UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
GREENBELT DIVISION

Wissam Abdullateff Sa'eed Al-Quraishi, et al., Plaintiffs, v. Adel Nakhla, et al. Defendants	Civil Action No. 8:08-cv-1696-PJM

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO TRANSFER THIS ACTION

By a September 8, 2008 submission, L-3 Services, Inc., moves to transfer the above-captioned matter from this Court to the Eastern District of Virginia pursuant to 28 U.S.C. § 1404(a). L-3 wholly fails to carry its burden to establish legally-cognizable reasons, supported by evidence, why Plaintiffs' choice of forum should be discarded and transfer should be ordered. L-3 fails to demonstrate that parties or witnesses would be inconvenienced if this case were to remain in the torture victims' choice of forum – Defendant Nakhla's home forum.

Defendant's motion, which is written in an oddly personal way, refers very little to the Plaintiffs or Defendants involved in this legal action.

Instead, Defendant's two paragraph motion mentions "she" four times, presumably referring to Susan Burke, the lead attorney for the torture victims. The memorandum in support follows suit, spending much of the factual and argument sections speculating about Ms. Burke's motivations and hardly any time examining the Section 1404(a) factors and how they apply to plaintiffs' injuries and defendants' conduct. Defendant's unsupported allegations about forum shopping are not only clearly untrue, but they are also a *non sequitur* in a Section 1404(a) motion requesting a transfer of venue.

Indeed, it is historically interesting, although not pointed out by Defendant, that this case in Maryland would be the first case of all those referenced in Defendant's motion where a plaintiff tortured at the Abu Ghraib prison would be allowed to remain in the jurisdiction where he initially filed his claim.

L-3 never claims that venue is in any way improper in this District; L-3 just prefers to be elsewhere. L-3 admits, as it must, that there is no credible convenience argument that can be made here, as the two courthouses in question are both located in close proximity within the Washington, D.C., area. *See* Def. Mem. at 14, 16-17. L-3 essentially concedes that the ***only*** argument they have in support of their motion is that

there is another case pending in the Eastern District of Virginia related to the torture that occurred at the Abu Ghraib prison in Iraq. *See id.* at 14. As will be explained, however, these two cases are not related in the way L-3 claims.

The plaintiffs are all victims of torture in Iraqi prisons. But they are opting to sue different parties for their differing roles in the torture. The action in this District is brought on behalf of 71torture victims who were tortured by L-3 translators at more than 22 different locations over a time span of five years. The other conspirator, CACI, was not even located at many of these locations.

The action in the Eastern District of Virginia is far narrower. Four victims, all tortured in the Abu Ghraib hard site in 2003 and 2004, seek to recover against the company that provided contract interrogators at that location, CACI. The more far-reaching action against L-3 need not be transferred twenty-five miles west to Alexandria, Virginia, to be consolidated with the more narrow and rapidly-moving action against CACI. Doing so would not accomplish any of Section 1404's statutory objectives. As a result, L-3 has not met its burden, and its motion should be denied.

PROCEDURAL BACKGROUND

On June 30, 2008, Mr. Al-Quraishi brought suit in this District against L-3 and its former employee Adel Nakhla, and CACI. Among other allegations, Mr. Al-Quraishi alleged that Mr. Nakhla personally tortured him. On the same day Mr. Al-Quraishi filed suit, several other torture victims represented by the same legal team sued the same two corporations and different individual torturers (Messrs. Dugan and Johnson) in the District Courts where the individual torturers lived (Ohio, and Washington, respectively). Another victim had previously filed suit in May 2008 against CACI, L-3, and a fourth individual torturer, Mr. Stefanowicz in the District Court where he resided (the Central District of California). All of these lawsuits alleged that L-3, CACI, and their employees conspired together and with others to torture and abuse plaintiffs when they were detained at Abu Ghraib and other prisons in Iraq. The torture victims planned to have a series of one-victim trials in the communities where the individual torturers now reside.[1]

[1] None of these victims was represented by undersigned counsel (or any other counsel) at the time that the District Court in the District of Columbia denied the motion for class certification. For that reason, none joined the pending *Saleh* action, which is now up on appeal to the Court of Appeals for the District of Columbia.

This plan did not come to fruition. On June 27, 2008, L-3 and CACI (joined by the individuals) began a series of procedural filings seeking to consolidate all the torture litigation in the Eastern District of Virginia "rocket docket" over the victims' objections. The torture victims, after learning from a procedural ruling in the District Court in California that they were losing this battle, developed a different trial strategy. They decided to consolidate the various lawsuits into two lawsuits, one seeking redress from the translation company, L-3 (*i.e.* this lawsuit) and one seeking redress from the interrogation company, CACI (in the Eastern District of Virginia).

To that end, on August 12, 2008, Mr. Al- Quraishi voluntarily dismissed CACI from his pending action in this District. At approximately the same time, the action in Ohio was transferred into the Eastern District of Virginia, becoming the first action pending there. This first-transferred action was assigned to Judge Bruce Gerald Lee, a District Court judge who had recently ruled against CACI on summary judgment in a lawsuit CACI brought against a radio station reporting on CACI's direct role in the Abu Ghraib torture scandal.[2] The action was assigned C.A. No. 08-cv-827 (E.D.Va.).[3]

[2] CACI filed a case against a radio station and talk show host who described CACI as being directly involved in torturing prisoners. The Court (J. Lee) found that the reporter had several valid sources for that conclusion,

Thereafter, on August 14, 2008, the Washington action was transferred to the Eastern District of Virginia, assigned to Judge Ellis, and given C.A. No. 08-cv-844 (E.D.Va.). The torture victims, after seeking guidance from the clerk of the court, drafted a motion to relate the later-filed action with the first-filed action, and sent this draft to CACI. The motion, had it been consented to, would have been filed in the action pending before Judge Ellis, and would have consolidated that action with the one pending before Judge Lee. In the meantime, on August 22, 2008, the California action was transferred to the Eastern District of Virginia, assigned to Judge O'Grady, and given C.A. No. 08-cv-868 (E.D.Va.).

Rather than consenting to the victims' motion to consolidate, CACI concocted its own plan, presumably aimed at avoiding having the later-transferred and higher-numbered actions consolidated with the matter already pending before Judge Lee. The torture victims, rather than consent

---

including a report by General Taguba, an army general charged with investigating the torture. The District Court's decision was upheld by the Court of Appeals for the Fourth Circuit. *CACI Premier Technology, Inc. v. Rhodes*, 536 F.3d 280 (4th Cir. 2008). This case is relevant to the torture victims because they allege (in the action against CACI) that CACI brought this case to try to suppress further investigation and reporting on their role in torturing prisoners. Obviously, such issues need not be litigated here in this action, as L-3 was not involved in any way.

[3] The torture victim in that action (Mr. Al-Shimari) voluntarily dismissed his claims against L-3 as part of this collective plan.

to CACI's machinations designed to avoid Judge Lee,[4] exercised the procedural device of dismissal available under Rule 41, and simply dismissed the two later-transferred actions.

On September 5, 2008, the two victims who had initially filed in California and Washington but dismissed their claims after transfer, as well as seventy other victims, joined as plaintiffs in this action.

On September 15, 2008, three Abu Ghraib "hard site" torture victims were joined to the Eastern District of Virginia complaint, which was recast to focus exclusively on CACI's acts in the hard site of Abu Ghraib prison.

On September 8, 2008, L-3 filed a motion to transfer this action to the Eastern District of Virginia. This motion included as Exhibit H a declaration by Defendant Nakhla. In this declaration, Defendant Nakhla does not concede that the Eastern District of Virginia would have jurisdiction over claims against him.

On September 22, 2008, this Court granted Plaintiffs' unopposed motion of September 19, 2008 to extend time to respond to the transfer motion until October 2, 2008.

---

[4] To Plaintiffs' knowledge, every federal district court in the United States uses the lower-numbered case as the anchor case for relation and consolidation. This automatic approach prevents litigants from using consolidation or relation as a device to select or avoid judges. CACI offered no reason, let alone a compelling reason, for seeking to depart from this automatic approach.

On October 1, 2008, Plaintiffs filed their Second Amended Complaint with this Court. This proposed Second Amended Complaint seeks to recast this pending action to focus exclusively on L-3 and its translators. It eliminates allegations specific to CACI, such as the allegation that CACI was seeking to cover-up its role in the torture by suing the radio station and threatening to sue other media outlets. The Second Amended Complaint seeks to recover for conduct over a five-year period, 2003 - 2008, that occurred in at least 22 different locations.

ARGUMENT

This Court, when considering L-3's motion to transfer, looks to whether L-3 carried the burden of proving that transfer is merited under Section 1404(a). That section is clear on the reasons transfer is merited: "[f]or 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." At the outset, in considering the motion, this Court gives significant consideration to plaintiff's choice of forum. *See Collins v. Straight*, 748 F.2d 916, 921 (4th Cir. 1984). There, the Court of Appeals for the Fourth Circuit, quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1946), stated that "[u]nless the balance is *strongly* in favor of the defendant, the plaintiff's choice of forum should

rarely be disturbed." *Id*. (emphasis added). *See also Neuralstem, Inc. v. StemCells, Inc.*, 2008 WL 3929350 (D. Md. August 27, 2008) (J. Williams)(forum choice first factor to consider); *Cross v. Fleet Reserve*, 383 F. Supp.2d 852, 856 (D. Md. 2005), *citing Board of Trustees, Sheet Metal Workers National Fund*, 702 F. Supp. 1253, 1256 (E.D. Va.1988) ("plaintiff's forum choice of venue is 'entitled to substantial weight").

Given the importance of this deference to plaintiff's choice of forum, L-3 has a heavy burden. It must make "a clear-cut and convincing showing" that this matter should be transferred to the Eastern District of Virginia. *Hi-Bred E.g., Aventis Cropscience v. Pioneer Int'l*, 2001 WL 604185 (M.D.N.C. 2001), *citing Family Realty v. Manufacturers Trust Company*, 931 F. Supp. 141, 142 (N.D.N.Y. 1996). L-3 did not – and cannot – establish with clear and convincing evidence that the convenience of the witnesses or the interest of justice compel this Court to deprive plaintiffs of their choice of forum.

I. L-3 FAILED TO CARRY ITS BURDEN.

As the movant seeking to transfer this action, properly venued in this district, L-3 has the burden to establish that the balance of convenience and justice substantially weighs in favor of transfer. This burden does not alter simply because the plaintiffs are Iraqi, requires that L-3 establish in the first

instance that the case could have been brought in the Eastern District of Virginia, and requires that L-3 offer this Court a particularized showing of convenience to specific witnesses important to the case, supported by an evidentiary proffer of the substance of their testimony. L-3 fails to meet this burden.

A. L-3's Burden Is Not Diminished by the Fact that the Plaintiffs are Iraqi Citizens.

L-3 tries to persuade the Court that in this particular action, its burden to proof a basis for transfer is non-existent, asserting that Plaintiffs' choice of forum "deserves no weight" because Plaintiffs are Iraqi civilians living outside the United States. Def. Mem. at 14. This is simply wrong as a matter of law. Section 1404(a) says nothing about different tests for different plaintiffs, and numerous court have specifically rejected efforts to apply a sliding scale of deference to the plaintiff's choice of forum. *See, e.g., Mohamed v. Mazda Motors Corp.*, 90 F.Supp. 2d 757, 773-74 (E.D.Tex. 2000) (citing numerous authorities and firmly rejecting sliding scale of deference based on plaintiff's status or actions and noting that "no appellate court has sanctioned the contention that deference to the plaintiff's choice of forum disappears under any circumstance"). There is no binding precedent in this jurisdiction that the deference due plaintiff's choice of forum is diminished simply because the plaintiff is a not a U.S. citizen,

particularly when that plaintiff is barred from pursuing these claims in their home courts based on U.S. issued edicts. *See C.P.A. Order 17* (barring claims against American contractors in Iraqi courts).

B. L-3 Failed To Establish That This Matter "Might Have Been Brought" in the Eastern District of Virginia.

L-3 has not met the very basic requirement of Section 1404, which requires the movant to demonstrate that their requested jurisdiction has venue over all of the defendants. A motion to transfer venue must establish that the action "might have been brought" in the transferee court, the Eastern District of Virginia. *See* 28 U.S.C. § 1404(a); *Hoffman v. Blaski*, 363 U.S. 335, 343-44, (1960); *United States v. One Oil Painting*, 362 F. Supp.2d 1175, 1185 (C.D. Cal. 2005). Transfer is permissible only if the movant demonstrates that personal jurisdiction over all defendants would be proper in the new district. *Catch Curve, Inc. v. Venali, Inc.*, 2006 U.S. Dist. LEXIS 96379, at *3.

Here, Plaintiffs chose this forum because Defendant Adel Nakhla resides here. L-3 asserts – without a supporting affidavit or any other evidence -- "the Eastern District [of Virginia] has specific jurisdiction" over Nakhla. Def. Mem. at 8. L-3 speculates that Mr. Nakhla's contacts with Virginia in this matter are sufficient to create jurisdiction over L-3's codefendant under Virginia's long-arm statute. *See id.* at 8-9. Yet Mr.

Nakhla successfully defeated personal jurisdiction in Washington D.C., which has a very similar long-arm statute. *Saleh v. Titan Corp.*, 436 F.Supp.2d 55, 59 (D.D.C. 2006). Even if this speculation were true, Section 1404 jurisprudence requires that the transferor court independently assess and determine jurisdiction without reference to a defendant's consent or waiver of personal jurisdiction. *Commercial Lighting Products, Inc. v. U.S. Dist. Court*, 537 F.2d 1078, 1079 (9th Cir. 1976).

This District was chosen because Mr. Nakhla resides in Maryland, and assuring jurisdiction over Mr. Nakhla was most easily assured in the district where he resides. Efforts to establish jurisdiction of Mr. Nahkla in other districts have failed. L-3 must establish that this case could have been brought in the Eastern District of Virginia, and the showing contained in their motion fails to meet this burden.

C. L-3 Failed To Establish With Affidavits or Other Evidence That Any Witness Would Be Inconvenienced by Keeping This Action in Maryland.

L-3 has not met its heavy burden to trump plaintiffs' choice of forum. L-3 has not – and cannot -- demonstrate that the Eastern District of Virginia is more convenient to potential witnesses or the parties. Indeed, no such argument can be made when the physical proximity of the two is such as it is for the Alexandria and Greenbelt courthouses. *U.S. Ship Mgmt. v. Maersk*

Line, Ltd., 357 F. Supp. 2d 924, 937 (E.D.VA. 2005) (finding that "none of the parties can claim any significant inconvenience whether the case is tried [in the Eastern District of Virginia] or [in the District of Columbia]"); *see also Market Transition Facility v. Twena*, 941 F. Supp. 462, 467–68 (D.N.J. 1996)(finding a distance of "less than twenty miles" only a "negligible difference in terms of convenience"); *Carlile v. Continental Airlines, Inc.*, 953 F. Supp. 169, 171 (S.D. Tex. 1997) (classifying the 50 miles between Houston and Galveston as a "generalized allegation" of inconvenience which is insufficient to transfer).

L-3 instead relies on two decisions that considered transfer in the context of California versus Virginia. Def. Mem. at 16. Factors that the courts in those cases had to consider, including costs associated with travel across the United States, inconvenience to witnesses due to travel time and subpoena powers, are all absent in this case. *C.f. Saleh v. Titan*, 361 F. Supp. 2d 1152 (S.D. Cal. 2005). The close proximity of the two jurisdictions has no impact on the ability of the court to subpoena witnesses. *See* Fed.R.Civ.P. 45(e)(1).

The inquiry into the convenience of transfer for witnesses and parties is, "perhaps the most important factor in determining whether a transfer of venue should be granted." *Mamani v. De Lozada Sanchez Bustamante*, 547

F. Supp. 2d 465, 473 (D. Md. 2008)(citing *Cronos Containers Ltd. v. Amazon Lines, Ltd.*, 121 F. Supp. 2d 461, 466 (D. Md. 2000))(internal quotes omitted). As Defendant has failed to establish this factor, transfer should not be granted.

D. L-3's Allegations of Forum Shopping Are Not Only False, But Irrelevant.

L-3 spills much ink alleging that Plaintiff's lead counsel acted improperly. This is not true. Indeed, but for this jurisdiction, the torture victims have yet to remain in a jurisdiction of their choosing. L-3 and CACI have consistently and successfully deprived plaintiffs of their chosen fora. Plaintiffs are clearly entitled to try a new litigation strategy when their initial one failed. Nothing Plaintiffs have done to try to respond to L-3 and CACI's procedural maneuverings violates either the letter or the spirit of the Federal Rules of Civil Procedure. (The relevant sequence of events is set forth above in the Statement of Facts.) Indeed, it is CACI's conduct, not plaintiffs, that raises the serious specter of judge-shopping. But that issue is not relevant to this Court, as CACI is not in this action and before this Court. In any event, any allegation of forum shopping is better addressed in other ways and is irrelevant to transfer under Section 1404. *See Mohamed v. Mazda Motors Corp.*, 90 F.Supp. 2d 757, 773-74 (E.D.Tex. 2000) (rejecting forum shopping claims as irrelevant to weighing of factors under 1404).

II. THE INTERESTS OF JUSTICE DO NOT REQUIRE TRANSFER.

L-3 argues that the interests of justice require transfer because the actions are duplicative, and the Eastern District is better able to handle the logistics of the trials and moves more quickly. None of these arguments merits transfer.

A. The Two Actions Lack Any Overlapping Parties and Address a Separate Nucleus of Facts.

L-3 tries to concoct an "interests of justice" argument out of its false allegations about judge-shopping. This argument lacks merit. L-3 also argues that the interests of justice merit transfer because this action and the Eastern District of Virginia action are duplicative. Although the actions initially were very similar, with similar parties and similar allegations, after L-3 and CACI deprived plaintiffs of their chosen fora, these two actions were modified to clearly focus on different parties and different events. The victims all share the common bond of having been tortured. But otherwise, the trials in the two jurisdictions will be very different. In Virginia, four plaintiffs will establish torture by CACI interrogators in the hard site of Abu Ghrabi prison. Here in Maryland, a far greater number of torture victims will establish that L-3 permitted literally thousands of translators spread across the entirety of Iraq to beat and torture prisoners during the years 2003

to 2008. This action revolves around L-3's unwillingness, and ultimate negligent failure, to supervise its employees as they worked in numerous detention facilities throughout Iraq. This action involves plaintiffs who were tortured by Mr. Nakhla himself, and who were tortured by other translators. For example, the lead plaintiff, Mr. Al-Quraishi, was victimized by Mr. Nakhla.

By contrast *Al Shimari v. Dugan, et al.*, the case in the Eastern District of Virginia, is more limited in scope and duration. That matter revolves around conduct by CACI interrogators occurring at the "hard site" area of Abu Ghraib prison in Iraq. This is a small cell area of the Abu Ghraib prison that has now been made infamous by the pictures that were released.

Keeping this action here rather than consolidating with the CACI action makes complete sense. The interests of justice, the primary Section 1404(a) concern upon which defendant relies, argue in favor of these two cases being litigated separately, not together. It appears that L-3, knowing the weakness in its argument, has chosen to attack one of the attorneys rather than analyze the legal issue. Hence, the company's Memorandum of Points and Authorities spends significant time discussing Ms. Burke and hardly any discussing Plaintiffs' claims and how they are distinct from the claims made in the Eastern District of Virginia. Plaintiffs' legal team is the only

connection between these two cases. All else differs: the Plaintiffs are different victims, the Defendants are different wrongdoers, the conduct occurred in different places at different times, and the witnesses are different people.

The two trials will not be carbon copies of each other. The Virginia action will ask the jury to decide whether CACI is responsible for having its interrogators torture four victims at the hard site at Abu Ghraib. This action will demonstrate that L-3's utter failure to monitor its employees spread across Iraq was negligent, and caused substantial harms to the multiple victims of beatings and abuse not only in Abu Ghraib but in 21 other locations during a five-year span of time. In sum, this action is completely distinct from the case that is currently pending in the Eastern District of Virginia. There are no parties in common between the two cases.

B. This Is An Action About Torture, Not Terrorism.

The Eastern District of Virginia has no institutional advantage over this Court in dealing with a case involving Defendant's torture of innocent civilians. Defendant mischaracterizes this case as one implicating national security and requiring the use of "sensitive compartmentalized information" (SCI). Def. Mem. at 17-18. This case is a tort case, not a terrorism case, that requires the court to consider the liability of a publicly-traded

corporation for violations that it inflicted upon innocent victims. To the extent that some classified evidence may be relied upon by the parties in the course of trial, this court is certainly capable of handling such information. Indeed, courts around the country are capable of dealing with classified and confidential information and Defendant makes no showing that they are not. Defendants resort to arguing that a supposed requirement of an SCI facility militates in favor of venue in the Eastern District of Virginia. The Defendant fails to make any specific showing of particular documents subject to classification that would require such a facility. The Defendant does not even specify what aspect of this suit relates in any way to national security.

C. Relative Court Congestion Cannot Be Considered on Transfer.

Defendant's speculations regarding this District's timeliness and speed of disposition are of no moment for the Court's disposition of the issue raised herein. Relative court congestion is not a persuasive factor for transfer, particularly when, as in this case, it is the only factor that might be considered to weigh in defendant's favor. When docket considerations are the primary reason a plaintiff has chosen the Eastern District of Virginia, "the interest of justice is not served." *Original Creatine Patent Co., Ltd. v. Met-Rx USA, Inc.*, 387 F. Supp. 2d 564, 572 (E.D. Va. 2005).

CONCLUSION

L-3 has failed to establish factors sufficient to weigh in favor of disturbing Plaintiffs' choice of forum, which must be afforded some weight. Convenience to parties and witnesses does not weigh in favor of transfer and the interests of justice do not require that this case be moved to the Eastern District of Virginia. Accordingly, L-3's motion for transfer of venue must be denied.

Date: October 2, 2008

Respectfully submitted,

Susan L. Burke
William T. O'Neil
BURKE O'NEIL LLC
4112 Station Street
Philadelphia, PA 19127
Telephone: (215) 971-5058
Facsimile: (215) 482-0874

Katherine Gallagher
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, NY 10012
Telephone: (212) 614-6439
Facsimile: (212) 614-6499

Shereef Hadi Akeel

AKEEL & VALENTINE, P.C.
888 West Big Beaver
Suite 910
Troy, MI 48084
Telephone: (248) 594-9595
Facsimile: (248) 594-4477

Counsel for Plaintiffs