, andhas also removed the Delaware state court action to federal courtin Delaware.

iGames now seeks to transfer this case to Delaware, where itwill presumably be consolidated with the two actions that arepending there. In response, Chex moved to remand the matter backto the Hennepin County court, contending that the forum-selectionclause in the Term Loan Note requires that disputes over thatNote be litigated only in Minnesota state court.



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Both of the agreements at issue contain forum-selection clauses. The Stock Purchase Agreement provides that the law of Delaware applies to that agreement, and further provides: Each party submits to the jurisdiction of any state or federal court sitting in the State of Delaware, New Castle County, in any action or proceeding arising out of or related to this Agreement; agrees that all claims in respect of this action or Proceeding may be heard and determined in any such court; and agrees not to bring any action or Proceeding arising out of or relating to this Agreement in any other court. (McDonald Aff. Ex. A ¶ 12(j), at 59.) By contrast, the Term Loan Note provides that: This Note is delivered and made in and shall in all respects shall [sic] be construed pursuant to the laws of Minnesota and any and every legal proceeding arising out of or in connection with this Note shall be brought in the appropriate courts of the State of Minnesota, each of the parties hereby consenting to the exclusive jurisdiction of said courts for this purpose. (Id. Ex. C at 3.)

DISCUSSION

A. Motion to Transfer Venue

28 U.S.C. § 1404(a) provides that, "[f]or the convenience of the 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." Thus, the statute mandates three factors for a court to consider when determining whether transfer is appropriate: (1) the convenience of parties; (2) the convenience of witnesses; and (3) the interests of justice. However, a court is not limited to considering only these three factors, because transfer determinations "require a case-by-case evaluation of the particular circumstances at hand and a consideration of all relevant factors." *Terra Int'l, Inc. v. Mississippi Chem. Corp.*, 119 F.3d 688, 691 (8th Cir. 1997). The presence of a "valid and applicable forum selection clause in a contract is 'a significant factor that figures centrally in the district court's calculus.'" *Id.* (quoting *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988)).

The party seeking a transfer bears the burden to establish that a change of forum is appropriate. *GMAC/Residential Funding Corp. v. The Platinum Co. of Real Estate & Fin. Servs., Inc.*, Civ. No. 02-1224, slip op. at 4 (D. Minn. March 13, 2003) (Kyle, J.) (citing *Stinnett v. Third Nat'l Bank of Hampden County*, 443 F. Supp. 1014, 1017 (D. Minn. 1978) (MacLaughlin, J.)). Transfers under § 1404(a) "should not be freely granted." *United Mortgage Corp. v. Plaza Mortgage Corp.*, 853 F. Supp. 311, 315 (D. Minn. 1994) (Doty, J.).

Further complicating the analysis of iGames's Motion is the interplay of § 1404 and the first-to-file rule. The first-to-file rule promotes judicial efficiency by providing that "the first court in which jurisdiction attaches has priority to consider the case." *Orthmann v. Apple River Campground, Inc.*, 765 F.2d 119, 121 (8th Cir. 1985). Chex's lawsuit in Minnesota was the first filed action, albeit only by eight days. Absent proof of forum-shopping or other wrongful conduct, and there is undisputedly no such evidence here, the Court would in the usual case give deference to Chex's choice of forum. See *Christensen Hatch Farms, Inc. v. Peavey Co.*, 505 F. Supp. 903, 911 (D. Minn. 1981) (noting



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presumption in favor of plaintiff's forum choice).

iGames argues that a transfer is appropriate because the outcome of the Minnesota litigation depends on what the Delaware courts determine with respect to the Stock Purchase Agreement. Specifically, Chex alleges in this lawsuit that the Note entitles Chex to recover an additional \$1 million, over and above the \$2 million it lent to iGames. The Note provides that, if Chex or Equitex terminate the Stock Purchase Agreement for iGames's failure to comply with its material obligations under that Agreement, iGames must pay Chex a \$1 million penalty. Thus, the propriety of the \$1 million payment Chex seeks here depends on whether Chex and Equitex properly terminated the Stock Purchase Agreement under the terms of that Agreement. According to iGames, the propriety of the termination of the Stock Purchase Agreement is at issue in the Delaware litigations, and the Minnesota case cannot proceed to judgment until the Delaware court has determined whether Chex and Equitex properly terminated the Agreement. Chex seems to agree that any final judgment here would have to await the final resolution of the Delaware litigation.

Neither the convenience of the parties nor the convenience of witnesses factors weigh clearly in favor of transfer. However, the interests of justice factor does weigh in favor of transfer, because this litigation cannot be completely resolved until the Delaware court has determined the propriety of the termination of the Stock Purchase Agreement. On the other hand, both the forum-selection clause in the Note and the first-to-file rule weigh against transfer.

Ultimately, however, the interests of justice must take precedence over even the parties' choice of forum. In light of the undisputed fact that the Minnesota litigation cannot be finally resolved until the Delaware litigation is complete, allowing this litigation to proceed in Minnesota is inefficient at best and constitutes a waste of judicial resources at worst. The issues to be resolved in the three pending actions are substantially similar, and indeed the findings in each action will have a direct bearing on the issues in the other actions. Thus, the three actions should proceed in the same court. Because Chex concedes that the Delaware actions are properly venued in Delaware, Delaware is the appropriate venue for all of the litigation surrounding both the Note and the Stock Purchase Agreement. iGames's Motion to Transfer is granted. B. Motion to Remand

In response to iGames's Motion to Transfer, Chex sought a remand to state court based on the language of the Note's forum-selection clause. Because the Court determines that the interests of justice outweigh the forum-selection clause and require the transfer of this matter to the United States District Court for the District of Delaware, Chex's Motion is moot.

CONCLUSION

Accordingly, upon all the files, records, and proceedings herein, IT IS HEREBY ORDERED that:

1. Defendant iGames's Motion to Transfer (Clerk Doc. No. 2) is GRANTED; and



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2. Plaintiff's Motion to Remand (Clerk Doc. No. 7) is DENIEDAS MOOT.

