

STATE OF INDIANA)
)
COUNTY OF LAKE)

LAKE SUPERIOR COURT
CIVIL DIVISION, ROOM SEVEN
CROWN POINT, INDIANA
Cause # 45D11-2208-MI-00565

O'LEARY'S CONTRACTOR)
EQUIPMENT & SUPPLY INC)
Plaintiff)

vs.)

SZP CONSTRUCTION INC and)
SLAWOMIR SZPAK)
Defendants)

FILED IN OPEN COURT

NOV 17 2023

BREO P. P.
JUDGE
SUPERIOR COURT OF LAKE COUNTY

ORDER ON PENDING MOTIONS

The Defendants, SZP CONSTRUCTION INC and SLAWOMIR SZPAK (hereinafter together "DEFENDANTS"), filed a motion for summary judgment, or to dismiss under Trial Rule 4.4, on January 5, 2023. After the Court permitted discovery to take place, the Plaintiff, O'LEARY'S CONTRACTOR EQUIPMENT & SUPPLY INC (hereinafter "PLAINTIFF"), filed a response in opposition to both motions on October 3, 2023, and the DEFENDANTS filed both a reply and a motion to strike on November 2, 2023. Because the Court could not be sure whether briefing had been completed and/or whether the parties wished to have a hearing, the Court held a teleconference on its own motion on November 8, 2023. Being permitted to rule by the agreement of both parties, the Court then read each of the foregoing and the associated designated materials; since neither party sought a hearing, the Court found and Ordered:

TRIAL RULE 4.4 ANALYSIS

1. Trial Rule 4.4(C), *in pertinent part*, provides that jurisdiction under this rule is subject to the power of the court to order the litigation to be held elsewhere under such reasonable conditions as the court in its discretion may determine to be just.

2. Trial Rule 4.4(C), *in pertinent part*, provides that in the exercise of that discretion the court may appropriately consider such factors as: (1) amenability to personal jurisdiction in this state in any alternative forum of the parties to the action; (2) convenience to the parties and witnesses of the trial in this state and in any alternative forum; (3) differences in conflict of law rules applicable in this state and in the alternative forum; or (4) any other factors having substantial bearing upon the selection of a convenient, reasonable, and fair place of trial.
3. The purpose of Trial Rule 4.4(C) is to permit a case to be litigated in another state upon a showing that litigation in Indiana is so inconvenient that substantial injustice is likely to result. *Employers Insurance v. Rectical Foam Corporation*, 716 N.E.2d 1015, 1021 (Ind. Ct. App. 1999).
4. This is a lawsuit which seeks to recover damages under Indiana's Crime Victims Recovery Act, IC 34-24-3-1.
5. Defendant, SLAWOMIR SZPAK (hereinafter "SZPAK"), serves as the president and sole shareholder of two companies, one organized in Illinois and the other organized in Indiana, both named "SZP Construction Inc".
6. The Court adopts the DEFENDANTS' suggestion that the Indiana corporation known as SZP Construction Inc shall hereinafter be referred to as "SZP-INDIANA" and that the Illinois corporation known as SZP Construction Inc shall hereinafter be referred to as "SZP-ILLINOIS"
7. SZP-INDIANA is a Defendant in the present lawsuit.
8. At the time it filed the present lawsuit, the PLAINTIFF could not have known that there were two separate construction companies named "SZP Construction Inc" – one in Illinois and one in Indiana. But, discovery has revealed that fact to the parties.
9. The proper corporate defendant under these facts is SZP-ILLINOIS as SZP-INDIANA did not exist at any time pertinent to the alleged conversion that underlies this lawsuit.
10. The PLAINTIFF is an Illinois corporation.
11. SZPAK is a resident of Illinois.
12. Non-party, Favor Flowers LLC – a likely necessary party to the this litigation – is an Illinois corporation.

13. The transaction that the PLAINTIFF alleges in its complaint as conversion took place in the State of Illinois.
14. The equipment that is alleged to have been converted is believed located somewhere in the State of Kentucky; important to this analysis is the fact that the equipment is *not* located within the State of Indiana.
15. The DEFENDANTS correctly argue that the PLAINTIFF'S entire argument that this case belongs in Indiana hinges alone on the issue that the equipment in controversy was transported for a time to a property owned by SZPAK located in Crown Point, Indiana.
16. The act of conversion is completed upon the initial interference with the owner's interest. *United States v. Beard*, 713 F.Supp. 285, 291 (S.D. Indiana 1989).
17. There is nothing in the nature of the crime of conversion which would indicate that Congress must have silently intended that it be treated as a continuing offense. *Id.*
18. The Court hereafter applies Trial Rule 4.4(C) to the present situation.
19. (1) While the Court has not been asked to undertake an analysis of jurisdiction, it is clear that Illinois has jurisdiction over every party, and one likely necessary non-party, to the transaction at issue.
20. (2) and (4) The convenience to the parties and witnesses favor holding this lawsuit in Illinois, as well as all factors pointing directly to Illinois.
21. (3) While IC 34-24-3-1 does not exist in the Illinois, common law holds the ability for the PLAINTIFF, if it carries its burden, to be made whole in Illinois. With nearly every aspect of this case taking place in Illinois, that is the law that should be applied to this case.
22. The Court made a finding that *Forum Non Conveniens* is appropriate to this matter, with Illinois being the proper forum for this case.
23. The parties are therefore instructed to undertake an attorney conference related to Trial Rule 4.4(D). This case will be dismissed in Indiana, upon the completion thereof.

24. This Court shall maintain jurisdiction over this matter pursuant to Trial Rule 4.4(D) and (E), until this case can be established in Illinois.


MOTION TO STRIKE AND TRIAL RULE 12 AND 56 ANALYSIS

25. The Court, having ruled favorably on the DEFENDANTS' Trial Rule 4.4 motion, **DENIED** the DEFENDANTS' motion to strike, without prejudice.
26. The Court further **DENIED**, without prejudice, the DEFENDANTS' Trial Rule 12 / Trial Rule 56 motion.
27. The Court found that the Trial Rule 4.4 dismissal – not Trial Rule 12 / 56 dismissal – was the appropriate disposition for the present action.

UNRELATED ORDER

28. On November 16, 2023, this Court improperly ruled upon the PLAINTIFF'S motion to amend its complaint, with this judicial officer failing to remember the parties' agreement that the DEFENDANTS need not respond to that motion until after this order was entered.
29. The Court therefore **VACATED** its order of yesterday, November 16, 2023.
30. The PLAINTIFF'S motion to amend its complaint is therefore **DENIED**, without prejudice.

SO ORDERED this NOV. 17 2023



JUDGE BRUCE D. PARENT
Lake Superior Court, Civil Room Seven