IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

STEFAN MANAGEMENT COMPANY, individually and derivatively on behalf of THE PATHS AT PRAIRIE LAKES LLC, *Plaintiffs*, v. BRIAN G. CUNAT, BRIAN G. CUNAT FAMILY LLC, JOHN C. CUNAT, JOHN C. CUNAT FAMILY LLC, *Defendants*, - and - THE PATHS AT PRAIRIE LAKES, LLC, *Nominal Defendant*.	)	Case No. 2021 CH 3713 Hon. Michael T. Mullen Calendar 8

ORDER

This matter comes before the Court on the Defendants motions to transfer, pursuant to the *forum non conveniens* doctrine, this matter from Cook County to McHenry County (22nd Judicial Circuit). For the following reasons, Defendants' motion to transfer pursuant to the *forum non conveniens* doctrine is denied.

I. Background

This case springs from a significant financial investment that the Plaintiff entrusted with the Defendants. Due to the nature of the present motion, it is essential to not only identify the principals, but also their identified County of residence. Plaintiff Stefan Management Company ("Stefan Management") is a Florida corporation that has its principal place of business in Sarasota, Florida. William Stefan, who is a nonparty to this suit, is the president of Stefan Management and a resident of DuPage County. The individual Defendants are Brian G. Cunat and John C. Cunat, both of whom are residents of McHenry County. The corporate Defendants are Brian G. Cunat Family LLC and the John C. Cunat Family LLC. Both of the "Cunat" corporate Defendants are incorporated in Delaware and have their principal place of business in McHenry County.

The final corporate Defendant is Paths at Prairie Lakes, LLC ("Paths"). Paths is an Illinois LLC that also has its principal place of businesses in McHenry County. In Paths' First Amended and Restated Operating Agreement, the Brian G. Cunat and the John C. Cunat are identified as the managers of Paths.

As alleged in the Plaintiff's Complaint, Paths was organized to own, maintain and operate 163 luxury multi-family rental townhouses. On March 27, 2018, Brian Cunat met with William Stefan at a Schaumburg, Illinois, i.e., Cook County, restaurant. Stefan was meeting Brian Cunat in Stefan's capacity as President of Stefan Management. At the meeting, Brian Cunat solicited money from Stefan Management for the purpose of investing in Paths. As a result of the March 27, 2018 meeting, Stefan Management via William Stefan, who was acting in his capacity as President of Stefan Management, agreed to make a significant investment in Paths.

On April 3, 2018, Stefan, in his capacity as President of Stefan Management, executed a Subscription Agreement with Paths in Cook County in order to purchase 100 Paths' "Membership Units." Also on April 3, 2018, Stefan, in his capacity as President of Stefan Management, executed a $1,000,000 check as consideration for the purchase of 100 Paths' Membership Units. The check was then mailed to the Defendants. Both the execution of the $1,000,000 check and the mailing of the check and Subscription Agreement took place in Cook County. As a result of this transaction, Stefan Management became a member of Paths.

The Plaintiff alleges that the Defendants took several actions regarding the financing of the project without obtaining the approval from Paths' members. The Plaintiff further alleges that the Defendants sold Paths to an entity that was related to the Defendants without disclosing their conflicts of interest. The Plaintiff also alleges that the Defendants' self-dealing resulted in a significant pre-payment penalty. The Plaintiffs further allege that the Defendants converted and misappropriated Plaintiff's capital contribution through an unlawful payment of a pre-existing Home State Bank loan. In summary, the Plaintiff's Complaint alleges causes of action for breach of fiduciary duty (Count I), conversion and misappropriation of funds (Count II), unjust enrichment (Count III) and breach of the Operating Agreement (Count IV).

II. Motion to Transfer

The Defendants have moved to transfer this case from Cook County to the 22nd Judicial Circuit (McHenry County) pursuant to the *forum non conveniens* doctrine. The Defendants note in their motion that:

- All individual Defendants reside and work in McHenry County;
- All corporate Defendants are located in McHenry County;
- Paths, the real estate development investment property, is located in McHenry County;
- All the books and records were maintained by an employee and accountant in McHenry County;

- The loan that the Defendants allegedly wrongfully paid down was secured at Home State Bank, which is located in McHenry County;
- The mortgages that the Plaintiff characterized as improper were executed and recorded in McHenry County;
- The Defendants executed the Subscription Agreement in McHenry County;
- The rent rolls at issue were paid by McHenry residents; and
- The closing of the Paths' sale occurred in McHenry County.

The Defendants further argue that Cook County does not have a strong interest in this litigation, noting that William Stefan is a resident of DuPage County and that Stefan Management is a Florida resident. The Defendants also argue that if the case proceeds in McHenry, as opposed to Cook County, it could possibly be less expensive and result in a more expeditious resolution of this litigation.

In its response, the Plaintiff notes that the March 27, 2018 meeting occurred at the Maggiano's Little Italy restaurant in Schaumburg, Cook County, Illinois. Further, Brian Cunat solicited Stefan Management, through William Stefan, to make a significant financial investment in Paths, i.e., $1,000,000, at this meeting. Additionally, Stefan Management makes clear that it regularly and consistently conducted business in Cook County. More specifically, Stefan Management manages four gas stations in Cook County. On April 3, 2018, Stefan executed the Subscription Agreement at one of Stefan Management's gas stations, which is in Cicero, Cook County, Illinois. Further, Stefan, acting on behalf of Stefan Management, drafted, signed, and mailed the check for Stefan Management's capital contribution to Paths from the same Cicero, Cook County, Illinois gas station, along with the fully executed Subscription Agreement.

The Plaintiff argues that even as a non-resident of Cook County, some deference should be given to its forum choice, especially as the Defendants solicited their investment into Paths in Cook County. The Plaintiff keenly observed that the Defendants failed to identify any single witness who would testify in this matter, much less be inconvenienced, if required to testify at trial in Cook County, rather than in McHenry County. Moreover, the Plaintiff notes that nowhere in the Defendants' motion or their clearly conclusory "affidavit" did the Defendants argue that *they* would be inconvenienced if required to litigate this matter in Cook County, rather than in McHenry County or incur any additional expenses if the matter proceeded to trial in Cook County, rather than in McHenry County, which the Plaintiff notes is adjacent to Cook County.

The Plaintiff further noted that the location of any documents is not a real factor as any necessary documents could be transmitted electronically. The Plaintiff also notes that the offices for the parties' respective attorneys were all located in Cook County ("within walking distance of the Daley Center"). Finally, the Plaintiff took issue with the Defendants' conclusion that the case would proceed more expeditiously in McHenry rather than in Cook County. In fact, the Plaintiff concluded that the case would result in a quicker resolution if the case remained in Cook County. The Plaintiff urges this Court to conclude that all relevant private and public interest factors

require a denial of the Defendants' request to transfer this matter to McHenry County (22nd Judicial Circuit)

III. Standard of Review

a. Venue

The concept of venue, which determines where a cause of action is heard, is distinct from the concept of jurisdiction. *Baltimore & Ohio R.R. Co. v. Mosele*, 67 Ill. 2d 321, 328 (1977). Therefore, "[s]tatutory venue requirements are procedural only and do not have any relation to the question of jurisdiction." *Id.* Further, "[v]enue may properly lie in more than one jurisdiction." *Servicemaster Co. v. Mary Thompson Hospital*, 177 Ill. App. 3d 885, 890 (2d Dist. 1988). Section 2-101 of the Code is the general venue statute in Illinois. 735 ILCS 5/2-101 (West 2008). Section 2-101 provides, in relevant part:

> "every action must be commenced (1) in the county of residence of any defendant who is joined in good faith and with probable cause for the purpose of obtaining a judgment against him or her and not solely for the purpose of fixing venue in that county, or (2) in the county in which the transaction or some part thereof occurred out of which the cause of action arose." 735 ILCS 5/2-101(West 2008).

"The burden of proving improper venue is on the defendant. Defendant must show a clear right to relief and set out specific facts, not conclusions. Doubts arising due to an inadequate record are to be resolved against the defendant." *Kerry No. 5, LLC v. Barbella Group, LLC*, 2012 IL App (1st) 102641 at ¶ 26.

b. Forum Non Conveniens

Even if a complaint is filed in an appropriate venue, Illinois Supreme Court Rule 187 permits the defendant to move to dismiss or transfer the action to a different forum under the doctrine of *forum non conveniens*. Ill. S. Ct. R. 187; *see also Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 171 (2003); *Estate of Prather v. Sherman Hosp. Sys.*, 2015 IL App (2d) 140723, ¶ 39. "*Forum non conveniens* is an equitable doctrine founded in considerations of fundamental fairness and the sensible and effective administration of justice." *Langenhorst v. Norfolk Southern Ry.*, 219 Ill. 2d 430, 441 (2006) (citing *Vinson v. Allstate*, 144 Ill. 2d 306, 310 (1991)). "This doctrine allows a trial court to decline jurisdiction when trial in another forum 'would better serve the ends of justice." *Id.* Moreover, "the doctrine of *forum non conveniens* assumes that there is more than one forum with the power to hear the case." *Fennell v. Illinois Central R.R. Co.*, 2012 IL 113812, ¶ 12. The equitable doctrine affords courts discretionary power that should be exercised only in exceptional circumstances when the interests of justice require a trial in a more convenient forum. *Langenhorst*, 219 Ill. 2d at 443. This doctrine is grounded in "considerations of fundamental fairness and sensible and effective judicial administration." *Fennell*, 2012 IL at ¶ 14. The doctrine is applicable when the choice is between intrastate forums, as well as when the choice is between interstate forums. *See Susman v. North Star Trust Co.*, 2015 IL App (1st) 142789, ¶ 15; *Glass v. DOT Transportation, Inc.*, 393 Ill. App. 3d 829, 832 (1st Dist. 2009).

"The plaintiff has a substantial interest in choosing the forum where his rights will be vindicated and the plaintiff's forum choice should rarely be disturbed unless the other factors strongly favor transfer." *Langenhorst*, 219 Ill. 2d at 443. "However, when the plaintiff is foreign to the chosen forum and when the action giving rise to the litigation did not occur in the chosen forum, the plaintiff's choice of forum is accorded less deference." *Fennell*, 2012 IL 113812, ¶ 18 (citing *Dawdy*, 207 Ill. 2d at 173–74). Nonetheless, the movant bears the burden in establishing that the relevant factors *strongly favor* transfer. *Koss Corp. v. Sachdeva*, 2012 IL App (1st) 120379, ¶ 89 (emphasis added).

In deciding a motion based on *forum non conveniens*, this Court must balance certain private and public interests in determining the appropriate forum in which the case should be tried. *Dawdy*, 207 Ill. 2d at 172. Each case is unique and must be considered on its own facts. *Fennell*, 2012 IL 113812, ¶ 21. In determining whether the doctrine of *forum non conveniens* applies, this Court conducts what has been characterized as an unequal balancing test to determine whether the plaintiff's chosen forum prevails. *Evans v. Patel*, 2020 IL App (1st) 200528, ¶29, *Taylor v. Lemans Corp.*, 2013 IL App (1st) 130033, ¶15; *see Wieser v. Missouri Pac. R.R. Co.*, 98 Ill. 2d 359, 366 (1983) ("This deference to plaintiff's choice of forum is commonly referred to as an unequal balancing test."). The balance of factors must strongly favor transfer of the case before the plaintiff can be deprived of his chosen forum. *First Nat'l Bank v. Guerine*, 198 Ill. 2d 511, 526 (2002). Although required to weigh private and public interest factors, this Court should not weigh the private interest factors *against* the public interest factors. *Id.* at 518 (emphasis added). Rather, the trial court must evaluate the total circumstances of the case in determining whether the balance of factors strongly favors transfer. *Id.* Put another way, "(t)he doctrine of *forum non conveniens* is a flexible one which requires evaluation of the total circumstances rather than concentration on any single factor." *Peile v. Skelgas, Inc.*, 163 Ill. 2d 323, 336–37 (1994).

"Private interest factors include: (1) the convenience of the parties; (2) the relative ease of access to sources of testimonial, documentary, and real evidence; and (3) all other practical problems that make trial of a case easy, expeditious, and inexpensive." *Langenhorst*, 219 Ill. 2d at 443 (quoting *Guerine*, 198 Ill. 2d at 516). Public interest factors include: (1) the interest in deciding controversies locally; (2) the unfairness of imposing trial expense and the burden of jury duty on residents of a forum that has little connection to the litigation; and (3) the administrative difficulties presented by adding litigation to already congested court dockets. *Langenhorst*, 219 Ill. 2d at 443–44. The Court considers all relevant factors in making its determination. *Id.* at 444.

IV. Analysis

a. *Venue*

The only reason the Court is even addressing venue is that in their Reply brief and for the first time, the Defendants suggested that Cook County was an improper venue. The Defendants failed to ever make a Motion To Transfer this matter due to improper venue and consistent with the provisions of 735 ILCS 5/2-101and 5/2-104. As such, any arguments that the Defendants

made relative to venue being improper, were waived as they were and are untimely. See 735 ILCS 5/2-104(b).

With that said, even had the Defendants made a timely argument relative to venue, they would have been required to establish under the second prong of section 2-101 of the Code, which is referred to as the transactional prong of the venue statute, that venue in Cook County was improper. Determining venue under this prong requires consideration of two key variables: the nature of the cause of action and the place where the cause of action sprang into existence. *Rensing v. Merck & Co.*, 367 Ill. App. 3d 1046, 1050 (5th Dist. 2006). The phrase "transaction or some part thereof" in the venue statute has been interpreted broadly. *Tipton v. Estate of Cusick*, 273 Ill. App. 3d 226, 228 (1st Dist. 1995). It includes every fact that is an integral part of the cause of action. However, it is not so narrowly interpreted as to include only those immediate facts from which the cause of action arose. *Home Depot, U.S.A., Inc. v. Dept. Revenue*, 355 Ill. App. 3d 370, 381–82 (2d Dist. 2005). Examples of the latter factor include the place where the parties carried on significant negotiations or signed an agreement, or where the agreed-upon action was supposed to be or was performed. This is generally the location where the parties engaged in direct adversarial dealing or where an event occurred that changed the parties' legal relationship. *Id.* at 382. Although preparatory or preliminary acts, without more, are insufficient to invoke transactional venue, "...third-party dealings that have a definite and direct bearing on the cause of action may be considered a part of the transaction out of which the cause of action arose." *S. & Cent. Illinois Laborers' Dist. Council v. Illinois Health Facilities Planning Bd.*, 331 Ill. App. 3d 1112, 1117 (5th Dist. 2002). If the defendant proves that venue is improper, the trial court must transfer the case to a proper venue. *Jackson ex rel. Jackson v. Reid*, 363 Ill. App. 3d 271, 276 (4th Dist. 2006).

It is clear that significant events gave that gave rise to the Plaintiff's cause of action, which are set forth within the complaint occurred in Cook County. The Plaintiff asserts that at the March 27, 2018 meeting that occurred in Cook County, Brian Cunat solicited Stefan Management, through William Stefan, to make a significant financial investment, i.e., $1,000,000, in Paths. Additionally, Stefan Management makes clear that it regularly and consistently conducted business in Cook County. More specifically, Stefan Management manages four gas stations in Cook County. On April 3, 2018, Stefan executed the Subscription Agreement at one of Stefan Management's gas stations that was located in Cook County, i.e., Cicero, Illinois. Further, Stefan, acting on behalf of Stefan Management, drafted, signed, and mailed the check for Stefan Management's capital contribution from the Cicero gas station (Cook County) to Paths, along with the fully executed Subscription Agreement. In short, the events that gave rise to this cause of action occurred in Cook County, and Cook County was the place where this cause of action sprang into existence.

The Plaintiff's affidavit is uncontradicted. Based upon a careful consideration of the contents of the complaint, the parties' submissions, including the affidavits, the Court would conclude that although the Defendants were residents of McHenry County, this cause of action sprang into existence in Cook County. So it is clear, even if the Defendants had not waived any objection to venue, which they clearly did, the Defendants would have been unable to establish

that Cook County was an improper venue based upon the submission that have been provided to the Court.

b. *Forum Non Conveniens*

Although the Court has made clear that venue in Cook County is appropriate, this conclusion does not preclude transfer of this matter to McHenry County pursuant to the *forum non conveniens* doctrine. As our Supreme Court made very clear:

> "[T]he fact that [defendant] conducts business within the county is not the only factor the court should consider in its analysis. A *forum non conveniens* motion *** causes a court to look beyond the criterion of venue when it considers the relative convenience of a forum. [Citation.] [M]erely conducting business in [the] County does not affect the *forum non conveniens* issue."

Vinson, 144 Ill. 2d at 31; see, *e.g.*, *Gridley v. State Farm Mut. Auto. Ins. Co.*, 217 Ill. 2d 158, 172 (2005).

i. Plaintiff's Choice of Forum

Before weighing the relevant public and private interest factors, the Court begins its analysis by determining how much deference is afforded to Plaintiff's choice of forum. *Benedict v. Abbott Lab'ys, Inc.*, 2018 IL App (1st) 180377, ¶ 32 (citing *Langenhorst*, 219 Ill. 2d at 448). Generally, a plaintiff's choice of forum is entitled to substantial deference. *Guerine*, 198 Ill. 2d at 517. "The plaintiff has a substantial interest in choosing the forum where his rights will be vindicated and the plaintiff's forum choice should rarely be disturbed unless the other factors strongly favor transfer." *Langenhorst*, 219 Ill. 2d at 443. Our Supreme Court has noted that where the plaintiff chooses a forum other than where he or she resides, his or her choice "is not entitled to the same weight" as the choice of his or her home forum. *Dawdy*, 207 Ill. 2d at 173–176; *Gridley*, 217 Ill. 2d at 170. However, this means that it is accorded less deference, but that less deference does not mean no deference. *See Langenhorst*, 219 Ill. 2d at 448 ("the deference to be accorded is only *less*, as opposed to *none*") (emphases in original) (quoting *Guerine*, 198 Ill. 2d at 518; quoting *Elling v. State Farm Mutual Automobile Insurance Co.*, 291 Ill. App. 3d 311, 318 (1st Dist. 1997)).

It is undisputed that Stefan Management did not choose its home forum as it is a resident of Florida, although it does business in Cook County. Although Stefan Management is foreign to Cook County, its choice of forum is still entitled to some deference. *See Langenhorst*, 219 Ill. 2d at 448 (finding that "the deference to be accorded is only less, as opposed to none"). So while Stefan Management's decision to file in Cook County is not entitled to "great weight," neither is it an insignificant factor in the *forum non conveniens* analysis. More importantly, in deciding a motion based on *forum non conveniens*, "the test is still whether the relevant factors viewed in their totality, strongly favor transfer to another forum." *Elling*, 291 Ill. App. 3d at 318. Accordingly, the Court concludes that Stefan Management's forum choice is entitled to *some* deference.

ii. Private Interest Factors

Turning to the private interest factors, this Court "must evaluate the total circumstances of the case in determining whether the balance of factors strongly favors dismissal." *Fennell*, 2012 IL 113812, ¶ 17. The balancing should be done "without emphasizing any one factor." *Langenhorst*, 219 Ill. 2d at 443; *Gridley*, 217 Ill. 2d at 169; *Dawdy*, 207 Ill. 2d at 180. As a reminder, private interest factors include: the convenience of the parties; the relative ease of access to sources of testimonial, documentary, and real evidence; the availability of compulsory process to secure attendance of unwilling witnesses; the cost to obtain attendance of willing witnesses; the possibility of viewing the premises, if appropriate; and all other practical considerations that make a trial easy, expeditious, and inexpensive. *Fennell*, 2012 IL 113812, ¶ 15. The Court has carefully considered each factor.

a. Convenience to the Parties

With respect to the first factor, *i.e.*, the convenience of the parties, "the defendant must show that the plaintiff's chosen forum is inconvenient to the defendant." *Langenhorst*, 219 Ill. 2d at 450; *Vivas v. Boeing Co.*, 392 Ill. App. 3d 644, 658 (1st Dist. 2009). As noted by our Appellate Court, "one party cannot argue the other party's convenience." *Ruch v. Padgett*, 2015 IL App (1st) 142972, ¶ 51. Furthermore, as our Supreme Court astutely observed:

> "[w]hen adjoining counties are involved, the battle over the forum results in a battle over the minutiae . . . We live in a smaller world. Today we are connected by interstate highways, bustling airways, telecommunications, and the world wide web. Today, convenience, the touchstone of the *forum non conveniens* doctrine – has a different meaning."

Langenhorst, 219 Ill.2d at 450 (quoting *Guerine*, 198 Ill.2d at 519–520, 525).

It is undisputed that the individual Defendants are Illinois residents who live in McHenry County. It is also undisputed that the corporate Defendants are Delaware corporations with their principal offices in McHenry County. Although it might be far more preferable for the Defendants to litigate this matter in McHenry County, as it is closer to where they live and do business, that preference alone is an insufficient basis for the Court to conclude that Cook County is inconvenient for the Defendants. Other than vague and conclusory allegations about inconvenience, the Defendants have not provided *any* evidence upon which this Court can conclude that it would be inconvenient for the Defendants to litigate this matter in Cook County, rather than in McHenry County. Absent any such evidence, the Court is unable to conclude that Cook County is inconvenient to the Defendants. Thus, the convenience factor does not weigh in favor of transferring the case from Cook to McHenry County.

b. Ease of Access to Evidence

As to the second factor, i.e., the relative ease of access to sources of testimonial, documentary, and real evidence, the Court notes that due to technological advancements, the location of any such records has become a less significant factor. *See Fennell*, 2012 IL 113812, ¶

36 (noting that "the location of documents, records and photographs has become a less significant factor in *forum non conveniens* analysis in the modern age of Internet, email, telefax, copying machines, and world-wide delivery services, since those items can now be easily copied and sent."). The Defendants have not identified a single witness who would be unwilling to testify in Cook County. In *Erwin v. Motorola, Inc.*, 408 Ill. App. 3d 261, 277 (1st Dist. 2011), the Court considered a *forum non conveniens* motion that was similar to the Defendants' present motion, i.e., where the defendant failed to provide the name or address of a single witness who would be unwilling to testify. The Court concluded that "Since the burden of proof lies with [the defendant], under these circumstances, we are not at liberty to speculate about a witness' whereabouts or unwillingness to testify at trial." *Erwin*, 408 Ill. App. 3d at 277. The same rationale applies to this case as this Court will not speculate about a witness' whereabouts or unwillingness to testify at trial as no such evidence has been provided for this Court's consideration.

The Defendants somewhat proffer the argument that proof related to this dispute is located somewhere in an unidentified McHenry County office, including certain unspecified records. Additionally, the Defendants suggest that an unnamed accountant and certain unnamed record keepers work in McHenry County. The Defendants do not indicate that the unnamed accountant or various unnamed record keepers will be called to trial to authenticate any records or for any other purpose. Nonetheless, even if that were the case, i.e., that these unnamed individuals would be called to testify so as to authenticate various records or even to lay a proper foundational basis for the admissibility of the unspecified records into evidence, it is well-recognized that due to technological advances, documentary evidence can be copied and transported easily and inexpensively. *See Erwin v. Motorola, Inc.*, 408 Ill. App. 3d at 280–81; *Benedict*, 2018 IL App (1st) 180377, ¶ 52. Additionally, as McHenry and Cook are adjoining counties, this truly is almost a nonexistent factor. However, the Court concludes that this second factor is neutral for both parties and thus does not weigh in favor of transfer.

c. Availability of Compulsory Process

As to the third factor, i.e., the availability of compulsory process to secure the attendance of unwilling witnesses, the Court finds that this factor favors Stefan Management. Pursuant to Rule 187, *forum non conveniens* motions "may" be supported and opposed by an affidavit. Ill. Sup. Ct. R. 187. "While the language of the rule clearly states that the filing of affidavits is optional, the wisdom of filing affidavits in support of or in opposition to factual issues raised in an affidavit cannot be overemphasized." *Bird v. Luhr Bros.*, 334 Ill. App. 3d 1088, 1096 (5th Dist. 2002).

No evidence or affidavits were presented that even suggests that any witness would be unwilling or even inconvenienced by being required to testify in Cook County. Further, there was no evidence presented which reflects that the compulsory process would be unavailable or that it would be ineffective to secure the attendance of any potential unwilling witness. In fact, and assuming the proper issuance of a subpoena, compulsory service is required. *See* Ill. S. Ct. R. 237 (a). The Court concludes that the Defendants have made an insufficient showing for the Court to conclude that any witness is unwilling to testify in Cook County or even that a witness would be somehow unavailable to testify, if the case remains in Cook County rather than

proceeding to trial in McHenry County. Since the burden of proof lies with the Defendants, under these circumstances, the Court is "not at liberty to speculate about a witnesses' whereabouts or unwillingness to testify at trial." *Erwin*, 408 Ill. App. 3d at 277; *see Brant v. Rosen*, 373 Ill. App. 3d 720, 728 (5th Dist. 2007). Thus, this factor does not weigh in favor of transfer.

d. Cost to Obtain Attendance of Unwilling Witnesses

As to the fourth factor, i.e., the cost to obtain attendance of willing witnesses, the Court reiterates that the burden of proof lies with the Defendants. This burden "remains with the defendant and never switches to the plaintiff." *Wilder Chiropractic, Inc. v. State Farm Fire & Cas. Co.*, 2014 IL App (2d) 130781, ¶ 52 (citing *Erwin*, 408 Ill. App. 3d at 275). The Defendants have failed to provide any evidence that in any way establishes that the potential cost to obtain the attendance of witnesses, gaining accessibility to witnesses or even insuring that the testimony of certain witnesses is properly preserved and available for trial, strongly favors a transfer to McHenry County. Therefore, the Court finds that this factor does not weigh in favor of a transfer to McHenry County.

e. Possibility of Viewing the Premises

As to the fifth factor, the Court finds that this factor, i.e., possibility of viewing the premises, is irrelevant in light of the allegations contained within the Complaint. With that made clear, the Defendants suggest that an expert may need to conduct a valuation of the McHenry County property. Although that is certainly a possibility, it is not appropriate for this Court to speculate that an expert would be necessary for this purpose or that unnecessary/avoidable expenses would be generated due to any expert's travel, e.g., to the Cook County courthouse. But what is clear is that no expert(s) has been identified who has been requested to undertake such a task.

Even if an expert had been retained to appraise the property and further assuming that the unidentified expert was either local to McHenry County or any County other than Cook, this would not be given much weight as an expert's location deserves little weight since the expert would be compensated for his travel and would clearly be willing to testify wherever instructed. In short, one should view a parties' selection of an expert as basis for a decision on a *forum non conveniens* motion with caution. Fennell, 2012 IL 113812, ¶¶33–34. Therefore, the Court finds that this factor does not weigh in favor of transfer.

f. Practical Problems

The last private interest factor is a consideration of "all other practical problems that make the trial of a case easy, expeditious, and inexpensive.'" *Langenhorst*, 219 Ill. 2d at 43 (quoting *Guerine*, 198 Ill. 2d at 516); *Dawdy*, 207 Ill. 2d at 172. The Court has concluded that whether this case proceeds to trial in McHenry County or in Cook County, the expenses and unfortunate logistical realities associated with litigation will essentially be identical. No contrary information has been submitted to the Court. Further, the close proximity of the two counties, and the many roads and trains between the two, reduces any practical problems. *Spiegelman v.*

Victory Mem. Hosp., 392 Ill. App. 3d 826, 844 (1st Dist. 2009) (observing the close proximity of Lake County to Cook County); *Huffman v. Inland Oil & Transp. Co.*, 98 Ill. App. 3d 1010, 1018 (5th Dist. 1981) (arguments regarding convenience to the parties and the witnesses [are] of little merit where the Missouri forum suggested by defendant was only 15 miles from the chosen forum)." *Susman*, 2015 IL App (1st) 142789, ¶ 31.

Additionally, the Court acknowledges that all parties' counsel are located in Cook County. While little weight should be accorded the location of the movant's attorney on a *forum non conveniens* motion, "a court may still consider it in the *forum non conveniens* analysis." *Vivas*, 392 Ill.App.3d at 660; *see Dawdy*, 207 Ill. 2d at 179 ("a court may consider this factor"); *Benedict*, 2018 IL App (1st) 180377, ¶ 57; *Woodward v. Bridgestone/Firestone, Inc.*, 368 Ill. App. 3d 827, 835 (5th Dist. 2006) ("We also note that the Defendants' counsel of record have offices in Illinois. Although not a significant factor, we may consider it in our analysis."). Although not a significant factor, the Court may consider this factor, i.e., the location of the Defendants' counsel, and has done so in its analysis. However, after a careful analysis, the Court finds that all other practical problems that make the trial of a case easy, expeditious, and inexpensive do not weigh in favor of transfer.

Accordingly, the Court concludes that the private interest factors, as a whole, do not weigh in favor of transferring this case to McHenry County. Nonetheless, the Court must now address and weigh the public interest factors.

iii. Public Interest Factors

When deciding a *forum non conveniens* motion, and as a review, the Court must also consider the following: (1) the interest in deciding controversies locally; (2) the unfairness of imposing trial expense and the burden of jury duty on residents of a forum that has little connection to the litigation; and (3) the administrative difficulties presented by adding litigation to already congested court dockets. *Langenhorst*, 219 Ill. 2d at 443–44 (citing *Guerine*, 198 Ill. 2d at 516–17). The public interest factors "insures that those jurisdictions are not unfairly burdened with litigation in which they have no interest or connection." *Fennell*, 2012 IL 113812, ¶ 44.

a. Interest in Deciding Controversies Locally

Turning to the first factor, the Court concludes that McHenry County has an interest in resolving this lawsuit. It is undisputed that this lawsuit involves two corporations that are based in McHenry County and that McHenry County has a strong interest in deciding a controversy involving any corporation that operates within its borders. Additionally, it is also undisputed that the two individual defendants reside and work in McHenry County. McHenry County has a clear interest in deciding a controversy involving two individuals who live and work in McHenry County who have essentially been accused committing fraud. However, the Court further concludes that Cook County also has an interest in resolving this lawsuit as Stefan Management does business in Cook County. Further, certainly Brian G. Cunat, who was acting as the manager of both the Brian Cunat Family LLC and as a manager of Paths, did business in Cook County when he solicited the significant capital contribution, i.e., $1,000,000, from Stefan Management

in Cook County, potentially with the intent of defrauding Stefan Management via the solicitation. Moreover, the additional events and/or transactions that are identified with some specificity in the Plaintiff's Complaint occurred in Cook County and led to this cause of action springing into existence. The Court concludes that this factor is neutral and does not weigh in favor of a transfer to McHenry County.

b. Unfairness of Imposing Expense and Jury Duty

In regards to the second factor, the Court concludes that this factor is neutral for both parties. Although a close review of the Court record does reveal that the Plaintiff has filed a jury demand, the Defendants have not. At argument, both counsel agreed that the case would proceed to trial without a jury, although certain of the Plaintiff's claims could conceivably be the subject of a jury trial. As has been made clear, there is a connection of this case to Cook County. Cook County has a clear interest in protecting individuals, entities and individuals who transact business within its borders. It would not be unfair to impose a trial expense, including potential jury duty on residents in a case, such as this one, that has a clear connection to Cook County. The Court concludes that this factor does not weigh in favor of a transfer to McHenry County.

c. Administrative Difficulties

Finally, in regards to the third factor, i.e., the administrative difficulties presented by adding to already congested court dockets, this factor, alone, is not enough to justify transfer if none of the other relevant factors, individually or collectively, can be said to weigh strongly in favor of transfer. *Griffith v. Mitsubishi Aircraft Int'l, Inc.*, 136 Ill. 2d 101, 114 (1990). Our Supreme Court cautioned that, "[c]ourts should be extremely reluctant to dismiss a case from the *forum rei gestae* merely because that forum's docket has a backlog." *Brummett v. Wepfer Marine, Inc.*, 111 Ill. 2d 495, 503 (1986). Our Supreme Court also concluded that "[w]hen deciding *forum non conveniens* issues, the trial court is in the better position to assess the burdens on its own docket." *Langenhorst*, 219 Ill. 2d at 451.

So it is clear, this case has been assigned to this Court for all purposes, including trial. So if the matter results in a bench or a jury trial, this Court will be the judge presiding over the case. Of some significance, this Court's docket cannot properly be characterized as "congested." This case *will* proceed to trial within 12 to 14 months. With that said, this Court makes every effort to accommodate all parties' schedules in setting a trial date. However, if any party pleasantly surprises the Court by requesting an earlier trial date, the Court would make every effort to accommodate such request. In any event, our Supreme Court has made clear that even if court congestion did exist, which it does not in this case, "[c]ourt congestion is a relatively insignificant factor." *Guerine*, 198 Ill. 2d at 517. Thus, the Court concludes that this factor does not warrant or justify transfer.

The Court finds the public factors, as a whole, do not weigh in favor of transferring this case to McHenry County. The Court reiterates that "the test is still whether the relevant factors, viewed in their totality, strongly favor transfer to another forum." *Landmark Am. Ins. Co. v. NIP Group, Inc.*, 2011 IL App (1st) 101155, ¶ 53 (citing *Elling*, 291 Ill. App. 3d at 318).

V. Conclusion

After carefully weighing all relevant factors and after much consideration, the Court finds and concludes that this case has a legitimate and substantial relation to Cook County. Therefore, the Court denies the Defendants' motion to transfer this case pursuant to the *forum non conveniens* doctrine.

For the foregoing reasons,

IT IS HEREBY ORDERED THAT:

1) Defendants' motion to transfer this matter from Cook County to the 22nd Judicial District (McHenry County) pursuant to the *forum non conveniens* doctrine is denied; and

2) The previously set hearing date of January 24, 2022 at 1:30 p.m. stands.

IT IS SO ORDERED.

ENTERED:

/s/ *Michael T. Mullen*
Judge Michael T. Mullen, No. 2084

Judge Michael T. Mullen
JAN 06 2022
Circuit Court - 2084