

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

**JOHN PAUL PARSONS, as trustee of** )  
**the Coty Realty Trust,** )  
 )  
**Plaintiff** )  
 )  
**v.** )  
 )  
**UNITED STATES OF AMERICA, et al.,** )  
 )  
**Defendants** )

**Docket No. 99-83-P-H**

**MEMORANDUM DECISION ON DEFENDANT UNITED STATES OF AMERICA’S  
MOTION TO TRANSFER ACTION**

The United States of America, one of two defendants in this action,<sup>1</sup> moves this court to transfer this action to the United States District Court for the District of Massachusetts. I deny the motion.

**I. Applicable Legal Standard**

The government’s motion is brought pursuant to 28 U.S.C. § 1404(a), which provides:

For 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.

Factors to be considered by the court to which a motion for transfer is brought include “the

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<sup>1</sup> The other named defendant, Jeffrey J. Clark, is trustee of the funds that are the subject matter of this action. Complaint (Docket No. 1) ¶ 4; Answer of Jeffrey J. Clark, Trustee (Docket No. 2) ¶ 4 & request for relief at 2.

convenience of the parties and witnesses, the order in which jurisdiction was obtained by the district court, the availability of documents, and the possibilities of consolidation.” *Cianbro Corp. v. Curran-Lavoie, Inc.*, 814 F.2d 7, 11 (1st Cir. 1987). The burden is on the party seeking transfer to show that transfer is warranted. *Blinzler v. Marriott Int’l, Inc.*, 857 F. Supp. 1, 3 (D.R.I. 1994). This court will not disturb a plaintiff’s choice of venue in the absence of evidence that predominates in favor of transfer, even when, as here, the plaintiff is not a resident of the chosen forum. *Scott v. Jones*, 984 F. Supp. 37, 46-47 & n. 16 (D. Me. 1997). “Section 1404(a) provides for transfer to a more convenient forum, not a forum likely to prove equally convenient or inconvenient.” *Van Dusen v. Barrack*, 376 U.S. 612, 645-46 (1964).

## **II. Factual background**

The plaintiff seeks a declaratory judgment concerning the ownership of the proceeds from the sale of a condominium located in York Harbor, Maine. Complaint ¶ 13 & request for relief (at 5). Pursuant to an agreement between the plaintiff and the United States attorney, these proceeds are currently held in an escrow account in Kennebunk Savings Bank. *Id.* ¶ 13. The plaintiff claims to be the sole trustee of the Coty Realty Trust, named on the deed as the owner of the condominium at the time of its sale. *Id.* ¶¶ 1-2. At the time of the purchase of the condominium by the Coty Realty Trust, the purchase and sale agreement was signed by John R. Parsons, father of the plaintiff. *Id.* ¶¶ 7, 10.

After the purchase of the condominium, John R. Parsons was convicted following a trial in the United States District Court for the District of Massachusetts on charges of conspiracy and bank fraud. *Id.* ¶ 10. At sentencing, the court ordered John R. Parsons to pay \$1.7 million in restitution.

*Id.* On or about May 12, 1997 the United States Attorney for the District of Massachusetts filed a notice of lien, as security for fines or restitution levied against John R. Parsons, against the condominium property. *Id.* ¶ 12. Between November 6, 1994 and February 24, 1997 John R. Parsons undertook various activities with respect to the condominium that were consistent with ownership of the condominium by him. Second Affidavit of Special Agent John T. Burke, Jr. (“Second Burke Aff.”) (copy attached to Memorandum in Support of the Motion to Transfer (“Government Memorandum”) (Docket No. 5)) ¶¶ 44-59. The condominium was sold by Coty Realty Trust on June 13, 1997. Complaint ¶ 13.

The plaintiff, a resident of Massachusetts, *id.* ¶ 1, filed this action on March 22, 1999.

### **III. Analysis**

The government requests transfer of this action to the District of Massachusetts on the grounds of justice and efficiency. Government Memorandum at [1]. It notes that four potential witnesses — the attorney who represented the trust in the purchase of the condominium, the man whose name appears on the deed for the condominium as the trustee of the trust, the named beneficiary of the trust (John R. Parsons’ daughter and the plaintiff’s sister), and Agent Burke — currently reside in Massachusetts. Affidavit of John O’Connor, attached to Government’s Memorandum, ¶¶ 3-4, 6; Affidavit of Special Agent John T. Burke, Jr. (“First Burke Aff.”), copy attached to Government’s Memorandum, ¶ 18. John R. Parsons is in prison in Pennsylvania. O’Connor Affidavit ¶ 5. The second named defendant in this action, Jeffery J. Clark, trustee of the Kennebunk Savings Bank account, is a resident of Maine. Complaint ¶ 4; Answer of Jeffery J. Clark, Trustee (Docket No. 2) ¶ 4.

The government properly concedes that it bears the burden of convincing the court to transfer this action. *Ashmore v. Northeast Petroleum Div. of Cargill, Inc.*, 925 F. Supp. 36, 38 (D. Me. 1996). It contends that transfer of this case is appropriate because the federal court in Massachusetts “held hearings on the nature of [John R.] Parson’s financial affairs” in connection with his application for appointment of counsel at government expense. Government Memorandum at 7; First Burke Aff. ¶¶ 8-11; Second Burke Aff. ¶¶ 18-20; Order dated May 3, 1996, *United States of America v. John R. Parsons*, Criminal Action No. 96-40006-NMG, United States District Court, District of Massachusetts, copy attached to Government Memorandum, at 1-6. These hearings, the government assert, establish the Massachusetts federal court’s familiarity with the facts underlying the present dispute. Government’s Memorandum at 8.

The plaintiff opposes the motion on the grounds that this is a “local” action, requiring that this court retain jurisdiction, because real property located in Maine is at issue; the majority of potential witnesses reside in Maine; Maine is the plaintiff’s choice of forum; this matter has not been previously litigated in Massachusetts; and Maine will provide an earlier resolution to the case than will the District of Massachusetts. Plaintiff’s Opposition to Motion to Transfer (“Plaintiff’s Opposition”) (Docket No. 7) at [1].

The plaintiff’s first argument — that this court cannot transfer this action because a claim to property located in Maine is at issue — is clearly wrong. The “local action doctrine,” which has not been adopted by the First Circuit or the Maine Law Court, provides that local actions, as opposed to transitory actions, may only be brought where the property involved in the action is located. 15 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 3822 at 204 (2d ed. 1986). Assuming *arguendo* that the doctrine would be applicable in this court, it is simply not implicated

by the facts. While the distinction between transitory and local actions is not always clear, *id.* at 205-13, the factual circumstances here present no such difficulty. Resolution of the dispute presented in the complaint will not affect the current title to the condominium nor any interest in that property. A dispute over money held in a bank account, even when that money is the proceeds from the sale of real property, is not “essentially *in rem.*” *In re School Asbestos Litig.*, 921 F.2d 1310, 1319 (3d Cir. 1990). *See, e.g., Box v. Ameritrust Texas, N.A.*, 810 F. Supp. 776, 779 (E.D.Tex. 1992) (action to prevent enforcement of purchase agreement for lien on realty not sufficiently related to property to invoke local action doctrine under Texas law); *Ely v. Smith*, 764 F. Supp. 1413, 1415-16 (D. Kan. 1991) (action to set aside conveyance of land on grounds of bad faith held to be transitory, not local, under federal law). *See also In re New York Trap Rock Corp.*, 158 B.R. 574, 575 (S.D.N.Y. 1993) (suits for monetary relief growing out of real property transactions not local actions under the doctrine).

The court’s consideration of the government’s motion, therefore, is an exercise of its discretion in which the party seeking transfer must establish that the balance of convenience weighs in its favor. *See Zahn v. Yucaipa Capital Fund*, 218 B.R. 656, 678 (D.R.I. 1998). Since there is no action currently pending in Massachusetts,<sup>2</sup> two of the *Cianbro* factors are irrelevant; the order in

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<sup>2</sup> The government takes issue with the plaintiff’s assertion that this matter has not been previously litigated in Massachusetts by referring to “the history of litigation regarding John R. Parsons’ . . . concealment of assets from the United States District Court for the District of Massachusetts, as well as the United States Bankruptcy Court for the District of Massachusetts.” Reply in Support of Motion to Transfer (“Reply Memorandum”) (Docket No. 9) at [1]. However, the materials submitted by the government show that the Massachusetts district court was made aware of the existence of the Maine condominium only as potential security for bail. Transcript, Disposition, *United States of America v. John R. Parsons*, CR No. 96-40006, United States District Court, District of Massachusetts, copy attached to Government’s Memorandum, at 58-59. The Maine condominium is mentioned in an adversary complaint filed in the Massachusetts bankruptcy (continued...)

which jurisdiction was obtained and the possibility of consolidation do not apply. Neither the government nor the plaintiff addresses the availability of documents. Accordingly, the convenience of the parties and witnesses is the only *Cianbro* factor that will be considered here.

The plaintiff lists seven residents of Maine whom he suggests may be called as witnesses. Plaintiff's Opposition at 7-8. As this court has previously noted, "the distance between this Court and the District of Massachusetts is too slight to create any true inconvenience to the parties, witnesses, and counsel." *Ashmore*, 925 F. Supp. at 40. The convenience of parties and witnesses is therefore not a factor weighing in favor of transfer, regardless of the number of potential witnesses who may reside in Maine or Massachusetts.

The plaintiff's choice of forum, even though he is not a resident of Maine, is entitled to some deference. *Scott*, 984 F. Supp. at 47 n.16. The action is likely to be resolved in this district sooner than would be possible in the District of Massachusetts. *Ashmore*, 925 F. Supp. at 39-40. Given these facts, the government has not shown that the interests of justice would be better served by transfer of this action to the District of Massachusetts.

Accordingly, I conclude that neither the convenience of the parties and witnesses nor the interests of justice would be served by the exercise of this court's discretion in favor of transfer of this action to the District of Massachusetts.

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<sup>2</sup>(...continued)  
court, Adversary Complaint Objecting to the Debtor, John R. Parsons, Discharge Pursuant to 11 U.S.C. Section 727(a), *In re John Parsons, Eileen Parsons, Debtors*, Chapter 7, Case No. 96-47000-HJB, United States Bankruptcy Court, District of Massachusetts (copy attached to Reply Memorandum), ¶ 14, but the government does not seek transfer of this action to the Massachusetts bankruptcy court. Indeed, this court cannot assume that this action, if transferred, would be assigned to the district court judge who handled the criminal case. No other judge in the District of Massachusetts would be any more familiar with John R. Parsons' real estate transactions than is any judge in the District of Maine.

#### **IV. Conclusion**

For the foregoing reasons, the defendant United States' motion to transfer this action to the District of Massachusetts is **DENIED**.

Dated this 11th day of August, 1999.

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*David M. Cohen*  
*United States Magistrate Judge*