

Judicial District of New Haven
SUPERIOR COURT
FILED

NO. NNH-CV-14-6049044-S

MAR 04 2015

SUPERIOR COURT

NUCAP INDUSTRIES, INC., ET AL

J.D. OF NEW HAVEN

CHIEF CLERK'S OFFICE

VS.

AT NEW HAVEN

PREFERRED TOOL & DIE, INC., ET AL.

MARCH 4, 2015

MEMORANDUM OF DECISION IN RE: MOTIONS #104 and #106

The defendants have filed motions to dismiss or transfer this action for improper venue. For reasons that follow, the court grants so much of the defendants' motions which seek to have the matter transferred to the Waterbury J.D. The court rejects the notion of dismissal.

FACTS

On July 28, 2014, the plaintiffs, (1) Nucap Industries, Inc. ("Nucap Industries"), and (2) Nucap US, Inc. ("Nucap US"), commenced this action, in the judicial district of New Haven ("New Haven"), via service of process, against the defendants, (1) Preferred Tool and Die, Inc., (2) Preferred Automotive Components, a division of Preferred Tool and Die, Inc. (collectively, with Preferred Tool and Die, Inc., "Preferred"), and (3) Robert A. Bosco, Jr. ("Bosco"). The plaintiffs filed a two count complaint on August 13, 2014. The complaint alleges (1) violation of the Connecticut Uniform Trade Secrets Act, against all defendants; and (2) breach of confidentiality and intellectual property agreement, against Bosco only.

In the plaintiffs' complaint, Nucap Industries is alleged to be a Canadian corporation; and Nucap US is alleged as a Delaware corporation, with a principal place of business in Wolcott, Connecticut. Preferred is alleged to be Connecticut corporation, with a principal place of business in Shelton, Connecticut; and Bosco is alleged to be resident of Wolcott, Connecticut.

On September 10, 2014, Bosco filed a motion to dismiss or transfer the action to the

Judgment Entered _____ 20__

Counsel/Pro Se Parties notified 3/4/ 2015

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judicial district of Waterbury (“Waterbury”) on the grounds of improper venue, and on September 17, 2014, Preferred filed a motion to dismiss or transfer the action to Waterbury on the same grounds. Each motion is accompanied by a memorandum of law. The plaintiffs filed their identical oppositions to each motion on October 9, 2014, each accompanied by a memorandum of law. The matter was heard at the short calendar on December 1, 2014.

DISCUSSION

“[A] motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court.” (Internal quotation marks omitted.) *Santorso v. Bristol Hospital*, 308 Conn. 338, 350, 63 A.3d 940 (2013). “A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction.” (Internal quotation marks omitted.) *MacDermind, Inc. v. Leonetti*, 310 Conn. 616, 626, 79 A.3d 60 (2013).¹

Practice Book § 12-1² and General Statutes § 51-347b³ govern motions to transfer venue.

¹It should be noted that at the time the defendants filed their motions to dismiss or transfer, Practice Book § 10-30 provided that a motion to dismiss was the proper vehicle to assert improper venue. “Effective January 1, 2015, [however], Practice Book §10-30 will no longer include improper venue as a ground for filing a motion to dismiss.” *National Cabinet & Millwork Installation, LLC v. Zepa Industries, Inc.*, Superior Court, judicial district of New Haven, Docket No. CV-14-6048332-S (December 31, 2014, *Fischer, J.*). In the present case, the defendants have titled their respective motions as motions to dismiss or transfer. The defendants, however, have not presented any substantive argument in regards to the actual dismissal of the action. Rather, the defendants’ substantive arguments concern the transfer of the present action to Waterbury. This memorandum, therefore, will only discuss whether it is proper for this action to be transferred to Waterbury.

²Practice Book § 12-1 provides: “Any cause, or the trial of any issue therein, may be transferred from a judicial district court location to any other judicial district court location or to any geographical area court location, or from a geographical area court location to any other geographical area court location or to any judicial district court location, by order of a judicial authority (1) upon its own motion or upon the granting of a motion of any of the parties; or (2)

“[V]enue requirements are created for the convenience of the parties.” *Haigh v. Haigh*, 50 Conn. App. 456, 465, 717 A.2d 837 (1998). “[V]enue is the place . . . where the suit may or should be heard. . . . Venue does not involve a jurisdictional question but rather a procedural one, and thus is a matter that goes to process rather than substantive rights.” (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. New London*, 282 Conn. 791, 814, 925 A.2d 292 (2007). “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.” *Id.*

“[S]tatutory venue provisions, which are merely for the convenience of the parties, should be presumed not to be jurisdictional in the absence of any clear expression of legislative intent to the contrary.” *Id.*, 819. When a venue provision is not jurisdictional, “the proper remedy under [General Statutes] § 51-351⁴ for the plaintiff’s failure to bring [an] action in the correct venue is to transfer the case to the [appropriate] judicial district . . . pursuant to General Statutes § 51-347b and Practice Book § 12-1.” (Footnote added.) *Id.*, 820. Even if venue is improper, a

upon written agreement of the parties filed with the court.”

³General Statutes § 51-347b provides: “Any action or the trial of any issue or issues therein may be transferred, by order of the court on its own motion or on the granting of a motion of any of the parties, or by agreement of the parties, from the superior court for one judicial district to the superior court in another court location within the same district or to a superior court location for any other judicial district, upon notice by the clerk to the parties after the order of the court, or upon the filing by the parties of a stipulation signed by them or their attorneys to that effect. The Chief Court Administrator or any judge designated by the Chief Court Administrator to act on behalf of the Chief Court Administrator under this section may, on motion of the Chief Court Administrator or any such judge, when required for the efficient operation of the courts and to insure the prompt and proper administration of justice, order like transfers.”

⁴General Statutes § 51-351 provides: “No cause shall fail on the ground that it has been made returnable to an improper location.”

motion to dismiss may be denied as General Statutes § 51-351 provides that “[n]o cause shall fail on the ground that it has been made returnable to an improper location.” *Lasky v. Pivnick*, 46 Conn. Supp. 539, 543, 759 A.2d 560 (2000). “By enacting [General Statutes] § 51-351, the legislature intended to authorize the transfer of cases . . . and to provide the remedy of transfer rather than dismissal. . . . Therefore, improper venue would only be grounds to transfer the matter, and not grounds for a motion to dismiss.” (Citations omitted; internal quotation marks omitted.) *Id.*

In his memorandum of law, Bosco argues that venue is improper in New Haven because none of the parties are located within New Haven, and that the plaintiffs have not alleged in their complaint that an injury or transaction occurred in New Haven.⁵ Further, Bosco argues that Waterbury would be the proper venue because he is a resident of Wolcott,⁶ and Nucap US maintains a principal place of business in Wolcott.⁷

In their memorandum of law, Preferred argues that New Haven is an improper venue because none of the parties are located in New Haven. Further, Preferred argues that under General Statutes § 51-345 (c), the action should be transferred to Waterbury because Nucap US

⁵The judicial district of New Haven consists of “the towns of Bethany, Branford, Cheshire, East Haven, Guilford, Hamden, Madison, Meriden, New Haven, North Branford, North Haven, Wallingford and Woodbridge.” General Statutes § 51-344 (8).

⁶The judicial district of Waterbury consists of the “towns of Middlebury, Naugatuck, Prospect, Southbury, Waterbury, Watertown, Wolcott and Woodbury.” General Statutes § 51-344 (12).

⁷Bosco also argues that there is a pending action in the judicial district of Waterbury with similar facts, legal issues, and parties. This action, however, was disposed of on October 10, 2014, after Bosco submitted his motion to dismiss or transfer the present case.

and Bosco are both connected to Wolcott.

General Statutes § 51-345 (c) provides in relevant part: “In all actions by a corporation . . . civil process shall be made returnable as follows: (1) If the plaintiff is either a domestic corporation or a United States corporation and the defendant is a resident, either (A) to the judicial district where the plaintiff has an office or place of business or (B) to the judicial district where the defendant resides. (2) If the plaintiff is either a domestic corporation or a United States corporation and the defendant is a corporation, domestic or foreign, to the judicial district where (A) the plaintiff has an office or place of business, (B) the injury occurred, (C) the transaction occurred, or (D) the property is located or lawfully attached. (3) If the plaintiff is a foreign corporation and the defendant is a resident, to the judicial district where the defendant resides. (4) If the plaintiff is a foreign corporation and the defendant is a corporation, domestic or foreign, to the judicial district where (A) the injury occurred, (B) the transaction occurred, or (C) the property is located or lawfully attached.”

In their opposition memoranda, the plaintiffs argue that under General Statutes § 51-345 (c) (4), New Haven is a proper venue because the alleged harm occurred throughout Connecticut, and “[i]t is likely that at least some of the underlying transactions implicate New Haven as the proper venue” Pls.’ Opp’n Mem., p. 5.

Although the plaintiffs argue that it is likely that some of the underlying transactions implicate New Haven, and that harm to them will resonate throughout the entire state, including New Haven, “[v]enue requirements are created for the convenience of the litigants” *Cleveland v. U.S. Printing Ink, Inc.*, 21 Conn. App. 610, 618, 575 A.2d 257 (1990), *aff’d*, 218 Conn. 181, 588 A.2d 194 (1991). Further, “[c]ommon sense would dictate that the purpose of the

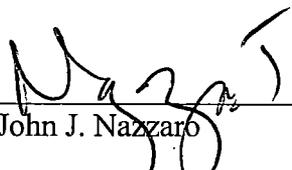
venue statute is for the plaintiff to have some meaningful contact with the district where the action is brought” *A. Petrucci Construction Co. v. Alaimo Excavators & Blasters, Inc.*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV-90-032322-S (July 9, 1990, *Fuller, J.*) (2 Conn. L. Rptr. 106, 107).

In the present case, Nucap US maintains a principal place of business in Wolcott; Bosco is an individual who resides in Wolcott, and Preferred agrees that the action should be transferred to Waterbury. Additionally, at the short calendar, the plaintiffs stated that “Waterbury would be an appropriate venue.” Although this grouping of parties could fit into several of the categories as described within General Statutes § 51-345 (c), it is apparent, however, that none of the parties have a place of business, residence, or any specific connection to New Haven. Common sense and convenience would dictate that New Haven is an improper venue and the present action should be transferred to Waterbury.

CONCLUSION

On the basis of the foregoing, so much of the defendants’ motions to dismiss or transfer which seek to transfer the matter to Waterbury is granted. The court concludes the movant really has abandoned a request for dismissal and denies same.

It is so ordered,



Hon. John J. Nazzaro