

NO. CV12-6013801S

LBI, INC.

: SUPERIOR COURT

V.

: JUDICIAL DISTRICT OF WATERBURY

JARED SPARKS, ET AL.

: January 17, 2013

MEMORANDUM OF DECISION
MOTION TO TRANSFER

The defendants have filed a motion to transfer this matter from the judicial district of Waterbury to New London where all the parties to this action reside or are located. When the defendants filed their appearance on March 23, 2012, they did not file a motion involving a claim of improper venue within thirty days, as asserted by the plaintiff to be required by the Practice Book. Instead of filing a motion to transfer, the defendants filed a notice of removal to federal court on the same day that they filed their appearance.

The case was remanded back to the judicial district of Waterbury by the Second Circuit Court of Appeals, over seven months later on November 14, 2012. Notably, the plaintiff thereafter moved to cite in an additional defendant, also

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JUDICIAL DISTRICT
OF WATERBURY
2013 JAN 17 P 12:24
STATE OF CONNECTICUT
SUPERIOR COURT

115

located within the judicial district of New London. On December 13, 2012, within thirty days of the remand from the Second Circuit, the defendants filed the present motion to transfer this action to the judicial district of New London. The plaintiff has filed an objection to the motion.

The discretionary authority to transfer civil cases from one judicial district to another may be found in the Connecticut General Statutes, as well as in our Practice Book. General Statutes § 51-347a (a) provides in pertinent part: "The judge holding the superior court in any judicial district may, if in the opinion of such judge the cause of justice requires it, upon motion, order any civil action pending in the court, to be transferred to the court in another judicial district." Practice Book § 12-1 similarly provides: "Any cause, or the trial of any issue therein, may be transferred from a judicial district court location to any other judicial court location . . . by order of a judicial authority . . . upon its own motion or upon the granting of a motion of any of the parties"

The court agrees with the defendant that the language of Practice Book §12-1 is unlimited as to time. Thereby, for example, a motion to transfer due to prejudicial pretrial publicity may be granted at any time to preserve a party's constitutional right to a fair trial. On the other hand, there

are other provisions of the Practice Book addressing the time frame within which to properly raise the question of venue. Practice Book § 10-31 provides in relevant part: "The motion to dismiss shall be used to assert . . . (3) improper venue" Practice Book § 10-32 provides in relevant part: "Any claim of . . . improper venue . . . is waived if not raised by a motion to dismiss filed . . . within the time provided by Section 10-30." Practice Book § 10-30 provides in relevant part: "Any defendant, wishing to contest the court's jurisdiction, may do so even after having entered a general appearance, but must do so by filing a motion to dismiss *within thirty days of the filing of an appearance.*" (Emphasis added.) See *In re Shonna K.*, 77 Conn. App. 246, 256, 822 A.2d 1009 (2003); also see *Belmont Laundry, Inc. v. Silvia Brighenti Family Wellness Center, LLC*, Superior Court, judicial district of New Haven at Meriden, Docket No. CV 04 0286877 (September 15, 2004, *Tanzer, J.*).

Motions to dismiss often involve jurisdictional questions. However, "[v]enue does not involve a jurisdictional question but rather a procedural one, and thus is a matter that goes to process rather than substantive rights. Moreover, although a court's lack of subject matter jurisdiction cannot be waived, improper venue may be waived and may be changed by the consent

of the parties." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. New London*, 282 Conn. 791, 814, 925 A.2d 292 (2007).

Although venue in the present case seems not to be a jurisdictional question, no motion was filed, whether to dismiss or to transfer, within thirty days of the defendants' appearance. Despite the unusual circumstances of this case, involving a notice of removal and recently citing in an additional defendant that is located in New London, the court nonetheless denies the motion to transfer.

The defendants elected to immediately pursue federal jurisdiction instead of a motion to transfer for reasons of venue. Absent an agreement to transfer the case to the logical venue of New London, the court finds that the motion is untimely. Although the Practice Book places a thirty-day time limit from the filing of an appearance to move as of right for a transfer of venue, it does not specifically contemplate an extension or stay for an unsuccessful attempt to remove the matter to federal court. Although the Waterbury judicial district may not be the most convenient forum in Connecticut for the defendants to appear and defend their case, it does not impose such an unjustifiable burden that a liberal interpreta-

tion of our rules is required to avoid surprise or injustice.
See Practice Book §1-8.¹

For the reasons set forth above, the motion to transfer is denied.

BY THE COURT


_____, J.
MARK H. TAYLOR

Copies mailed on 1/17/13 to:

- ✓ James O. Craven, Esq. / Wiggin & Dana LLP
- ✓ James K. Robertson, Jr., Esq. / Carmody & Torrance
- ✓ Reporter of Judicial Decisions

by  Deputy Chief Clerk

¹ Practice Book § 1-8 serves as a ground for the court to liberally interpret the rules of procedure. Practice Book § 1-8 provides: "The design of these rules being to facilitate business and advance justice, they will be interpreted liberally in any case where it shall be manifest that a strict adherence to them will work surprise or injustice."