UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SHERMAN STREET ASSOCIATES, LLC and MICHAEL KNIGHT, Plaintiffs,	:	
v.	:	Civil Action No. 3:03 CV 1875 (CFD)
JTH TAX, INC. and LIBERTY TAX SERVICE, INC. Defendants.	:	

RULING ON MOTION TO TRANSFER

The plaintiffs, Sherman Street Associates, LLC ("Sherman Street") and Michael Knight, commenced this action against the defendants JTH Tax, Inc. and Liberty Tax Service, Inc. (collectively "Liberty") in the Connecticut Superior Court, seeking damages arising out of a franchise agreement.[1] The defendants then removed this action to the United States District Court for the District of Connecticut on the ground of diversity of citizenship, pursuant to 28 U.S.C. § 1441. Pending is the defendants' Motion to Transfer Venue **[Doc. #9]** to the United States District Court for the Eastern District of Virginia pursuant to 28 U.S.C. § 1404, based on a forum selection clause in the franchise agreement. For the following reasons, the motion is **DENIED**.

I. Background

In August 2002, Liberty sent out an "offering sheet" for the sale of franchises of a tax return preparation business, and Knight entered into a franchise agreement with Liberty. The

[1]Although the complaint names JTH Tax, Inc. and Liberty Tax Service, Inc. separately as defendants, the complaint also alleges Liberty is wholly or partially owned by JTH, and that the franchise agreement was signed by JTH Tax, Inc. d/b/a Liberty Tax Service, Inc. The defendants refer to themselves collectively as "Liberty." Accordingly, the Court also will refer to the defendants collectively as "Liberty."

franchise agreement provided for the opening of ten franchises by Knight, and contemplated the preparation of at least one thousand federal income tax returns by each franchise after the fourth tax season. The franchise agreement contained the following forum selection clause:

> In any suit brought against [Liberty], including [Liberty's] present and former employees and agents, which in any way relates to or arises out of this Agreement, or any of the dealing of the parties hereto, any termination of this Agreement, and any other dealings between the parties, venue shall be proper only in the federal court located nearest our National Office (presently in the U.S. District in Norfolk, Virginia), or if neither federal subject matter or diversity jurisdiction exists, in the city or county state court located where our National Office is (presently the City of Virginia Beach, Virginia).

In addition, the franchise agreement provided that each franchise was to utilize software provided by Liberty, and would have access to Liberty's trademarks and training materials. In return, Knight would pay an initial franchise fee for each franchise, as well as royalties for the term of the franchise agreement, initially a five year term.

In September 2002, Knight executed a promissory note in the amount of $144,000 payable to the order of JTH Tax, Inc. d/b/a/ Liberty Tax Inc. In January 2003, however, Knight relinquished five of the franchises, and, consequently, the note amount was reduced to $44,000. On January 21, 2003, Knight, with the approval of Liberty, assigned to Sherman Street all of his "rights, title and interest" to the five remaining franchises. Sherman Street is a Connecticut limited liability corporation with its principal place of business in Fairfield County. Sherman Street subsequently began operations at four facilities, which included renting space, hiring employees, preparing returns and utilizing Liberty's software and training materials.[2] Soon thereafter, however, disputes arose between the parties concerning Sherman Street's operation of

[2]Knight apparently was very much involved with Sherman Street. He guaranteed its obligations to Liberty and managed its operations.

the franchises. In response, Liberty sent its Chief Operating Officer, Michael Trainor, to Connecticut to meet with Knight, visit several of the franchises and review the franchises' compliance with Liberty's "guerrilla marketing" system.[3] Disputes persisted, however, and on July 11, 2003, Liberty sent a "Notice to Cure" to Knight, stating that the failure to submit a timely profit and loss statement was a violation of the franchise agreement, and requesting the submission of a budget and action plan.

Sherman Street alleges that on September 30, 2003, Liberty terminated the franchise agreements by letter stating: "effective immediately, the franchise agreements for the territories CT003, CT004, CT011, CT 013, CT083 are terminated pursuant to paragraph 8(c)(ii) of the franchise agreement." Sherman Street further alleges that this termination violated Conn. Gen. Stat. § 42-133f (the Connecticut Franchise Act); Conn. Gen. Stat. § 42-110b (the Connecticut Unfair Practices Act); tortiously interfered with its business expectancy; and breached the defendants' duty of good faith and fair dealing under the franchise agreement. Sherman Street and Knight request damages, temporary and permanent injunctive relief and punitive damages and attorney's fees pursuant to Conn. Gen. Stat. §§ 42-133f and 42-110b. Liberty seeks transfer of this action pursuant to the forum-selection clause quoted above.

II. The Transfer Statute

Pursuant to 28 U.S.C. § 1404(a), "[f]or the convenience of 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." The undisputed goal of Section 1404(a) "is to prevent waste

[3]This marketing system included dressing up franchise employees as gorillas and soliciting tax return preparation business on the street.

'of time, energy and money' " and "to protect litigants, witnesses and the public against unnecessary inconvenience and expense." Van Dusen v. Barrack, 376 U.S. 612, 616 (1964) (quoting Continental Grain Co. v. Barge FBL-585, 364 U.S. 19, 26-27 (1960)).

In Stewart Organization, Inc. v. Ricoh Corporation, 487 U.S. 22 (1988), the United States Supreme Court held that, although a forum selection clause should be "a significant factor" in the district court's decision on whether to transfer venue in a diversity action, it alone is not dispositive, and Section 1404(a) required courts to take into account other important considerations. Id. at 29. "Section 1404(a) directs a district court to take account of factors other than those that bear solely on the parties' private ordering of their affairs. The district court must also weigh in the balance the convenience of the witnesses and those public-interest factors of systemic integrity and fairness that, in addition to private concerns, come under the heading of 'the interest of justice.' " Id. at 30; see also Red Bull Associates v. Best Western International, Inc., 862 F.2d 963, 967 (2d Cir. 1988) ("Section 1404(a) reposes considerable discretion in the district court to adjudicate motions for transfer according to an 'individualized, case-by-case consideration of convenience and fairness.'")(quoting Stewart, 487 U.S. at 29). Therefore, under the discretion afforded by § 1404(a), a district court may transfer an action based on the presence of a forum-selection clause, or despite the presence of a forum-selection clause. See Heller Financial, Inc. v. Midwhey Powder Co., 883 F.2d 1286, 1293 (7th cir. 1989) ("Despite the existence of a valid forum-selection clause, courts may still transfer a case under § 1404(a). . . . This is because only one of § 1404(a)'s factors--convenience of the parties--is within the parties' power to waive.").

III. Analysis

A) Conn. Gen. Stat. § 42-133f

The Connecticut Franchise Act (the "Act") provides that "[a]ny waiver of the rights of a franchisee under sections 42-133f or 42-133g which is contained in any franchise agreement entered into or amended on or after June 12, 1975, shall be void." Conn. Gen. Stat. § 42-133f(f). The Act further provides that "[a]ny franchisee may bring an action for violation of sections 42-133e to 42-133g, inclusive, in the Superior Court to recover damages sustained by reason of such violation . . . ." Conn. Gen Stat. § 42-133g(a). In its Memorandum in Opposition to Motion to Transfer Venue [Doc. #11], Sherman Street argues that the anti-waiver provision of § 42-133f(f) renders the forum-selection clause in the franchise agreement between the parties void. See Pepe v. GNC Franchising, Inc., 46 Conn. Supp. 296 (2000) (finding § 14-133f rendered a forum-selection clause void in state court proceeding). A similar argument was expressly rejected by the Supreme Court in Stewart.

In Stewart, a forum-selection clause designated Manhattan as the appropriate venue for resolving disputes between the parties. Stewart, 487 U.S. at 29-30. The plaintiff brought a diversity of citizenship action in the United States District Court for the Northern District of Alabama. Id, 24. The defendant then sought to transfer venue to Manhattan pursuant to § 1404(a), or to dismiss the case for improper venue pursuant to 28 U.S.C. § 1406. Id. The district court denied the § 1406 motion, finding that venue was proper in Alabama. The district court also denied the § 1404(a) motion, finding that it was governed by Alabama law, which disfavored forum-selection clauses. Id. A panel of the United States Court of Appeals for the Eleventh Circuit reversed, finding that questions of venue in diversity actions were matters of

federal, rather than state, law. Id., at 25. The Eleventh Circuit, sitting en banc, adopted the conclusion of the panel, and applied the standards first articulated in The Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972)[4] to conclude that "the choice of forum clause in this contract is in all respects enforceable generally as a matter of federal law." Id.

The Supreme Court affirmed, but on a different rationale. Rather than apply the analysis set forth in The Bremen, the Stewart court concluded that § 1404(a) "is intended to place discretion in the district court to adjudicate motions for transfer according to an individualized, case-by-case consideration of convenience and fairness." Id., 29 (internal quotation marks omitted). Therefore, while the "presence of a forum-selection clause . . . will be a significant factor" in the district court's analysis under § 1404(a), it would not be dispositive. The Supreme Court noted that "[o]ur determination that § 1404(a) governs the parties's dispute *notwithstanding* any contrary Alabama policy makes it unnecessary to address the contours of state law." Id., 30 n.9 (emphasis added).

Since Stewart, therefore, a state law or policy prohibiting forum-selection clauses is not dispositive of a district court's consideration of a motion to transfer venue under § 1404(a) in a diversity action. See Kerobo v. Southwestern Clean Fuels, Corp., 285 F.3d 531, 538 (6th Cir. 2002) ("a district court does not have the discretion to hold that because the state public policy prohibits the enforcement of clauses requiring an out-of-state venue, the state policy will be categorically upheld and the clause will not be enforced."); Deans v. Tutor Time Child Care

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[4]In The Bremen, the Supreme Court held that federal courts sitting in admiralty generally should enforce forum-selection clauses absent a showing that to do so "would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or overreaching." The Bremen, 407 U.S. at 15.

Systems, Inc., 982 F.Supp. 1330, 1330 (S.D.IN. 1997) (rejecting argument that Indiana policy against forum-selection clauses should apply because "state public policy concerns do not dictate the resolution of a § 1404(a) motion to transfer."). Accordingly, the Court finds that Conn. Gen. Stat. § 42-133f(f), by itself, does not render the forum-selection clause in the franchise agreement void.

B) Analysis under Section 1404(a)

Section 1404(a) provides that a district court may transfer an action to a district in which the action originally "might have been brought." Neither party claims that the present action could not have been brought originally in the Eastern District of Virginia under 28 U.S.C. § 1391(a) (setting forth the proper forum for a diversity action). Therefore, in order to determine whether transfer to that district is appropriate, the Court should engage in the "individualized, case-by-case consideration of convenience and fairness" required by the Supreme Court's interpretation of § 1404(a). Stewart, 487 U.S. at 29.[5] When conducting such a individualized analysis, the district courts generally have looked at the following factors: (1) the convenience of witnesses; (2) the availability of process to compel attendance of unwilling witnesses; (3) the location of relevant documents and the relative ease of access to sources of proof; (4) the convenience of the parties; (5) the locus of operative facts; (6) the relative means of the parties; (7) a forum's familiarity with the governing law; (8) the weight accorded to plaintiff's choice of

[5]In Stewart, the Supreme Court declined to issue an authoritative list of the factors a district court should consider under § 1404(a), choosing instead to leave that to each court's discretion. The Supreme Court did note, however, the district court in Stewart would be called upon "to address such issues as the convenience of a Manhattan forum given the parties' expressed preference for that venue, and the fairness of transfer in light of the forum-selection clause and the parties's relative bargaining power." Stewart, 487 U.S. at 29.

forum; and (9) trial efficiency and the interests of justice, based on the totality of the circumstances. Alden Corp. v. Eazypower Corp., 294 F.Supp.2d 233, 237 (D.Conn. 2003); Charter Oak Fire Ins. Co. v. Broan-Nutone, L.L.C., 294 F.Supp.2d 218, 220 (D.Conn. 2003); U.S. Surgical Corp. v. Imagyn Medical Technologies, Inc., 25 F.Supp.2d 40, 46 (D.Conn. 1998); see also Eskofot A/S v. E.I. Du Pont De Nemours & Co., 872 F.Supp. 81, 95 (S.D.N.Y. 1995) (citing same factors). "There can be no doubt that the burden is on the defendant, when it is the moving party, to establish that there should be a change of forum." Factors Etc., Inc. v. Pro Arts, Inc., 579 F.2d 215, 218 (2d Cir.1978) rev'd on other grounds, Factors Etc., Inc. v. Pro Arts, Inc., 652 F.2d 278 (2d Cir. 1981); see also Red Bull Assoc. v. Best Western Int'l., Inc., 862 F.2d 963, 966-67 (1988) (affirming district court's discretion not to transfer despite presence of forum selection clause); United Rentals, Inc. v. Pruett, 296 F.Supp.2d 220, 228 (D.Conn. 2003) (placing burden on movant despite presence of forum-selection clause); O'Brien v. Okemo Mountain, Inc., 17 F.Supp.2d 98, 102 (D.Conn. 1998) (same).[6] Each of these factors will be

[6]The Court recognizes that some courts have shifted the burden to the respondent when the movant relies on a forum-selection clause as its basis for transfer. See, e.g., Micro-Assist v. Cherry Communications, 961 F.Supp. 462, 465 (E.D.N.Y. 1997) (" the presence of a mandatory forum selection clause shifts the burden of proof to the party arguing against the enforcement of the clause."); 17 Moore's Federal Practice § 111.13[1][p][ii][A] (Matthew Bender 3d ed.) (citing cases). For the following reasons, Court declines to follow such an approach. In Stewart, the Supreme Court rejected the application of the standard previously set forth in The Bremen, which greatly favored the enforcement of forum-selection clauses. See Kerobo, 285 F.3d at 536 (in Bremen, "the Supreme Court held that forum-selection clauses are prima-facie valid and should be enforced unless enforcement would be unreasonable under the circumstances of the case."). Under the Bremen standard, and the almost conclusive effect it gives to forum selection clauses, shifting the burden to the respondent is appropriate. In Stewart, however, the Supreme Court explicitly noted that a forum-selection clause is not dispositive, and stated that such a clause "should receive neither dispositive consideration . . . nor no consideration . . . but rather the consideration for which Congress provided in § 1404(a)." Stewart, 487 U.S. at 31. Therefore, under this flexible standard articulated in Stewart, it seems appropriate to keep the burden on the movant. That is the approach several courts in this district have followed. See United Rentals,

considered below.

(1) The Convenience of Witnesses.

Convenience of the witnesses is probably the single-most important factor used to determine whether to transfer a case. See Hernandez v. Graebel Van Lines, 761 F.Supp. 983, 990 (E.D.N.Y. 1991); Arrow Elecs., Inc. v. Ducommum, Inc., 724 F.Supp. 264, 265 (S.D.N.Y. 1989); Dateline Corp. v. Unirock Management Corp., 1997 WL 205794, at *4 (D.Conn. April 11, 1997). "While the convenience of party witnesses is a factor to be considered, the convenience of non-party witnesses is a more important factor." Aquatic Amusement Assoc. v. Walt Disney World Co., 734 F.Supp 54, 57 (N.D.N.Y. 1990); see South Street Capital Corp. v. Dente, 734 F.Supp. 54, 57 (S.D. Tex. 1994) (convenience of non-party witnesses is accorded greater weight in a transfer of venue analysis). A party moving under Section 1404(a) must specify the key witnesses to be called and make a general statement of what their testimony will cover. Factors Etc., Inc. v. Pro Arts, Inc., 579 F.2d 215, 218 (2d Cir. 1978), rev'd on other grounds, Factors Etc., Inc. v. Pro Arts, Inc., 652 F.2d 278 (2d Cir. 1981). "[I]t is not the prospective number of witnesses in each district that determines the appropriateness of a transfer, but, rather, the materiality of their anticipated testimony." Charter Oak Fire Ins. Co. v. Broan-Nutone, L.L.C., 294 F.Supp.2d 218, 220 (D.Conn. 2003) (quoting Schwartz v. Marriott Hotel Services, Inc., 186 F.Supp.2d 245, 249 (E.D.N.Y.2002)).

In support of its motion to transfer, Liberty has identified several company employees that it expects to call as witnesses, each of whom represented that it would be inconvenient to come to Connecticut. Sherman Street also has indicated it would be inconvenient for its witnesses to

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296 F.Supp.2d at 228; O'Brien v. Okemo Mountain, Inc., 17 F.Supp.2d 98, 102 (D.Conn. 1998).

travel to Virginia. It appears that during the course of their relationship, Knight flew to Virginia for some initial training, while Liberty sent employees to Connecticut, including its Chief Operating Officer, to work with Sherman Street's franchises. Thus, both parties have demonstrated that their party witnesses are able to travel to the other party's preferred venue. Litigation is a time consuming process that necessarily will cause some disruption of the parties' respective businesses and the party witnesses' personal lives. In the context of this motion, however, the Court finds that Liberty has not explained "why its inconvenience in traveling to Connecticut outweighs the plaintiff's inconvenience in maintaining this action in [Virginia]." O'Brien, 17 F.Supp.2d at 104 (denying movant's motion to transfer to Vermont, where the movant had its headquarters and where the significant events occurred). In particular, since it is the conduct of Knight and Sherman Street in Connecticut that will be the principal focus of a trial, the Connecticut witnesses would seem to be more important, as well as providing much of the evidence. Therefore, the Court finds that this factor slightly favors the plaintiffs.

(2) The Availability of Process to Compel Attendance of Unwilling Witnesses.

As indicated previously, the convenience of non-party witnesses is a more important factor than the convenience of party witnesses. See Aquatic Amusement Assoc., 734 F.Supp at 57. A district court cannot require "a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business" to appear before it. Fed.R.Civ.P. 45(c)(3)(A)(ii). Therefore, another significant factor for the court to consider is the ability of each venue to compel the attendance of witnesses. Charter Oak, 294 F.Supp.2d at 222 (citing Merkur v. Wyndham Int'l, Inc., 2001 WL 477268, at *4 (E.D.N.Y. Mar.30, 2001)); see also 17 Moore's Federal Practice § 111.13[1][f][iii]

("the location of the majority of non-party witnesses in one of the two districts generally will tip the balance in favor of that district, regardless of where the party witnesses and their employees reside.").

Liberty has not identified any non-party witnesses in Virginia that it plans to call during this trial. During oral argument before the Court, Sherman Street indicated that it will utilize non-party witnesses in the form of other Liberty franchisees located in Connecticut and former employees of its own franchises. Accordingly, since compulsory process would be available in Connecticut for the non-party witnesses, but not in Virginia, the Court finds that this factor counsels heavily against transfer. See Hernandez, 761 F.Supp. at 990 (when the majority of non-party witnesses were beyond the subpoena power of the transferor court, transfer was favored to a district where the witnesses resided).

(3) The Locus of the Relevant Evidence.

"Although the location of relevant documents is entitled to some weight, modern photocopying technology and electronic storage deprive this issue of practical or legal weight." Charter Oak, 294 F.Supp.2d at 221. Given the nature of this action, it is unlikely that there will be any evidence that would be problematic or prohibitively expensive for either party to transport. Nevertheless, the Court notes that the fact that since it is the conduct of Knight and Sherman Street in Connecticut that will be the focus of a trial, and most of the evidence relating to such conduct is located in Connecticut, this factor counsels somewhat against transfer.

(4) The Convenience of the Parties.

Sherman Street is a Connecticut limited liability corporation doing business in Fairfield County. Liberty is headquartered and has its principal place of business in Virginia Beach,

Virginia. As with most cases involving motions to transfer, it "appears to the Court that no matter where the case were to be sited, inconvenience is unavoidable to one party or the other, given the number of witnesses from Connecticut, the number of witnesses from [Virginia], and the logistical problems involved, as they often are, in diversity jurisdiction involving two corporate entities." Pitney Bowes, Inc. v. National Presort, Inc., 33 F.Supp.2d 130, 132 (D.Conn. 1998). The plaintiff apparently agreed to the forum-selection clause, which states that "venue shall be proper *only* in the federal court [in the Eastern District of Virginia]."[7] The weight given to that clause under the § 1404(a) analysis is increased due to the fact that the parties phrased it as a mandatory clause, and not a permissive or limited clause. See Orix Credit Alliance, Inc. v. Mid-South Materials Corp., 816 F.Supp. 230 (S.D.N.Y.1993) (mandatory clause entitled to great weight); Micro-Assist, 961 F.Supp. at 466 ("permissive forum selection clauses are entitled to somewhat less weight in a § 1404(a) analysis."); 17 Moore's Federal Practice § 111.13[1][p][i][C] (explaining the difference between a mandatory, permissive and limited forum-selection clause). Accordingly, the Court concludes that this factor supports transfer to Virginia.

(5) The Locus of Operative Facts.

The location of operative facts underlying a claim is another key factor in determining a motion to transfer venue. Charter Oak, 294 F.Supp.2d at 220; TM Claims Service v. KLM Royal Dutch Airlines, 143 F.Supp.2d 402, 404 (S.D.N.Y. 2001); Bionx Implants, Inc. v. Biomet, Inc., 1999 WL 342306, at *3 (S.D.N.Y. May 27, 1999). To determine the locus of operative facts, a

[7]The forum-selection clause also provides that, if personal or subject matter jurisdiction is lacking in the Eastern District of Virginia, venue would be proper in the state courts of Virginia.

court must look to the "site of the events from which the claim arises."Alden Corp., 294 F.Supp.2d at 237; 800-Flowers, Inc. v. Intercontinental Florist, Inc., 860 F.Supp. 128, 134 (S.D.N.Y.1994); Distefano v. Carozzi North America, 2002 WL 31640476, at *3 (E.D.N.Y. Nov.16, 2002).

All of Sherman Street's franchises were located in Connecticut, and, as such, all of its employees were located here in Connecticut and all of its business was conducted in Connecticut. The affidavit of Trainor reveals that early in the relationship between the parties, Liberty believed that Sherman Street had improperly expanded the territories for two of his franchises, and was not operating its franchises properly. In order to remedy that situation, Trainor states that he flew to Connecticut to meet with Knight, visited several of the franchises and reviewed the franchises' compliance with Liberty's "guerrilla marketing" system. Additionally, Trainor states that he engaged in some"guerrilla marketing" on behalf of Sherman Street's franchises during his visit. Sherman Street submitted the affidavit of Ryan Sheppard, in which he states that Liberty held a training session for Liberty franchisees in Hartford, Connecticut. In sum, the facts revolve around the actual performance of Sherman Street's franchises, which took place within Connecticut. Although certainly some of the activity that will be relevant to the resolution of this action occurred in Virginia, the Court nevertheless finds that the "site of the events from which the claim arises" is Connecticut. Alden Corp., 294 F.Supp.2d at 237. Consequently, this factor weighs strongly against transfer.

(6) The Relative Means of the Parties.

The "relative financial hardship on the litigants and their respective abilities to prosecute or defend an action in a particular forum are legitimate factors to consider." Charter Oak, 294

F.Supp. at 222 (quoting Michelli v. City of Hope, 1994 WL 410964, at *3 (S.D.N.Y. Aug. 4, 1994)). Liberty is a large corporation that claims to have over 1100 franchises located throughout the United States. Sherman Street had five franchises here in Connecticut, and the record fails to reveal any other significant businesses or assets. Despite the disparate size of the parties, there is insufficient evidence in the record from which the Court could conclusively say that Liberty enjoys a significant financial advantage over Sherman Street. Accordingly, this factor favors neither party.

(7) A Forum's Familiarity with the Governing Law.

A federal court sitting in diversity applies the choice of law rules of the forum state. Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487, 496-97 (1941). Sherman Street originally brought this action in the Superior Court of Connecticut, and it was removed to this court on the basis of diversity of citizenship. If this action is transferred to the Eastern District pursuant to § 1404(a), then that district would follow Connecticut's choice of law rules. See Ferens v. John Deere Co., 494 U.S. 516, 519 (1990) ("following a transfer under § 1404(a) initiated by a defendant, the transferee court must follow the choice-of-law rules that prevailed in the transferor court"); Sheldon v. PHH Corp, 135 F.3d 848, 852 (2d Cir. 1998) (noting that choice of law rules from transferor forum apply in transferee forum even if § 1404(a) transfer initiated by the plaintiff); Computer Assoc. Int'l, Inc. v. Altai, Inc., 22 F.3d 32, 35 n.3 (2d Cir. 1994) (choice of law rule from transferor court applied); see also 17 Moore's Federal Practice § 111.20[1][a] (Matthew Bender 3d ed) ("The [Supreme] Court views Section 1404(a) as merely a 'housekeeping measure' that does not carry with it a change in the applicable law."). Whether Connecticut's choice of law rule would counsel in favor of the application of Connecticut law or

Virginia law is immaterial for purposes of this motion. More specifically, the Court does not view this case as involving a highly specialized or unique aspect of state law, and concludes that neither this Court or a court in the Eastern District of Virginia would have difficulty applying the laws from the other's forum, as " federal courts are accustomed in diversity actions to applying laws foreign to the law of their particular State." Pitney Bowes, 33 F.Supp.2d at 132. Thus, this factor favors neither party.

(8) The Weight Accorded to Plaintiff's Choice of Forum;

"In considering a motion to transfer, a district court ordinarily affords plaintiff's choice of forum substantial weight." Charter Oak Fire, 294 F.Supp.2d at 237; TM Claims Service, 143 F.Supp.2d at 404. "[T]his deference is inappropriate [however] when the parties have entered into a contract providing for a different forum." Outek Caribbean Distr. v. Echo, Inc., 206 F.Supp.2d 263, 266 (D.P.R. 2002); accord Strategic Marketing & Communications v. Kmart, 41 F.Supp.2d 268, 273 (S.D.N.Y. 1998); but see Micro-Assist v. Cherry Communications, 961 F.Supp. 462, 465 (E.D.N.Y. 1997) (despite the presence of a forum-selection, the court found that this factor "weighs against transfer, in that a plaintiff's chosen forum should, where possible, be respected."). Liberty has demonstrated that the presence of the forum-selection clause mitigates against Sherman Street's choice of forum. Accordingly, this factor favors neither party.

(9) Trial Efficiency and the Interests of Justice

This factor is "broad enough to cover the particular circumstances of each case, which in sum indicate that the administration of justice will be advanced by a transfer." Schneider v. Sears, 265 F.Supp. 257, 263 (S.D.N.Y.1967). Moreover, the Supreme Court has indicated that the interests of justice generally encompasses "public interest factors of systemic integrity and

fairness." Stewart, 487 U.S. at 30; see also 17 Moore's Federal Practice § 111.13[1][n] (Matthew Bender 3d ed) (noting the variety of ways in which courts treat the "interests of justice" factor). Neither party has identified any related cases pending either in Connecticut or in Virginia that, in consideration of judicial economy and fairness, are relevant to this motion. Liberty contends, however, that transferring the case to the Eastern District of Virginia would ensure a speedy outcome due to that district's employment of the "Rocket-Docket" system, in which a case will be tried within 180 days of filing. This Court's docket is current, however, and would provide the parties with a speedy trial and ensure the proper administration of justice. Thus, neither party has identified any factor related to systemic integrity or fairness that should guide the Court's analysis.

This Court also may consider relevant public policies, however, when weighing the interests of justice. As the Second Circuit has stated, the interest of justice "is not properly within the power of private individuals to control. The existence of a forum selection clause cannot preclude the district court's inquiry into the public policy ramifications of transfer decisions." Red Bull, 862 F.2d at 967 (concluding that district court properly found that enforcement of the forum-selection clause would frustrate a strong federal public policy favoring enforcement of the civil rights laws). Connecticut has demonstrated, through its adoption of the Act, that it has a strong public policy protecting its local franchisees from abuse, unfair economic conditions and early termination by franchisors. See Petereit v. S.B. Thomas, Inc., 63 F.3d 1169, 1180 (1995) ("[W]e are mindful of the Act's remedial purpose, that is, preventing a franchisor from unfairly exerting its economic leverage to take advantage of a franchisee."); Grand Light & Supply Co. v. Honeywell, Inc., 771 F.2d 672, 677 (2d Cir. 1985) ("The Franchise Act was passed

for the purpose of correcting abuses in relationships between franchisees and franchisors."). The enforcement of the forum-selection clause in the present case would frustrate this public policy, and, therefore, the interests of justice weigh in favor of keeping this case in Connecticut.[8]

IV Conclusion

When all of the factors are considered together under the discretion afforded to the Court by § 1404(a), and due consideration is given to the presence of the forum-selection clause, the Court concludes that transfer is not warranted. Accordingly, the Motion to Transfer **[Doc. #9]** is **DENIED**.

SO ORDERED this 30th day of September 2004 at Hartford, Connecticut.

/s/ CFD
CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE

[8]Although the franchise agreement contains a choice of law provision indicating that Virginia substantive law applies, the defendants' Reply Memorandum indicates that Connecticut law likely would still apply. (See Defs. Rep. Memo., p. 7).