

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

IRIS ESTICK, PERSONALLY AND AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF RAHEED
CAESAR AND NEXT OF FRIEND OF RASENOCH
CAESAR, MINOR, AND RODNEY CAESAR,

Plaintiffs,

v.

TIMOTHY REYNOLDS, KAREN REYNOLDS AND
RUTH PFANNER D/B/A POINT PLEASANT
RESORT,

Defendants.

SX-09-CV-339

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendants' Motion to Dismiss for Improper Venue, filed on August 19, 2009. On October 1, 2009, Plaintiffs filed an Opposition to Defendants' Motion to Dismiss. On October 9, 2009, Defendants filed a Reply to Plaintiffs' Opposition.

FACTS

Plaintiff Iris Estick is a resident of St. Croix, U.S. Virgin Islands. She is the mother of Raheed Caesar and is the personal representative of his estate. Defendant Timothy Reynolds, Defendant Karen Reynolds and Defendant Ruth Pfanner are residents of St. Thomas, U.S. Virgin Islands. Defendant Point Pleasant Resort is located in St. Thomas, U.S. Virgin Islands. In October 2008, Plaintiff Iris Estick made reservations to stay at Defendant Point Pleasant Resort with two of her children, deceased Raheed Caesar and Plaintiff Rasenoch Caesar. While staying at Defendant Point Pleasant Resort, Raheed Caesar spotted the Swimming Pool sign and told Plaintiff Iris Estick that he wanted to go to the pool. Plaintiff Iris Estick told Raheed Caesar to stay in their hotel room and that they would go to the pool after Plaintiff Iris Estick was done

bathing Plaintiff Rasenoch Caesar and herself. About 10-15 minutes into the shower, Plaintiff Iris Estick heard a loud continuous beating at the door. Upon answering the door, an employee of Defendant Point Pleasant Resort yelled for Plaintiff Iris Estick to go with him. Plaintiff Iris Estick responded that she could not go with him in the condition she was without a reason. The employee then told her that her son has drowned. When Plaintiff Iris Estick and Plaintiff Rasenoch Caesar arrived at the pool, Raheed Caesar was on his back with EMT and others around him.

A hotel guest had seen Raheed Caesar in trouble in the pool and had jumped into the pool in an attempt to rescue Raheed Caesar. However, the hotel guest lost her grasp of Raheed Caesar and he went to the bottom. At that point, the hotel guest had to go for help because she was unable to get Raheed Caesar up from the bottom by herself. Together with the new found help, the hotel guest was able to get Raheed Caesar out of the pool and pump out some of water from Raheed Caesar before the EMT arrived. Plaintiff Iris Estick and Plaintiff Rasenoch Caesar watched the EMT try to resuscitate Raheed Caesar. The EMT was able to get a faint pulse on Raheed Caesar and transported him to the Roy Schnieder Hospital Emergency Room. Shortly after, Raheed Caesar died in the Emergency Room.

In July 2009, Plaintiffs filed a Complaint against Defendants, alleging pain and suffering, lost income, lost of love and affection, severe emotional distress, mental anguish, and loss of enjoyment of life.¹ Plaintiffs also asked for punitive damages against Defendants for their

¹ Relevant parts of Plaintiffs' Complaint:

28. Raheed Caesar suffered trying to save himself from drowning and the panic, mental anguish and suffering associated with that and the horrible physical and mental anguish and suffering associated with that and the horrible physical and emotional pain of drowning and the pain of attempting to bring him back to life and his attempts to cling to life and not to die.
29. Iris Estick suffered seeing her son drowned, watching the EMT's attempt to bring him back to life and watching her son struggle to try and live.

“reckless disregard for the rights and interests of small children in general and the Raheed Caesar in particular.”

DISCUSSION

Motion to Dismiss for Improper Venue

Fed. R. Civ. P. 12(b)(3) provides that a party may file a motion to dismiss for improper venue. In the U.S. Virgin Islands, Title 4 of the Virgin Islands Code (hereinafter, “V.I.C.”), Section 78 governs venue. Title 4 V.I.C. § 78 provides that,

(a) All civil actions shall be initiated in the judicial division where the defendant resides or where the cause of action arose or where the defendant may be served with process. Criminal actions shall be brought in the judicial division in which the alleged criminal offense was committed. Actions of criminal conspiracy may be brought in either division in which any of the alleged overt acts were committed.

(b) For the convenience of parties and witnesses and in the interest of justice, a judge of the Superior Court may, with the approval of the presiding judge of such

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30. Rasenoch Caesar watched his brother being treated by the EMTs, being drowned and trying to bring his brother back to life.
 31. Rodney Caesar suffered seeing his son dead and burying his son.
 32. The Estate of Raheed Caesar has lost the income that he would have earned.
 33. Raheed Caesar lost his life and the love and affection of his parents and siblings.
 34. The Estate lost the love and affection of Raheed Caesar and the contributions he would have made during his life.
 35. Plaintiff Iris Estick suffered severe emotional distress by the way she was told her son had drowned and seeing her son drowned.
 36. Plaintiff Rasenoch Caesar suffered severe emotional distress by the way he was told his brother had drowned and seeing his brother drowned.
 37. Plaintiff Estick and Rasenoch Caesar and Rodney Caesar suffered mental anguish, pain and suffering, and loss of enjoyment of life all of which are expected to continue into the foreseeable future.
 38. The Defendants never contacted the Plaintiffs, never apologized and never took responsibility for their actions and inactions.
 39. The Defendants knew young children stayed at its premises and took no actions to prevent them from entering the pool and no actions to prevent them from drowning.
 40. The actions of the Defendants were done with such a reckless disregard for the rights and interests of small children in general and the Raheed Caesar in particular as to entitle the Plaintiffs to an award of punitive damages.

court, transfer any action or proceeding pending in one judicial division to the other judicial division for hearing and determination.

As noted in Title 4 V.I.C. § 78(b), the Court may transfer the case to a proper venue in the alternative to dismissing a case for improper venue. Title 28 of the United States Code (hereinafter “U.S.C”), Section 1404(a) also addresses the change of venue. Title 28 U.S.C. § 1404(a) allows a Court to transfer an action to any other district or division where it could have been brought, if convenient to the parties and witnesses, and in the interest of justice.² The languages used in Title 28 U.S.C. § 1404(a) and Title 4 V.I.C. § 78(b) are identical: “For the convenience of parties and witnesses, in the interest of justice...” Therefore, it is helpful to look at the District Court of the Virgin Islands and the Third Circuit’s interpretation of Title 28 U.S.C. § 1404(a) when interpreting Title 4 V.I.C. § 78(b).

While Plaintiff’s choice of forum is entitled to paramount consideration, the burden is on the moving party to prove that an alternative forum would be more convenient for it and that Plaintiff would not be substantially inconvenienced by the transfer. *Bostic v. AT&T of the Virgin Islands*, 2000 WL 34627712, 1 (D.V.I., 2000). In other words, the moving party has the burden to establish that a balancing of proper interests weighs in favor of the transfer. *Id.* “The decision to transfer rests within the sound discretion of the court which must consider all the factors listed in the statute.” *Id.* While there is no set formula or list of factors for the courts to considering proper/improper venue, courts have considered many variants of the private and public interests protected by the language of Title 28 U.S.C. § 1404(a). *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 880 (3d Cir. 1995).

² Title 28 U.S.C. § 1404(a) 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.”

Whether This Matter is Properly Filed in St. Croix Division

Defendants argue that, according to Title 4 V.I.C. § 78, this matter should be dismissed and re-filed in the St. Thomas/ St. John Division. Defendants point out the following: (1) the incident that brought about this lawsuit occurred in St. Thomas; (2) the pool and the real property at issue in this lawsuit are located in St. Thomas; (3) there is an issue of real property ownership in this case that will be dictated by the land records in St. Thomas; (4) Defendant Timothy Reynolds, Defendant Karen Reynolds and Defendant Ruth Pfanner are residents of St. Thomas with no connections to St. Croix; (5) Defendant Point Pleasant Resort is located in St. Thomas with no connection to St. Croix; (6) aside from Plaintiffs, all of the witnesses (such as the hotel guest, the hotel employees, the responding EMT, the Emergency Room attendants, etc.) are located in St. Thomas; and (7) Plaintiffs availed themselves to the St. Thomas venue by coming to St. Thomas. In summary, Defendants contend that the only relevance of St. Croix to this case is that Plaintiffs reside there.

Defendants argue that, in fact, Title 4 V.I.C. § 78 mandates this case to be brought in St. Thomas. In their Motion to Dismiss, Defendants stated that, “[I]f this Court transferred the case to St. Thomas rather than dismissed it, Defendants will not object. However, even though the criteria for transfer, even though met here, are not required as the statute mandates the case be brought in St. Thomas in the first instance to give the Court jurisdiction to hear the case in chief.” (Defendants’ Motion to Dismiss for Improper Venue, at 1) Defendants point out that courts have transferred cases between divisions when the defendant was inconvenienced and/or third party witnesses may be inconvenienced or when the case was filed in the division solely for the convenience of the plaintiff and her attorney. *Bostic*, 2000 WL 34627712. Additionally,

Defendants request the Court for fees and costs related to filing this Motion To Dismiss for Improper Venue.

Plaintiffs argue that this matter should not be dismissed or transferred to St. Thomas/ St. John Division because Plaintiffs, their fact witnesses and their expert witnesses would all be seriously inconvenienced and subjected to significantly greater expense. Plaintiffs point out that, despite alleging inconvenience as Defendants' primary reason for dismissal/transfer for improper venue, Defendants never provided any affidavit supporting that contention. Plaintiffs contend that the witnesses who were present at the time of Raheed Caesar's drowning, witnesses who observed Raheed Caesar's injuries, witnesses who will describe Raheed Caesar's life as an individual, and witnesses as to Raheed's pain and suffering all reside in St. Croix.³ (Plaintiffs' Opposition to Defendants' Motion to Dismiss for Improper Venue, at 2) Moreover, Plaintiffs contend that, since Defendants advertised and solicited businesses in St. Croix, and thereby have minimum contacts with St. Croix.⁴ Accordingly, Plaintiffs argue that Defendants should have reasonably expected to be sued in St. Croix.

³ Plaintiffs point out that Nancy Rogers and Jeanne Bowen, the hotel guests who witnessed Raheed Caesar's fall into the pool, do not reside in the U.S. Virgin Islands. Therefore, Plaintiffs argue that it would be equally convenient for Nancy Rogers and Jeanne Bowen to testify in St. Croix. Plaintiffs further point out that since they plan on calling the only witnesses from St. Thomas, the EMT and the Emergency Room attendants, Plaintiffs will bear the costs of bringing them to trial, at no cost or inconvenience to Defendants.

According to Plaintiffs, they also plan on calling the following witnesses: Plaintiff Iris Estick, Plaintiff Rodney Caesar (father of Raheed Caesar), Rasenoch Caesar (brother of Raheed Caesar), Donna Samuel (neighbor of Caesar Family), Ronald Milligan (godfather of Raheed Caesar), Kimo Urgent (friend of Raheed Caesar), Kent Moorhead (former school principal of Raheed Caesar), Carol Benjamin Grandmother of Raheed Caesar), James Caesar (uncle of Raheed Caesar), Raheed Caesar's St. Croix school teachers, Raheed Caesar's physicians, Raheed Caesar's friends, Raheed Caesar's relatives, Raheed Caesar's religious consultants, Plaintiffs' St. Croix friends/family/physicians/counselors, who will testify as to Plaintiffs' loss and mental anguish and medical treatment.

⁴ Plaintiffs allege that Defendants have offered Seaborne Airlines' St. Croix employees, including Plaintiff Iris Estick, a discounted rate to stay at Defendant Point Pleasant Resort. Defendants disagree with Plaintiffs' assertion. Defendants explain that Plaintiff Iris Estick is acquainted with the manager of Defendant Point Pleasant Resort through her employment with Seaborne Airlines. The manager told Plaintiff Iris Estick that he would give her a discount if she stayed at Defendant Point Pleasant Resort, which he did when Plaintiff Iris Estick requested it.

Plaintiffs claim that it is well settled that in determining venue, the courts have held that the moving party bears the burden of establishing the need for a transfer and has the burden of persuasion. *See Jumara*, 55 F.3d at 879.⁵ Plaintiffs argue that Defendants have failed to meet their burden here for the following reasons: (1) Defendants incorrectly stated that all witnesses reside in St. Thomas; and (2) Defendants failed to identify the names, addresses and testimony of any other witnesses and explain the inconvenience caused by trying this case in St. Croix. Plaintiffs further highlight that Defendants were properly served with process, in accordance with Fed. R. Civ. P. 4., in St. Thomas by the Superior Court of the Virgin Islands Division of St. Croix and therefore, venue is proper under Title 4 V.I.C. § 78(a). Accordingly, Plaintiffs maintain that the St. Croix Division is the proper venue for this matter. In the alternative, Plaintiffs argue that the case should be transferred rather than dismissed to avoid undue delay and cost.

In regards to Defendants' request for costs and fees related to filing their Motion To Dismiss for Improper Venue, Plaintiffs ask the Court to deny Defendants' request. First, Plaintiffs argue that Defendants have not cited any local or federal rule or statute in support of their request. Second, Plaintiffs argue that they have filed their Complaint in the St. Croix Division in good faith based on their residency.

In their Reply to Plaintiffs' Opposition, Defendants reemphasize that they are not requesting a discretionary venue change but a mandatory venue change pursuant to Title 4 V.I.C. § 78. Title 4 V.I.C. § 78(a) stated, "All civil actions shall be initiated in the judicial division...

⁵ In their Opposition, Plaintiffs also cited to *Borghi v. Purple Group*, where the District Court determined that the defendants failed to meet their burden of establishing that the private and public interest factors weighed in favor of transferring the case under *forum non conveniens*. 2009 WL 1404752 (D.V.I., 2009). The Court does not find *forum non conveniens* arguments applicable here because that is not what Defendants argued. In their Motion to Dismiss For Improper Venue, Defendants argued that filing this matter in the St. Croix Division is improper under 4 V.I.C. § 78.

where the defendant may be served with process.” Defendants point out that Fed. R. Civ. P. 4 addresses procedural issue of perfecting service of process and is irrelevant to the issue of improper venue here. Defendants were served in St. Thomas. Defendants argue that they cannot be served with process in St. Croix and were not served with process in St. Croix because they are not on St. Croix. Defendants further argue that Plaintiffs are misleading in the list of witnesses they plan on calling to testify at trial. According to 5 V.I.C. § 76, the wrongful death statute, limits damages to pain and suffering to parents only. Thereby, Defendants assert that all the family and friends referred to by Plaintiffs are not witnesses to alleged emotional pain and suffering. Defendants maintain that majority of the witnesses, aside from Plaintiffs, are located on St. Thomas. Consequently, Defendants argue that this matter is improperly filed in the St. Croix Division. Moreover, Defendants request the Court to certify this issue for appeal if this matter is allowed to continue in the St. Croix Division.

The Court finds that this matter is improperly filed in the St. Croix Division. This matter involves Raheed Caesar’s unfortunate death at Defendant Point Pleasant Resort, located in St. Thomas. All the Defendants and most of the eyewitnesses, such as the hotel guests, the hotel employees, the responding EMT, the Emergency Room attendants, are also located in St. Thomas. Although Defendants may be served with process in St. Croix, they were all served in St. Thomas. Consequently, according to Title 4 V.I.C. § 78(a), the proper venue for this matter is in the St. Thomas/ St. John Division.

Whether This Matter Should Be Dismissed or Transferred

Both Plaintiffs and Defendants have already advised the Court that they will not object to the Court transferring this matter instead of dismissing it altogether. Plaintiffs’ ties to St. Croix and other witnesses Plaintiffs plan on calling, such as Raheed Caesar’s family and friends, who

may reside here are substantially less compelling than the inconvenience that Defendants and the witnesses would suffer if this matter proceeded in St. Croix. Upon consideration of all the factors, the Court finds that Defendants have established that the balance of inconvenience weighs in favor of this matter proceeding in the St. Thomas/ St. John Division. Accordingly, rather than dismissing this matter, upon the approval of the presiding judge, the Court will transfer this matter to the St. Thomas/ St. John Division. *See* Title 4 V.I.C. § 78(b). In regard to Defendants' request of fees and costs related to the filing of the Motion to Dismiss for Improper Venue, Defendants failed to cite any support for their request. Nothing in the statutes indicates that Plaintiffs should pay Defendants' fees and costs related to the dismissal/transfer for improper venue. The Court also does not find that Plaintiffs filed this matter in the St. Croix Division in bad faith. Therefore, the Court will deny Defendants' request for fees and costs related to the filing of the Motion to Dismiss for Improper Venue.

CONCLUSION

. The Court finds that this matter was improperly filed in the St. Croix Division. Pursuant to 4 V.I.C. § 78(b), the Court will transfer this matter to the St. Thomas/ St. John Division. Accordingly, the Court will deny Defendants' Motion to Dismiss for Improper Venue. The Court will also deny Defendants' requests for fees and costs related to the filing of the Motion to Dismiss for Improper Venue.

DONE and so ORDERED this 27th day of September, 2010.

ATTEST:

Venetia Harvey-Velasquez
Clerk of the Court

By: Lo Romblenton
Clerk of the Court

Dated: 9/29/10

Harold W. L. Willocks
HAROLD W. L. WILLOCKS
Judge of the Superior Court

CERTIFIED TO BE A TRUE COPY
This 11th day of Oct 20 10
VENETIA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT

By: [Signature] Court Clerk II