UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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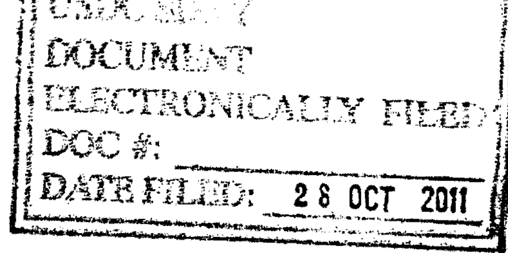

WADE ROBERTSON,

Plaintiff,

-v-

No. 10 Civ. 8442 (LTS)(HBP)

WILLIAM C. CARTINHOUR et al.,

Defendants.

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MEMORANDUM ORDER GRANTING MOTIONS TO TRANSFER

Plaintiff Wade Robertson ("Plaintiff" or "Robertson") brings this action against Defendants William C. Cartinhour, Jr. ("Cartinhour"), Albert Schibani, Patrick J. Kearney, Michael Bramnick, Robert S. Selzer, Carlton T. Obecny, James G. Dattaro, Neil Gurvitch, Andrew R. Polott, H. Mark Rabin, Elyse L. Strickland (collectively, the "Attorney Defendants"), Vesna Kustudic, Tanja Milicevic (a.k.a. Tanja Popovic), and Aleksander Popovic. Plaintiff asserts RICO claims under 18 U.S.C. §§ 1962(c) and (d), as well as claims for fraud, defamation, and tortious interference. The Court has jurisdiction of the action pursuant to 28 U.S.C. §§ 1331 and 1367. Defendants have moved to dismiss Plaintiff's claims or, in the alternative, to transfer this action to the United States District Court for the District of Columbia (the "D.C. Court"), or to stay this action pending a determination of the related case before the D.C. Court. After Defendants filed their motion to dismiss, the D.C. Court entered a judgment in favor of Defendant Cartinhour in the related case. Subsequently, Plaintiff moved for, inter alia, a stay of

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the instant action and an order authorizing alternate service on Defendant Milicevic. For the following reasons, Defendants' motion is granted to the extent that this case is transferred to the D.C. Court. Plaintiff's motion for a stay and for authorization of alternative service is denied.[1]

BACKGROUND

Unless otherwise noted, the following facts are alleged in the complaint and taken as true for purposes of this motion practice. Plaintiff Wade Robertson is an attorney and resident of Tennessee. (Compl. ¶¶ 3, 20.) Defendant William C. Cartinhour lives and operates businesses in the Washington, D.C. - Maryland - Virginia metropolitan area. (Compl. ¶ 25.) In September 2004, Robertson and Cartinhour formed a partnership, W.A.R. LLP ("W.A.R." or the "Partnership"), in the District of Columbia, through which Robertson was to work as an attorney in connection with securities class actions, while Cartinhour was to develop a related consulting business ancillary to Robertson's legal services. (Compl. ¶¶ 30, 35.) In particular, Robertson was to focus on a securities class action, the "Liu Action", that had been filed in the Southern District of Florida, then transferred to the Southern District of New York. (Compl. ¶¶ 20-24.) Robertson and Cartinhour agreed to contribute services and cash to the partnership, and that any profits from Robertson's legal work or Cartinhour's consulting work would be reinvested in the partnership. (Compl. ¶ 31.) Between September 2004 and April 2006, Cartinhour contributed $3.5 million in cash to the Partnership and, between September 2004 and August 2009, Robertson contributed $3.83 million in services. (Compl. ¶ 84.) As part of the partnership agreement, Cartinhour signed an "Indemnification, Hold Harmless, and Agreement to Waive All

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[1] Plaintiff's motion also sought certificates of default with respect to certain defendants who have not appeared. The Clerk of Court has issued the requested certificates.

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Claims" document (the "Indemnification Agreement"), stating that he would not "make any claims or demands, or file any legal proceedings against [plaintiff] Wade A. Robertson," including claims concerning "any future injuries, losses, and damages not not known or anticipated, but which may letter develop or be discovered." (Compl. ¶ 66; Affirmation of Peter C. Contino in Support re: Motion to Dismiss, Exh. D, Jan. 13, 2011, ECF No. 21.)

By February 2008, Robertson had exhausted all efforts in the "Liu Action" which yielded no profit for the Partnership. (Compl. ¶ 69.) He then began investigating another securities class action matter, on which he continued working until August 2009. (Compl. ¶ 71.) On January 9, 2009, and February 6, 2009, Cartinhour, through his attorney, Defendant Albert Schibani, contacted Robertson demanding the return of all the money that Cartinhour had invested in the Partnership. (Compl. ¶¶ 72, 74.) Robertson did not return any money to Cartinhour. On August 14, 2009, and August 21, 2009, Cartinhour, through his attorney, Defendant Carlton Obecny, served additional demand letters on Robertson and informed him that Cartinhour would file suit if the money was not returned. (Compl. ¶ 76.)

The D.C. Action

In response to these demand letters, on August 28, 2009, Robertson filed a complaint in the United States District Court for the District of Columbia (the "D.C. Action") seeking a declaratory judgment enforcing the Indemnification Agreement that Cartinhour had signed. (Compl. ¶ 79.) Cartinhour, through his attorneys, Selzer Gurvitch Rabin & Obecny, filed an answer and counter-complaint on October 28, 2009, and later filed an amended counter-complaint. (Compl. ¶¶ 80.) The amended counter-complaint asserted several claims against Robertson, including fraud, breach of fiduciary duty, breach of partnership agreement, and negligent misrepresentation. (See Compl. ¶ 81.) Robertson proceeded to file numerous motions

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in the D.C. Court as well as in the United States Court of Appeals for the D.C. Circuit. See, e.g., Robertson v. Cartinhour, 691 F.Supp. 2d 65, 68-74 (D.D.C. 2010); Robertson v. Cartinhour, 711 F.Supp. 2d 136 (D.D.C. 2010).

On November 9, 2010, Robertson filed the instant action in this Court, alleging that Cartinhour and the Attorney Defendants had violated various federal laws, including RICO, during the course of the D.C. Action. (Compl. ¶¶ 109-149.) Shortly thereafter, Defendants filed motions to dismiss or, in the alternative, to transfer this action to the D.C. Court. While Defendants' motions were pending, the D.C. Action went to trial and, on February 18, 2011, the jury in that action rendered a verdict, finding that Robertson was liable for breach of fiduciary duty and for legal malpractice and awarding Cartinhour $7 million in compensatory and punitive damages. See Robertson v. Cartinhour, No. 09-1642, 2011 U.S. Dist. LEXIS 31959 (D.D.C. Mar. 28, 2011). On March 16, 2011, Plaintiff Robertson moved in this Court to stay this action.

Partnership Bankruptcy Proceedings

An involuntary Chapter 11 bankruptcy petition was filed against the Partnership in November 2010. Thereafter, issues were raised, and decided against Robertson and the Partnership in the bankruptcy and district courts, as to whether Cartinhour's continued pursuit of his counterclaims in the D.C. Action violated the automatic stay imposed by section 362 of the Bankruptcy Code, 11 U.S.C. § 362. See Memorandum Decision re Ray Connolly's Motion for Order of Civil Contempt and for Sanctions for Violating Bankruptcy Stay, filed as docket entry no. 164 in In re W.A.R. LLP, Chap. 11 Case No. 11-00044 (Bankr. D.D.C. June 15, 2011).

Discussion

28 U.S.C. § 1404(a) provides that, "[f]or the convenience of the parties and

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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." A district court has broad discretion to transfer venue. In re Cuyahoga Equipment Corp., 980 F.2d 110, 117 (2d Cir. 1992). In deciding a motion to transfer, the Court conducts a two-pronged analysis: whether the action could have been brought in the transferee district and, if yes, whether transfer would be an appropriate exercise of the Court's discretion. Mattel, Inc. v. Robarb's, Inc., 139 F. Supp. 2d 487, 490 (S.D.N.Y. 2001).

This Action Could Have Been Brought in the Transferee District

A court may only transfer an action pursuant to § 1404(a) if the transferee district has personal jurisdiction over the defendants and the transferee district is an appropriate venue. The District of Columbia meets both of these criteria.

Defendants Appear to be Subject to Personal Jurisdiction in the District of Columbia

Plaintiff argues that this Court has personal jurisdiction over Cartinhour and the Attorney Defendants pursuant to 18 U.S.C. §§ 1965(a) and (b). 18 U.S.C. § 1965(a) provides that "any civil action or proceeding under [RICO] against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs." 18 U.S.C. § 1965(b) further provides that if "the ends of justice require that other parties residing in any other district be brought before the court," the court may exercise personal jurisdiction over those parties as well. Therefore, "a civil RICO action can . . . be brought in a district court where personal jurisdiction based on minimum contacts is established as to at least one defendant." PT United Can Co. v. Crown Corp & Seal Co., Inc., 138 F.3d 65, 71 (2d Cir. 1998).

Plaintiff's assertion of the propriety of this Court's exercise of personal

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