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HAPPY HOLIDAYS

Best wishes for the New Year from the Anthony & Partners Team.

Transferring the Venue of a Civil Action in Federal District Court

by Dominic Isgro

According to 28 U.S.C. § 1391, which determines the proper venue in a federal civil suit, private litigants will often have a choice of venues when bringing legal action. For the plaintiff, there are many considerations when selecting a venue, especially when more than one venue is appropriate. Often, the question of which state's laws will apply to the key issues in the case is an important factor, but it is not the only consideration. Other issues include which rules of procedure and evidence will apply, the expected quality of the judges and potential jury pools in the available venues, and the level of resources, financial and otherwise, of the plaintiff and his or her law firm. Additionally, in a contract-based case, a plaintiff should carefully review the contract(s) at issue to determine whether there is an enforceable clause specifying where any legal action will take place.

A plaintiff's choice of venue is not final, however, as 28 U.S.C. § 1404(a) permits transfer of a federal civil action from one federal district court to another for the convenience of parties and witnesses, and in the interests of justice. When one of the parties to the legal action seeks to transfer venues, that party must demonstrate that (i) the venue is proper in both the transferor and transferee courts, (ii) that the transfer is convenient for the parties and witnesses, and (iii) that the transfer serves the interests of justice. It is also important for the plaintiff to understand that a defendant's objection to venue must be raised at the beginning of the litigation. As such, attorneys must act quickly to assemble evidence supporting the motion to transfer, which may be challenging at such an early stage in the litigation.

If the venue is appropriate in both the initial court and the proposed transfer court, then the court that was the original venue is tasked with weighing and balancing a number of case-specific considerations to determine whether to move forward with the transfer. The Eleventh Circuit Court of Appeals has instructed district courts that conduct this analysis to evaluate the convenience of witnesses, the location of relevant documents, the ease of access to sources of proof, the convenience of the parties, the locus of operative facts, the availability of process to compel unwilling witnesses to attend, the relative means of the parties, a forum's familiarity with the governing law, the weight given to a plaintiff's initial choice of forum, and trial efficiency and the interests of justice, based on the totality of the circumstances.

CASE LAW UPDATES

Despite all of the attention directed to the foreclosure process in Florida, and the well-documented issues of lenders with incomplete or missing loan documents, lenders continue to suffer setbacks in foreclosure proceedings. These recent cases highlight recurring problems.

Business Records Exception to the Hearsay Rule

By now the elements needed to prove that a business record is admissible should be well known to lender's counsel. The record must (1) be made at or near the time of the event, (2) be made by or from information that was transmitted by a person with knowledge, (3) have been kept in the ordinary course of business, and (4) have been kept as a regular practice of that business. Despite these clear rules, lenders still struggle to get a matter as simple as the payment history of a loan admitted at trial. In Holt v Calchas, LLC, 2014 WL 5614374, Calchas had acquired the loan from Consumer Solutions, who had in turn acquired it from Wells Fargo. Calchas' witness attempted to testify about the payment history prior to its acquisition of the loan. He testified that he had never worked for the prior owners, did not know who transmitted the prior payment records, nor had knowledge of their payment process policy. The Fourth District Court of Appeal overruled the trial court's judgment in favor of the lender and remanded the case due to lack of evidence about the amount owed.

Standing to Foreclose

In Kiefert v Nationstar Mortgage, the lender had acquired the loan after foreclosure had been initiated by Aurora Mortgage. Aurora had acquired the loan form Lehman Brothers. The note attached to the complaint was not endorsed to Lehman when Aurora filed suit. Aurora then sought and was granted leave to amend, and they attached a copy of the note endorsed to make it a bearer paper. None of the endorsements had any dates. Because of the lack of dates on the endorsements, Nationstar could not prove that Aurora was a holder in due course when suit was filed. The foreclosure was dismissed for lack of standing and its foreclosure judgment overturned by the First District Court of Appeal.

In a similar ruling, Pennington v Ocwen Loan Servicing, 2014 WL 5740990, the original note was payable to the order of EQ Financial as payee. MERS acted as servicer for EQ. The note was then made payable to Countrywide with an attached allonge. MERS then purported to transfer the note to Ocwen. Countrywide was not a party to the transfer. Ocwen filed foreclosure when Pennington defaulted. The First District Court of Appeals reversed a foreclosure judgment for Ocwen, ruling that the lack of any endorsement from Countrywide after the specific endorsement meant that Ocwen lacked standing to initiate the case because it could not establish that it was the legal holder of the note.

STAFF MEMBER PROFILE

Dominic A. Isgro

Dominic is an associate attorney with Anthony & Partners, LLC. He received his B.S. from the United States Military Academy at West Point and his J.D. from the University of Florida Levin College of Law. In law school, Dominic was an active member of the Corporate and Securities Litigation Group Moot Court team. He also held leadership positions in the Eighth Judicial Circuit Law Student Association and the Phi Delta Phi Legal Honor Society.

Education:

- University of Florida Levin College of Law, J.D. (2014)
- United States Military Academy, B.S. (2005)
- Russian Language; Environmental Engineering

Professional:

- The Florida Bar
- Tampa Bay Bankruptcy Bar Association

ANTHONY & PARTNERS NEWS

Attorney News

Starting in January 2015, Anthony & Partners founding member and attorney at law Stephenie Biernacki Anthony will serve as treasurer of the Bankruptcy Law Educational Series ("BLES") Foundation, Inc. BLES is a non-profit entity that promotes bankruptcy legal education and funds pro-bono and other public service projects relating to the practice of bankruptcy in the Middle District of Florida.

Educational Workshops

Interested in a seminar on a recurring legal issue confronting your company? Contact our event coordinator, Cindy Klosicki, to learn more about our educational workshop options.

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