

I. Background

Plaintiffs in this case are the Lackawanna Chapter of the Railway & Locomotive Historical Society, Inc. (a Pennsylvania not-for-profit corporation with its principal place of business in Pennsylvania), and the Friends of the New Jersey Railroad and Transportation Museum Commission, Inc. (a New Jersey not-for-profit corporation with its principal place of business in New Jersey). (Am. Compl. ¶¶ 1, 2.) Defendant St. Louis County, Missouri (organized under the laws of the state of Missouri) operates the Museum of Transportation in St. Louis, Missouri. (Id. ¶ 3.) Plaintiffs allege that they are the owners of Locomotive No. 952, which is currently located in St. Louis at the Museum of Transportation, and that Defendant has refused Plaintiffs' request to return the Locomotive. Plaintiffs claim ownership of the Locomotive and a right to demand its return based on their position as successors in interest to a 1953 Loan Agreement that allegedly conveyed the Locomotive to St. Louis on an "indefinite loan" basis without transferring ownership.

The Amended Complaint includes Counts for breach of the 1953 Loan Agreement (Count I), conversion (Count II), and deprivation of rights to substantive and procedural due process pursuant to 42 U.S.C. § 1983 (Count III). Jurisdiction is asserted on the basis of "diversity of citizenship and the existence of a substantial federal question." (Id. ¶ 4.) Plaintiffs seek specific performance of the 1953 Loan Agreement, requiring Defendant to return Locomotive No. 952 to Plaintiffs; an order of replevin, requiring Defendant to deliver

the Locomotive to Plaintiffs; and an award of damages for the wrongful detention of the Locomotive.

Regarding the history of Locomotive No. 952, the Amended Complaint alleges that the American Locomotive Company, of Schenectady, New York, manufactured the Locomotive for the Delaware, Lackawanna & Western Railroad Company (Lackawanna Railroad) around 1905. (Id. ¶ 5.) The Lackawanna Railroad utilized Locomotive No. 952 in active service from 1905 to 1938. (Id. ¶ 9.) In 1938, officers of the Lackawanna Railroad retired the Locomotive from active service. (Id. ¶ 10.) In an agreement dated April 17, 1939, the Lackawanna Railroad transferred ownership of the Locomotive to the Railway and Locomotive Historical Society, Inc. (R&LHS), a Massachusetts corporation, subject to certain conditions. One such condition was that the Locomotive was to be used by the R&LHS only for the purposes of exhibition or as a museum piece, and the purpose of the transaction was “to preserve the said locomotive as an object of historical and scientific interest.” (Id. ¶ 11.)

In 1952, John Roberts, the owner of a private railroad museum in St. Louis, Missouri, known as the St. Louis Museum of Transport, requested that the Locomotive be placed on display at his museum. (Id. ¶ 14.) In April of 1953, with the consent of the Lackawanna Railroad, John Roberts and the R&LHS agreed that the Locomotive would be placed on display in St. Louis on an “indefinite loan” basis, but with ownership being retained by the

R&LHS. (Id. ¶ 15.) Around 1979, John Roberts experienced financial difficulties and “transferred his entire museum collection by lease to The St. Louis County Department of Parks and Recreation. The County exercised its option to acquire the museum as a gift in February, 1984. The Museum is presently operated at Barrett Station Road, St. Louis, Missouri.” (Id. ¶ 16.)

In 1993 and 1994, officers of the R&LHS visited the site of Locomotive No. 952 and expressed concern about its condition. It had been “moved to an unused railroad track at the Museum where it began to decay and was surrounded by weeds and debris.” (Id. ¶ 17.) On May 30, 1996, the Board of Directors of the R&LHS adopted a resolution providing for transfer of its ownership of the Locomotive to any responsible organization “that would protect the locomotive against further deterioration, restore and conserve it for future display, and return the locomotive to the service territory of the Lackawanna Railroad with the expectation and intent that the locomotive would be placed on display in Scranton, Pennsylvania.” (Id. ¶ 18.) In 1999, the Board of Directors of the R&LHS approved the execution of a gift deed that transferred all right, title, and interest to the Locomotive to Plaintiffs. (Id. ¶ 20.) On January 4, 2002, Defendant refused a request to return the Locomotive to Plaintiffs. (Id. ¶ 22.) This action was commenced on June 10, 2002.

II. Discussion

Plaintiffs assert venue in the Middle District of Pennsylvania pursuant to 28 U.S.C. § 1391(b)(2), which provides:

A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought . . . in . . . 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

In the present case, the property that is the subject of this action, i.e., Locomotive No. 952, currently is located in St. Louis, Missouri. Therefore, consideration of the venue issue focuses on whether substantial events or omissions giving rise to the claims occurred in the Middle District of Pennsylvania.

Under Federal Rule of Civil Procedure 12(b), Defendant moves to dismiss or transfer for lack of personal jurisdiction and improper venue. A court may consider venue before personal jurisdiction when there are sound reasons for doing so. See Baker v. Bennett, 942 F. Supp. 171, 175 (S.D.N.Y. 1996) (citing Leroy v. Great W. United Corp., 443 U.S. 173, 180 (1979)); Saferstein v. Paul, Mardinly, Durham, James, Flandreau & Rodger, P.C., 927 F. Supp. 731, 735 (S.D.N.Y. 1996). The Third Circuit has concluded that “on a motion for dismissal for improper venue . . . the movant has the burden of proving the affirmative defense asserted by it.” Myers v. Am. Dental Ass’n, 695 F.2d 716, 724 (3d Cir. 1982); Simon v. Ward, 80 F. Supp. 2d 464, 468 (E.D. Pa. 2000) (“[The] defendant bears the burden

of establishing that venue is improper.”).²

In a case with multiple claims, venue must be proper for each claim. See Lomanno v. Black, 285 F. Supp. 2d 637, 641 (E.D. Pa. 2003); Am. Trade Servs., Inc. v. Tele-E-Star Communication, Inc., No. Civ. A. 98-CV-2636, 1998 WL 964203, at *2 (E.D. Pa. Nov. 25, 1998); Jones v. Trump, 919 F. Supp. 583, 587 (D. Conn. 1996); Phila. Musical Soc’y, Local 77 v. Am. Fed’n of Musicians of the United States and Canada, 812 F. Supp. 509, 517 (E.D. Pa. 1992). In this case, Defendant has carried its burden of showing that substantial events or omissions did not occur in the Middle District of Pennsylvania with respect to any of the claims advanced by Plaintiffs.

A. Breach of Contract Claim

Courts in the Third Circuit have found that “[i]n breach of contract actions, venue ordinarily will lie where the contract was to be performed.” Waste Mgmt. of Pa., Inc. v. Pollution Control Financing Auth. of Camden County, No. Civ. A. 96-1683, 1997 WL 22575, at *1 (E.D. Pa. Jan. 21, 1997). See also Harrison v. L.P. Rock Corp., No. Civ. A. 99-CV-5886, 2000 WL 19257, at *3 (E.D. Pa. Jan. 7, 2000); Direct Response Media, Inc. v. Resort Connection & Travel Corp., No. 96-1683, 1997 WL 14479, at *1 (E.D. Pa. Jan. 15, 1997). In

²During oral argument on Defendant’s Motion to Dismiss or Transfer, conducted on February 18, 2004, this Court erroneously suggested that Plaintiffs bear the burden of proof to establish improper venue. This is the rule in other jurisdictions. See Myers v. Am. Dental Ass’n, 695 F.2d 716, 732 (3d Cir. 1982) (Garth, J., dissenting); Seariver Mar. Fin. Holdings, Inc. v. Pena, 952 F. Supp. 455, 458 (S.D. Tex. 1996).

the present case, the place of performance is St. Louis because the 1953 Loan Agreement between John Roberts and the R&LHS allegedly provided that the Locomotive would be placed on display in St. Louis. Officers of the R&LHS expressed concern in 1993 and 1994 regarding the Locomotive's condition while it was in St. Louis. Defendant, a citizen of Missouri, refused to return the Locomotive on January 4, 2002.

A substantial part of relevant events or omissions did not occur in Pennsylvania. There is no evidence that when the contract was formed the Locomotive was in Pennsylvania or that there was then an expectation of its return to Pennsylvania. As noted above, the Locomotive was owned by a Massachusetts corporation. In fact, the Lackawanna Chapter of the Railway & Locomotive Historical Society, Inc., the only party with Pennsylvania citizenship in this case, did not even exist when the 1953 Loan Agreement was made. There is neither allegation nor evidence that the 1953 Loan Agreement itself either was somehow connected to Pennsylvania or expressed any intention eventually to return the Locomotive to Scranton, Pennsylvania. Indeed, the exact provisions of this Loan Agreement, upon which Plaintiffs so heavily rely, are not clear because it has not been produced. That ownership of the Locomotive was transferred in 1999 (nearly a half-century after the 1953 Loan Agreement) to, *inter alia*, a Pennsylvania citizen "with the expectation and intent that the locomotive would be placed on display in Scranton, Pennsylvania" (Am. Compl. ¶ 18) fails to constitute a "substantial" event for the purposes of

breach of contract claims. St. Louis had no involvement with this contract on which Plaintiffs' case rests. This case centers on the Loan Agreement between a Missouri resident and a Massachusetts corporation. Plaintiffs cannot create in Pennsylvania the events giving rise to this case by virtue of their succession to ownership of the Locomotive.

A determination of proper venue "must be guided by the 'nature of the suit' not by the underlying historical facts which simply provide this Court with a frame of reference as to how this case evolved." Grey v. State of New Jersey, No. Civ. A. 01-1561, 2001 WL 34355649, at *4 (E.D. Pa. Dec. 26, 2001) (citing Cottman Transmission Sys., Inc. v. Martino, 36 F.3d 291, 295 (3d Cir. 1994)). "Events or omissions that might only have some tangential connection with the dispute in litigation are not enough. Substantiality is intended to preserve the element of fairness so that a defendant is not haled into a remote district having no real relationship to the dispute." Cottman, 36 F.3d at 294.

In Cottman, the defendants were Leonardo Martino, a Michigan resident, and Trans One II, Inc., a Michigan corporation, and the plaintiff was Cottman Transmission Systems, Inc., a Pennsylvania corporation. Martino had entered into a franchise agreement with A-1 Transmissions, Inc., a Michigan corporation, and A-1 later assigned its franchises to Cottman. Pursuant to the assignment, Martino and Trans One executed a franchise agreement with Cottman, but Cottman asserted an ability to enforce the original A-1 agreement if necessary. Cottman eventually became dissatisfied with Martino's

performance, especially due to inaccurate reporting of sales and delinquent license fee payments, and filed suit against the defendants in the Eastern District of Pennsylvania for, *inter alia*, breach of the A-1 franchise agreement. Cottman argued that substantial acts and omissions gave rise to its cause of action in the Eastern District of Pennsylvania, including Martino's failure to pay license fees to Cottman in Pennsylvania and Martino's failure to return advertising items to Cottman in Pennsylvania. The Third Circuit held that "[t]he omissions that Cottman cite[d] – Martino's failure to return various materials and failure to remit payments – actually occurred in Michigan, not in Pennsylvania. Even though the result was Cottman's non-receipt of those items in Pennsylvania, the omissions bringing about this result actually occurred in Michigan." 36 F.3d at 295. Accordingly, the court held that these omissions failed to "give rise" to Cottman's claims in Pennsylvania. *Id.*

Applying the holding in Cottman to this case, the alleged breach of contract – the failure to return the Locomotive – occurred not in Pennsylvania, but in Missouri. The holding in Cottman compels the decision in this case. In sum, it simply cannot be said that a substantial part of the events or omissions giving rise to the breach of contract claim occurred in the Middle District of Pennsylvania.

B. Conversion Claim

The basis for the conversion claim is Defendant's refusal to return Locomotive No. 952 to Plaintiffs. (Am. Compl. ¶ 29.) Plaintiffs argue that "the event giving rise to Plaintiffs'

claim is the refusal by Defendant to return Locomotive No. 952 to its rightful owners in Scranton, Pennsylvania. This refusal is not just a 'substantial part' of events giving rise to the claim, it is the event underlying Plaintiffs' claim." (Pls.' Br. in Resp. to Def.'s Mot. to Dismiss or Transfer at 10 (emphasis omitted).) The Third Circuit, however, as discussed above, has held that an out-of-state defendant's failure to return items to an in-state plaintiff constitutes an omission that occurs where the defendant is located, not where the plaintiff is located. Cottman, 36 F.3d at 295. Thus, Defendant's refusal is insufficient to constitute a substantial omission that occurred in Pennsylvania.

C. Due Process Claims

Plaintiffs claim that Defendant's refusal to return the Locomotive constitutes a deprivation of Plaintiffs' rights to substantive and procedural due process pursuant to 42 U.S.C. § 1983. For the procedural due process claim, they argue that "Defendant, upon learning that Plaintiff sought the return of its locomotive, should have provided Plaintiff with notice and a hearing before flatly refusing to return the locomotive." (Pls.' Br. in Resp. to Def.'s Mot. to Dismiss or Transfer at 16.) In determining venue, "it is appropriate to look where the Plaintiff was allegedly denied his due process rights which gave rise to his claim." Egervary v. Young, No. Civ. A. 96-3039, 1997 WL 9787, at *5 (E.D. Pa. Jan. 7, 1997). In the present case, the alleged failure to provide notice and a hearing occurred in Missouri. Similarly, the substantive due process claim is based on Defendant's actions in retaining the

Locomotive in Missouri. There is no substantial event or omission that occurred in Pennsylvania for either the procedural or substantive due process claims.

III. Conclusion

Defendant's Motion to Dismiss or Transfer for improper venue will be granted. Cottman compels the conclusion that no substantial part of the events or omissions giving rise to Plaintiffs' claims for breach of contract, conversion, or denial of due process occurred in this judicial district. Notwithstanding the current strong local interest in this matter, it would be inappropriate to recognize venue here in light of Cottman. Retention of this case could result in wasted litigation efforts on the part of all concerned, the parties and this Court. In fact, the Third Circuit in Cottman found that venue was improper after judgment had been entered in favor of the plaintiff in the Eastern District of Pennsylvania, vacated the judgment, and transferred the case to the Eastern District of Michigan, which is where it found that venue was proper.

Where, as here, venue is improper, a district court may, in the interest of justice, transfer the case to any district in which the case could have been brought. See 28 U.S.C. § 1406(a). There is no dispute that this action could have been brought in the Eastern District of Missouri. At the oral argument conducted in this matter, counsel for Plaintiffs indicated that Plaintiffs would prefer a transfer to outright dismissal. Thus, in the interest of justice, this case will be transferred to the Eastern District of Missouri. An appropriate Order

follows.

s/ Thomas I. Vanaskie
Thomas I. Vanaskie, Chief Judge
Middle District of Pennsylvania

DATE: March 12, 2004

