

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

NO. 5:05-CV-767-FL

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 \$19,985.90 in U.S. CURRENCY, et al., )  
 )  
 Defendants. )

ORDER

This matter comes before the court on motion of claimants Avedis Djeredjian, Carmen Badrian, Ashken Djeredjian, and Star Tobacco, Inc. (hereinafter "movants") to change venue (DE # 111), filed April 10, 2007.<sup>1</sup> Claimant Chase Fidelity Bancorp (hereinafter "Chase Fidelity") filed a response in support of the motion to change venue, and claimant Silver State Distribution, Inc. (hereinafter "Silver State") filed a response in opposition. The government filed a response in opposition, and movants filed a reply. The court heard argument on the motion to change venue and simultaneously heard argument on the government's motion for reconsideration of a transfer order in the related criminal case, United States v. Djeredjian, et al. (Case No. 5:06-CR-41-FL), on May 10, 2007.<sup>2</sup> For the reasons discussed herein, the motion to change venue is granted.

BACKGROUND

This is a civil forfeiture case against several bank accounts, vehicles and three tracts of real

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<sup>1</sup> Avedis Djeredjian and Carmen Badrian, husband and wife, are also defendants in the related criminal case.

<sup>2</sup> The related criminal case was ordered transferred to the Central District of California, as to defendants Djeredjian and Badrian, on April 9, 2007. The following day, the motion to change venue in the civil case was filed, relying in part on the court's transfer of the criminal case. Such transfer was stayed upon motion of the government. The government then filed a motion to reconsider the transfer order. Due to the interrelated nature of the cases and these motions, the court set a joint hearing to simultaneously address the government's motion for reconsideration of the transfer in the criminal case, and the motion to change venue in the civil case.

property. The government alleges the defendant properties are forfeitable pursuant to 18 U.S.C. §§ 981(a)(1)(A) and (C) as property involved in, or traceable to property involved in, money laundering transactions in violation of 18 U.S.C. §§ 1956 and 1957, or proceeds traceable to violations of the Contraband Cigarette Trafficking Act, 18 U.S.C. § 2341, *et seq.* Several months after filing of the civil forfeiture case, the government initiated a criminal action against claimants-defendants Avedis Djeredjian and Carmen Badrian.<sup>3</sup> By order dated June 2, 2006, the court granted the government's motion to stay the civil case, pending resolution of the related criminal case. The stay of the civil case remains in effect.<sup>4</sup>

Movants are all residents of California. Chase Fidelity, claimant of the Colorado Street Property, is a Nevada corporation but acts through the natural person of Jason Gulvartian, a resident of California. Silver State, claimant of approximately one hundred seventeen thousand dollars (\$117,000) in an account at Bank of Nevada, is incorporated in Nevada, and its principal owner at the relevant time, and sole present owner, resides in Nevada.

## DISCUSSION

### I. Standard of Review

The civil forfeiture venue statute, 28 U.S.C. § 1395, provides for venue "in the district in which [the forfeiture] accrues or where the defendant is found;" in any district where the property

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<sup>3</sup> The government indicted a third defendant who did not joint the motion to transfer in the criminal case and is not a claimant in the civil case.

<sup>4</sup> Although the civil case was stayed, on August 18, 2006, claimants Djredjian and Badrian filed a motion for release of seized assets to pay counsel's fees (DE # 56). The court referred the motion to United States Magistrate Judge William A. Webb. After extensive briefing and a hearing in accordance with United States v. Farmer, 274 F.3d 800 (4th Cir. 2001), Magistrate Judge Webb denied the motion for release of assets by order of February 20, 2007 (DE # 107). Claimants Djeredjian and Badrian filed a motion for reconsideration (DE # 108), to which the government responded (DE # 110). Although styled as a motion for reconsideration, this effectively amounts to an appeal of the decision issued by Magistrate Judge Webb. Accordingly, the motion for reconsideration remains pending before the undersigned.

sought to be forfeited is found; and where property is seized outside any judicial district, a proceeding for its forfeiture may be prosecuted "in any district into which the property is brought." 28 U.S.C. §§ 1395(a), (b), and (c). In addition to the general forfeiture venue provision, 18 U.S.C. § 981(h) provides an alternative venue in forfeiture proceedings for money laundering transactions.

[I]n the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

18 U.S.C. § 981(h). Courts have noted that "[a]s a practical matter, [Section 981(h)] avoids piecemeal forfeiture proceedings in district courts throughout the country where the criminal defendant owns or has an interest in property located outside of the district within which he or she is being criminally prosecuted." United States v. All Funds on Deposit, 767 F. Supp. 36, 39-40 (E.D.N.Y. 1991). See also United States v. Contents of Account Number 03001288, 344 F.3d 399, 403-04 (3d Cir. 2003) (noting section 981(h) provides for venue in the district where a related criminal action is pending).

"For 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." 28 U.S.C. § 1404(a). District courts are afforded broad discretion in deciding motions to transfer venue. See Nichols v. G.D. Searle & Co., 991 F.2d 1195, 1201 (4th Cir. 1993). However, a motion to transfer should not be granted "[i]f transfer merely shifts the inconvenience of litigating in a given forum from one party to the other, or if the balance of factors is only slightly in favor of the movant." United States v. \$633,021.67 in U.S. Currency, 842 F.Supp. 528, 535 (N.D. Ga. 1993).

In a civil case seeking transfer pursuant to 28 U.S.C. § 1404(a), courts commonly consider

the following factors: (1) ease of access to sources of proof; (2) convenience of the parties and witnesses; (3) cost of obtaining attendance of witnesses; (4) availability of compulsory process; (5) possibility of view by a jury; (6) interest in having local controversies decided at home; and (7) interest of justice. See United States v. \$78,850.00, 446 F. Supp. 2d 428, 431 n.2 (D.S.C. 2006) (citing Landers v. Dawson Constr. Plant, Ltd., 201 F.3d 436 (4th Cir. 1999)).<sup>5</sup>

The interest of justice can be a decisive factor in a court's analysis of a motion to transfer venue, and encompasses considerations such as judicial economy and the avoidance of inconsistent judgments. See Byerson v. Equifax Information Svcs., LLC, 467 F. Supp. 2d 627, 635 (E.D. Va. 2006). In contrast, plaintiff's choice of forum is but one relevant factor to be considered. See Norwood v. Kirkpatrick, 349 U.S. 29, 32 (1955) (holding Congress' intent in enacting section 1404(a) was to "permit courts to grant transfers upon a lesser showing of inconvenience" than traditionally required by the doctrine of *forum non conveniens*).<sup>6</sup>

## II. Analysis

The motion to change venue, filed the day after the court's transfer of the criminal case, relies on many of the same arguments cited in the motion to transfer the criminal case, including the location of property and witnesses in California and the commission of relevant acts in California.

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<sup>5</sup> While some of the factors considered in a civil transfer decision are similar to, and overlap factors the court analyzes in deciding a motion to transfer a criminal case, the analysis is not identical. See Platt v. Minnesota Mining & Mfg. Co., 376 U.S. 240, 244-45 (1964) (identifying the ten factors to be considered by the court in deciding a motion to transfer pursuant to Fed. R. Crim. P. 21(b)).

<sup>6</sup> Chase Fidelity suggests plaintiff's choice of forum should not be disturbed unless the balance strongly favors claimants. (See DE # 115, p. 7 (citing Collins v. Straight, Inc., 748 F.2d 916, 921 (4th Cir. 1984)). Chase Fidelity argues six of the relevant factors favor claimants, tipping the balance "strongly" in favor of claimants and thereby counseling in favor of transfer. The court notes however that the Collins decision, and its high level of deference to plaintiff's choice of forum, relied on a Supreme Court opinion discussing transfer under the more stringent common law doctrine of *forum non conveniens*, prior to the enactment of section 1404(a) which requires a lesser showing of inconvenience. See Gulf Oil v. Gilbert, 330 U.S. 501, 508 (1946) *superseded by statute*, Pub. L. No. 80-773, § 1404(a), 62 Stat. 869, 937 (1948), *as recognized in* Selective Ins. Co. of South Carolina v. Schremmer, 465 F. Supp. 2d 524, 526 (D.S.C. 2006).

In addition to these arguments, movants note the potential problems which could arise if the two cases proceed in different districts. Specifically, claimants Djeredjian and Badrian anticipate renewing their motion for release of assets to pay attorney's fees in the criminal case upon transfer to the Central District of California. If such a motion were granted in the criminal case, the district court in California could not afford complete relief where the assets remained under restraint in the civil case pending in the Eastern District of North Carolina. Furthermore, the pendency of the civil and criminal cases in different districts also gives rise to the possibility of simultaneous appeals to different circuit courts, with the potential for inconsistent judgments.

The government does not deny that venue in the civil case is proper in the Central District of California, but argues plaintiff's choice of forum is entitled to significant weight, and that the acts giving rise to the forfeiture occurred in North Carolina. The government admits that the criminal and civil matters are intertwined to such a degree that the two cases should be kept together, but argues that this militates in favor of maintaining both cases in this district. Finally, the government acknowledges that there is a difference between Fourth and Ninth Circuit law with regard to the permissibility of pretrial restraint of assets, and argues its reliance on Fourth Circuit law in bringing the case therefore requires denial of the motion to change venue.

By order entered today in the criminal case, the court denies the government's motion for reconsideration, thereby transferring the criminal case as against defendants Djeredjian and Badrian to the Central District of California. In their briefing on the instant motion, both movants and the government argue the civil and criminal cases should be adjudicated in the same district. At hearing, upon inquiry of the court, the parties explicitly affirmed this position. The question of whether to transfer a pending criminal case should be affected minimally, if at all, by a related civil forfeiture

case that has been stayed pending the resolution of that criminal case. Conversely, the court's decision regarding the transfer of the criminal case should, and does, affect its determination of the motion to change venue in the civil case.

None of the parties dispute venue is proper in the Central District of California, and venue is indeed proper in the district where the related criminal case is pending, pursuant to 18 U.S.C. 981(h). See Contents of Account Number 03001288, 344 F.3d at 403-04. If the civil forfeiture case were to remain in this district, the claimants-defendants and the government would both face the difficulty of managing related litigation in two districts more than two thousand miles apart. Additionally, such separation of the two cases would give rise to the potential inability of the California court to provide complete relief on any issue regarding release of assets, and could also create a potential for pending appeals in different circuits, possibly resulting in inconsistent judgments. The intent of section 981(h) is to avoid piecemeal litigation of forfeiture actions by allowing for venue in the district where the related criminal case is brought. See All Funds on Deposit, 767 F. Supp. at 39-40. Accordingly, the transfer of the criminal cases as against claimants - defendants Djeredjian and Badrian, and the intertwined nature of the criminal and civil cases, demonstrate that the interest of justice heavily favors transfer of the civil case. See Byerson, 467 F. Supp. 2d at 635 (recognizing the possibility of inconsistent judgments and considerations of judicial economy as part of the court's analysis of the "interest of justice").

The foregoing discussion obviates the need for a full analysis of all potential factors to be considered in deciding a motion to change venue pursuant to section 1404(a). See id. (holding the interest of justice factor can be decisive). However, several of these factors further support transfer. All but one of the claimants are residents of California. Silver State, the only non-California

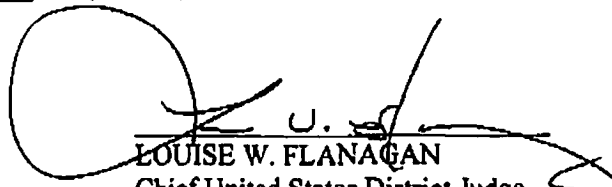
resident, is a Nevada corporation.<sup>7</sup> In the criminal case, the court determined that the location of witnesses favored transfer. The government failed to show that this determination was incorrect. Although not argued specifically in the civil case, the court finds the determination applicable. Therefore, the convenience of the parties and witnesses factor favors transfer of the case to California. The interest in having local controversies decided at home also favors transfer. The civil forfeiture case is an *in rem* proceeding, where the defendant real property is located in California. The remaining considerations not discussed herein are either neutral, or weigh marginally in favor of transfer.

The decisive "interest of justice" factor, in conjunction with the several other factors favoring transfer amount to more than a mere shifting of inconvenience from one party to another, and require transfer of this case to the Central District of California.

#### CONCLUSION

After careful consideration, for the reasons set forth above, the motion to change venue (DE # 111) is GRANTED, and this case is hereby TRANSFERRED to the United States District Court for the Central District of California. The Clerk is directed to effectuate the transfer forthwith.

SO ORDERED, this the 16<sup>th</sup> day of May, 2007.

  
LOUISE W. FLANAGAN  
Chief United States District Judge

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<sup>7</sup> The proximity of Nevada to California would seem to counsel in favor of a California forum for Silver State, despite its protestations. Silver State's brief identifies the expense incurred in retaining North Carolina counsel, and the desire not to incur additional expense to retain California counsel. While the court recognizes the burden of such additional expense, Silver State admits its claim is a relatively small piece of the overall litigation. The financial concern of one litigant cannot override the interest of justice in having highly interrelated cases adjudicated in the same district.