

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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| NATIONWIDE BI-WEEKLY | : | |
| ADMINISTRATION, INC., | : | NO. 1:05-CV-00482 |
| | : | |
| Plaintiff, | : | ORDER |
| | : | |
| | : | |
| v. | : | |
| | : | |
| | : | |
| BELO CORP., <u>et al.</u> , | : | |
| | : | |
| Defendants. | : | |

This matter is before the Court on the Defendants Dallas Morning News (initially misidentified as Belo Corporation) and Scott Burns' Motion to Dismiss for Lack of Personal Jurisdiction and Failure to State a Claim Upon Which Relief Can Be Granted (doc. 3), Plaintiff Nationwide Bi-Weekly Administration, Inc.'s Memorandum in Opposition to Defendants' Motions to Dismiss (doc. 14), Defendants' Reply Memorandum in Support of Motion to Dismiss for Lack of Personal Jurisdiction and Failure to State a Claim Upon Which Relief Can Be Granted (doc. 17), and Defendants' Motion for Leave to File Supplemental Memorandum in Support of Motion to Dismiss for Lack of Personal Jurisdiction and Failure to State a Claim Upon Which Relief Can Be Granted (doc. 19). The Court held a Hearing on Defendants' Motion on March 9, 2006. Subsequent to that Hearing, Plaintiff filed an Alternative Motion to Transfer Venue (doc. 20). Defendants indicated to the Court shortly after submission of this Motion by Plaintiff that they would not be filing any opposition. The Court notes that as of the date of this Order no

Opposition has been filed. As the Court grants Plaintiff's Motion to Transfer Venue (doc. 20), for the reasons discussed below, it declines to rule on Defendants' pending Motion to Dismiss (doc. 3).

Nationwide provides a bi-weekly mortgage payment service to borrowers (doc. 3). This involves administering the payment of thirteen monthly mortgage payments every year instead of the typical twelve (Id.). This service is provided for a small fee and in effect a mortgagee winds-up receiving twenty-six payments a year for a net gain of one monthly payment (Id.). Nationwide distributes a marketing letter to borrowers in which the service is explained (Id.). Nationwide's marketing letter presents a sample comparison of the results obtainable if its service is used (Id.). The sample, according to Nationwide, is based upon a \$110,000.00, thirty-year mortgage at eight percent (Id.). Dallas Morning News published an editorial piece dated July 29, 2003, in the Dallas Morning News, which questions the need of Nationwide's service (Id.). The article is headlined with the following two lines: "You're 'entitled' to deception" and "Sales pitch for biweekly mortgage payment plan doesn't tell whole story" (Id.). This article continues to be available on a web site owned and maintained by the Dallas Morning News (Id.). Nationwide argues that this article portrays its marketing letter as deceptive (Id.).

Central to the Parties' dispute is the allegation by Nationwide that the article incorrectly states the "sample mortgage" used by it in its marketing letter (Id.). The article comments that

Nationwide failed to disclose any interest rate in its marketing letter whatsoever (Id.). Nationwide maintains that it did indeed disclose an interest rate in its sample - specifically, eight percent (Id.). The article states that no loans at the rate actually used in the sample have been offered in approximately fifteen years (Id.). This, asserts Nationwide, is false (Id.). Based upon the Dallas Morning News's misreading of the assumptions in the "sample mortgage," Nationwide claims that the Dallas Morning News defames it and falsely disparages the services offered by it (Id.). As a result of this alleged defamation, Nationwide claims that its business and reputation have been adversely impacted (Id.).

Title 28 U.S.C. § 1406(a) states that a "district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. § 1406(a). Section 1406(a) does not require that the district court have personal jurisdiction over the defendants before transferring the case. See e.g., 8 F.3d 325, 329 (6th Cir. 1993). In the case of Nation v. U.S. Gov't., 512 F.Supp. 121 (S.D. Ohio) (Rice, J.), the court stated:

[T]ransfer in and of itself is generally considered to be more in the "interest of justice" than dismissal and, therefore, doubts should be resolved in favor of preserving the action, particularly where it appears that venue may be properly laid in the proposed transferee district. In the present case, it appears that venue would be proper under 28 U.S.C. s 1391(b) in the Southern District of Indiana, wherein the claim arose

and in which, at least, the Defendant Sheriff of Marion County resides.

Nation at 126-127.

In the instant matter, the Court finds that venue is appropriate in the Northern District of Texas pursuant to 28 U.S.C. § 1391(a). This section states that venue is proper in a judicial district "where any defendant resides, if all defendants reside in the same state" or "in which a substantial part of the events or omissions giving rise to the claim[s] occurred." 28 U.S.C. § 1391(a). In this matter, all of the Defendants are residents of Texas and reside in the Northern District. Furthermore, a substantial portion of the events occurred in the Northern District of Texas - namely, the initial publication of the news article at issue.

Therefore, this matter is hereby TRANSFERRED in the interests of justice to the Northern District of Texas pursuant to 28 U.S.C. § 1406(a). This Court passes no judgment on the Motion to Dismiss filed by Defendants and any pending motions in this matter before this Court are rendered MOOT. This matter is DISMISSED from this Court's docket.

SO ORDERED.

Dated: March 28, 2006

/s/ S. Arthur Spiegel

S. Arthur Spiegel

United States Senior District Judge