

Case No. GN CV14-00021 - Aguilera vs. Hentschel

TENTATIVE RULING

Judge John P. Kennelly

May 15, 2014 Motion To Change Venue To Contra Costa County

Plaintiffs are requesting that this case be transferred to Contra Costa County. Plaintiffs make this motion on the following grounds:

1. Forum Non Convenience (sic)
2. Inability To Have a Fair Trial in Plumas County
3. It is Impractical To Have This Case Heard in Plumas County Because There is No Judge Available

Opposition To Motion

The defendant opposes the motion and has filed his opposition, along with objections to the evidence and a request for judicial notice.

Discussion

Forum Non Conveniens

Code of Civil Procedure (CCP) s. 410.30(a) provides for the stay or dismissal of an action if in the interest of substantial justice an action should be heard in a **forum outside the state**. The relative convenience of the parties and witnesses can be considered with this motion.

The plaintiffs are requesting that this case be transferred to Contra Costa County, not another state. Forum non conveniens does not apply. Instead, the court treats this part of the motion as a motion pursuant to *CCP 397*.

CCP 397(c) states that the place of trial can be changed when the convenience of the witnesses and the ends of justice would be promoted by the change. In order to prevail on this motion the movant must:

1. Provide the names of all the witnesses expected to testify for the movant
2. Describe the substance of each witness's expected testimony and explain why that testimony is material, relevant and admissible
3. Make a detailed, factual showing of why it would be inconvenient for the witnesses to appear in the court where the action is currently pending
4. Show how the ends of justice would be promoted by a change in venue

The plaintiffs fail to provide this necessary information. In their moving papers the plaintiffs make a general and conclusionary statement that most of the parties and witnesses in this action reside in the San Francisco Bay Area.

Based on a review of the pleadings, David C. Norton, the referee in question and certainly an important witness, apparently has worked in Plumas County and lives in the State of Nevada.

The court denies the motion to change venue based on the convenience of the witnesses and the ends of justice.

Inability To Have a Fair Trial in Plumas County

The plaintiffs assert that they will be unable to have a fair trial in Plumas County because the county's two judges have recused themselves and the use of a visiting judge will cause unfair and prejudicial delays and extreme hardships to the majority of witnesses in the case.

This judge is assigned to Plumas County under a reciprocal order in which judges from Plumas County and Sierra County are cross-assigned to each county. This judge has been assigned this case and will be handling it from this point forward.

Consequently, the plaintiff's fears are misplaced. The court denies this motion based on this ground.

It is Impractical To Have This Case Heard in Plumas County Because There is No Judge Available

Again, this judge is assigned this case to completion. The court denies this motion based on this ground.

Other Factors

This case was originally filed in Contra Costa County. The case was transferred to Plumas County because the defendant resides in Plumas County.

For purposes of this ruling it appears that the contract in question was signed in both Contra Costa and Plumas counties.

Defendant's Objections To Evidence

The court sustains the six objections made by the defendant to the plaintiffs' evidence.

Judicial Notice

The court grants the defendant's request for judicial notice of the documents identified.

Ruling & Order

Plaintiffs motion to change venue is denied. This ruling is made without prejudice to renew the motion in the future if discovery so dictates.

To request a hearing regarding this matter, you must call the Court at 530-283-6305 by noon on May 14. The court does not provide a court reporter. If any party wants a court reporter that party is responsible for providing the court reporter.

Notice of the intention to appear must also be given to all other parties. If the clerk is not notified of a party's intention to appear, there will be no hearing and the tentative ruling becomes the order of the court.

DATED: 5/12/14

John P. Kennelly
Sierra County Superior Court Judge