UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GORDON WAYNE WATTS,

Plaintiff,

v. Case No: 8:19-cv-829-T-36CPT

CIRCUIT COURT OF COOK COUNTY, ILLINOIS, et al.,

Defendants.
_____/

ORDER

This matter comes before the Court upon Plaintiff's response to this Court's Order to Show Cause (the "Response") and Amended Verified Complaint. Docs. 12, 13. Plaintiff contends that Defendants denied his due process rights when they refused to enter an order to limit the record on an appeal. After reviewing Plaintiff's Response and the Amended Complaint, the Court is not satisfied that it is the proper venue for this action.

I. Background

The forty-page Amended Verified Complaint alleges as follows. Plaintiff's friend, Richard Daniggelis, engaged in transactions with individuals who fraudulently deprived him of title to his home. Doc. 13 at ¶¶ 18-32. When Daniggelis' mortgage holder filed a foreclosure lawsuit, Plaintiff filed a Motion for Intervention in the lawsuit to protect his interests in money owed to him by Daniggelis. *Id*. at ¶¶ 33-38. The mortgage holder ultimately moved to dismiss the foreclosure lawsuit; the circuit court dismissed the case before it ruled on the Motion for Intervention. *Id*.

Plaintiff reviewed the docket and spoke to a Circuit Court clerk, after which he concluded that he was now a "party" to the case. *Id*. at ¶ 38. As such, he felt entitled to seek relief in the lawsuit, including an appeal of his Motion for Intervention. *Id*. The record on appeal of the case is

apparently voluminous. Despite many efforts to get the circuit and appellate courts to "limit" the record, which would reduce the copying costs and allow Plaintiff to afford to file the record on appeal, both courts refused to do so. The appellate court also denied his fee waiver request. *Id*. at ¶¶ 41-45.

The Supreme Court of Illinois entered an order denying Plaintiff's petition for a Supervisory Order to compel the circuit and appellate courts to act on his "Motion for Intervention, Fee Waiver, and Preparation of the Record on Appeal." *Id*. at ¶ 46.

The appeals court dismissed Plaintiff's appeal of the denial of his fee waiver request for want of prosecution. *Id*. at ¶ 47. It also dismissed another appeal for Writ of Mandamus (citing a lack of jurisdiction) and denied his motion to reconsider. *Id*. at ¶ 48. Plaintiff alleges that the record on appeal was very large, and thus, costly to copy and he could not get a price estimate from the Circuit Court Clerk's office. The appellate rules require him to produce the full record for appeal unless the record was limited by stipulation or court order under "Rule 321."[1] *Id*. at ¶¶ 49-51. Plaintiff filed a Rule 321 motion, but the appellate court only granted additional time to file the record; it noted that all issues regarding filing of the record had to be directed to the circuit court. *Id*. at ¶ 53.

Plaintiff now sues in this Court seeking redress against the circuit and appellate courts in Illinois, as well as the individual judges, for denial of his federal civil rights. He argues that their refusal "to have his redress reviewed on the merits (by either circuit or appeals courts)[,]" violated his rights and he maintains that both courts had jurisdiction to limit the record on appeal. *Id*. at ¶ 56.

[1] Plaintiff apparently refers to ILCS S. Ct. Rule 321. "Contents of the Record on Appeal."

This Court entered an Order to Show Cause seeking clarification on the facts which invoke this Court's subject matter jurisdiction, specifically inquiring as to whether the *Rooker-Feldman*[2] doctrine applied. Doc. 9. And it sought additional information on the basis for venue in the Tampa Division of the Middle District of Florida since all of the alleged acts occurred in Illinois. *Id*.

II. Venue

Regarding venue, federal law provides:

> A civil action may be brought in--
>
> **(1)** a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;
>
> **(2)** a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or
>
> **(3)** if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

28 U.S.C. § 1391(b).

If venue is improper, the Court "shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. § 1406(a). The decision to transfer or dismiss is within the Court's discretion. *Roofing v. Sheet Metal Servs., Inc. v. La Quinta Motor Inns, Inc.*, 689 F.2d 982, 985 (11th Cir. 1982); *Brownsberger v. Nextera Energy, Inc.*, 436 Fed. Appx. 953, at *1 (11th Cir. 2011).

[2] Under the *Rooker-Feldman* doctrine, federal courts do not have jurisdiction to "exercise appellate authority 'to reverse or modify' a state court judgment," meaning that "state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced" may not obtain rejection of the state-court judgment through review by the district court. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284-85 (2005) (*citing Rooker v. Fidelity Tr. Co., 263 U.S. 413, 416 (1923); D.C. Ct. App. v. Feldman, 460 U.S. 462 (1983)).*

In evaluating dismissal for improper venue, "[t]he facts as alleged in the complaint are taken as true, to the extent they are uncontroverted." *Home Ins. Co. v. Thomas Indus., Inc.*, 896 F.2d 1352, 1355 (11th Cir. 1990).

In analyzing the propriety of venue under Section 1391(b)(2), the Eleventh Circuit has stated that "only the events that directly give rise to a claim are relevant" and that "of the places where the events have taken place, only those locations hosting a 'substantial part' of the events are to be considered." *Jenkins Brick Co. v. Bremer*, 321 F.3d 1366, 1371 (11th Cir. 2003). In conducting this analysis, "the proper focus of the venue inquiry is on the relevant activities of the Defendants." *Hemispherx Biopharma, Inc. v. MidSouth Capital, Inc.*, 669 F.Supp.2d 1353, 1357 (S.D. Fla. 2009).

Here, Plaintiff alleges that he is a resident of Plant City, Florida, which is within the Tampa Division, Middle District of Florida. But the Amended Verified Complaint has no other allegation which establishes that the Tampa Division of the Middle District of Florida is the appropriate venue. The Defendants are all in Illinois, the Defendants committed all of the alleged acts in Illinois, and the main witnesses are in Illinois. None of the Defendants are alleged to reside here, none of the alleged acts or omissions occurred in Florida, and this case could have been brought in a federal court in Illinois. Thus, under § 1391(b), the Amended Verified Complaint presents no basis for venue in the Middle District of Florida.

The question of *forum non conveniens* need not be reached because there is only one proper venue in the case at bar. *Ford v. Brown*, 319 F.3d 1302, 1306–07 (11th Cir. 2003) ("The doctrine of *forum non conveniens* 'authorizes a trial court to decline to exercise its jurisdiction, even though the court has venue' "). But because Watts discusses it in depth in his Response, the Court will address it accordingly.

Even if venue is proper where the action is filed, it is within the district court's discretion to transfer a case "[f]or the convenience of parties and witnesses in the interest of justice…to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). The decision to transfer a case pursuant to § 1404(a) should be based on an individualized, case-by-case consideration of convenience and fairness.

The Eleventh Circuit lists nine factors a court should consider:

> (1) the convenience of the witnesses; (2) the location of relevant documents and the relative ease of access to sources of proof; (3) the convenience of the parties; (4) the locus of operative facts; (5) the availability of process to compel the attendance of unwilling witnesses; (6) the relative means of the parties; (7) a forum's familiarity with the governing law; (8) the weight accorded a plaintiff's choice of forum; and (9) trial efficiency and the interests of justice, based on the totality of the circumstances.

Manuel v. Convergys Corp., 430 F.3d 1132, 1135 n. 1 (11th Cir. 2005) (citation omitted). *See also Bennett Eng'g Grp., Inc. v. Ashe Indus., Inc.*, Case No. 6:10–cv–1697–Orl–28GJK, 2011 WL 836988, at *1–2 (M.D. Fla. Mar. 8, 2011) (discussing the nine factors and granting motion to transfer division pursuant to 28 U.S.C. § 1404(a) and L.R. 1.02(c)).

And "there is a long-approved practice of permitting a court to transfer a case *sua sponte* ... but only so long as the parties are first given the opportunity to present their views on the issue." *Tazoe v. Airbus S.A.S.*, 631 F.3d 1321, 1336 (11th Cir. 2011) (quotations omitted).

In his Response, Watts argues that the § 1404(a) factors weigh in his favor. But Watts does not establish any basis for venue here in Tampa. Plaintiff essentially argues that it is more convenient for him to prosecute the case here and his choice of forum should outweigh all other factors. Doc. 12 at 16-19; Doc. 13 at ¶¶ 15-17. But, as discussed below, the other factors clearly outweigh his choice of forum.

1. *The convenience of the parties, convenience of the witnesses, and availability of process to compel the attendance of unwilling witnesses.*

It does not appear that any of the potential witnesses in this case, besides Plaintiff, reside in this district. All of the judicial defendants reside and work in Illinois; thus, traveling to this district would be a hardship. As such, since none of the key witnesses are in Florida, and the primary witnesses are located in Illinois, this case should be transferred to Illinois.

The inconvenience of the parties and/or non-party witnesses alone may be an improper basis for transfer. *See MobileMedia Ideas LLC v. Samsung Elecs. Co.,* No. 8:16-CV-1316-T-23MAP, 2017 WL 3720954, at *4 (M.D. Fla. Mar. 28, 2017) (citing *Trinity Christian Ctr. of Santa Ana, Inc. v. New Frontier Media, Inc.*, 761 F. Supp. 2d 1322, 1329 (M.D. Fla. 2010)) ("[W]hen a transfer of venue would merely shift the inconvenience from the defendant to the plaintiff, the plaintiff's forum choice should not be disturbed."). But as noted, Plaintiff must support venue here by clearly specifying the key witnesses and their significance to the case. Plaintiff has failed to do so and as a result, this Court finds that these factors favor transfer.

2. *The location of relevant documents and the relative ease of access to sources of proof.*

These factors examine the location of sources of documentary proof and other tangible materials, and the ease with which the parties can transport them to trial. *Trinity Christian*, 761 F. Supp. 2d at 1327. The Court acknowledges the relative unimportance of the physical location of many documents in the era of modern technology. *See Microspherix LLC v. Biocompatibles, Inc.*, No. 9:11-CV-80813-KMM, 2012 WL 243764, *3 (S.D. Fla. January 25, 2012) (noting that "[i]n a world with fax machines, copy machines, email, overnight shipping, and mobile phones that can scan and send documents, the physical location of documents is irrelevant.").

Although technology mitigates the inconvenience of discovery, conducting discovery from Illinois of documents (and the documents' custodians) located mostly in Illinois is more convenient than conducting discovery from Florida of documents located mostly in Illinois. On balance, this factor favors transfer.

3. *Plaintiff's choice of forum.*

The Eleventh Circuit typically gives strong consideration to the plaintiff's choice of forum. *Robinson v. Giarmarco & Bill, P.C.*, 74 F.3d 253, 260 (11th Cir. 1996) (noting that "[t]he plaintiff's choice of forum should not be disturbed unless it is clearly outweighed by other considerations."). Here, Plaintiff maintains that the Defendants "broke the law" in Illinois courts, and they should be made to answer for those actions in any court. *See* Doc. 16. Further, he maintains that the Defendants should have a say regarding venue prior to the Court's *sua sponte* transfer. *Id*. The Court disagrees. The claims here do not support the proposition that Defendants' actions caused Plaintiff injury in this district, or that any injury occurred in this district. A substantial part of the events giving rise to Plaintiff's claims occurred in Illinois. Thus, although this factor weighs in favor of transfer, the other factors outweigh Plaintiff's choice of forum.

4. *Familiarity with the governing law***.**

Plaintiff alleges claims under federal law as it pertains to the Defendants' application of Illinois law. The Defendants are likely to interpose defenses, including the applicable limitations, under Illinois law. The correct resolution of Plaintiff's claims requires careful and correct analysis of Illinois law including its civil and appellate procedures. A district judge in Illinois indisputably has the advantage in an action based on Illinois law. This factor distinctively favors transfer. *See Laing v. BP Expl. & Prod. Inc.*, No. 8:13-CV-1041-T-23TGW, 2014 WL 4059870, at *2 (M.D. Fla. Aug. 14, 2014).

5. *The relative means of the parties.*

Plaintiff admits to having limited means and is thus proceeding in this case *pro se*. The Defendants will likely retain counsel for these actions provided by the appropriate state agency given that they are sued in their official capacities. Thus, this factor disfavors transfer.

6. *The locus of operative facts.*

The locus of operative facts is in Illinois. Plaintiff argues that the relevant documents are all available electronically, thus, venue here does not negatively impact the Defendants. But the only fact tying this case to this district is Plaintiff's residence here at the time he filed this suit. Thus, this factor favors transfer.

7. *Trial efficiency and the interests of justice.*

Finally, the Court evaluates "those public-interest factors of systemic integrity and fairness that, in addition to private concerns, come under the heading of the 'interest of justice.' " *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 30 (1988). Essentially, this factor addresses all other issues that make trial of the case easy, expeditious, and inexpensive. *Anthony Sterling, M.D. v. Provident Life and Acc. Ins. Co.*, 519 F. Supp. 2d 1195, 1208 (M.D. Fla. 2007). In considering this factor, "[c]ourts often consider such things as the relative interests of the two forum states in the litigation, relative hardship of the parties, and questions of judicial economy." *Suomen Colorize Oy v. DISH Network L.L.C.*, 801 F. Supp. 2d 1334, 1338–39 (M.D. Fla. 2011); *In re Hoffman–La Roche Inc.*, 587 F.3d 1333, 1338 (Fed. Cir. 2009) (noting that "if there are significant connections between a particular venue and the events that gave rise to a suit, this factor should be weighed in that venue's favor."). The Court is persuaded that trial efficiency and the interests of justice, based on the totality of the circumstances, weigh in favor of transfer.

III. Conclusion

Plaintiff's choice of venue in the Middle District of Florida is improper. Rather than dismissing this case, the Court will transfer it to the Northern District of Illinois, a more convenient forum.

Although the Court has doubts regarding subject matter jurisdiction, that issue requires more analysis under *Rooker-Feldman*, which the court will leave for determination by a judge in the Northern District of Illinois. The Eleventh Circuit recently admonished district courts to be mindful that not all cases related to a state court action automatically invoke *Rooker-Feldman*. *See Target Media Partners v. Specialty Mktg. Corp.*, 881 F.3d 1279, 1285 (11th Cir. 2018) (citing *Exxon Mobil*, 544 U.S. at 280, 283) (recognizing that the Supreme Court concluded that the inferior federal courts had been applying *Rooker–Feldman* too broadly and it expressly limited *Rooker–Feldman's* applicability).

Because this Court lacks venue, it will transfer this case to the Northern District of Illinois which encompasses Cook County, Illinois.

Accordingly, it is hereby **ORDERED** as follows:

1. This case is hereby **TRANSFERRED** to the Northern District of Illinois for all further proceedings.
2. The Clerk is hereby directed to immediately **transfer** this case to the Northern District of Illinois.

DONE AND ORDERED in Tampa, Florida on May 22, 2019.

Charlene Edwards Honeywell

Charlene Edwards Honeywell
United States District Judge

Copies: All Parties of Record