United States District Court, District of Columbia.
Bertha EL-BEY, aka Bertha M. Vinson, Plaintiff,
v.
UNITED STATES OF AMERICA, et al.,
Defendants.
No. Civ.A. 04-1231(JDB).

Sept. 28, 2004.
Bertha El Bey, Fairfax, VA, pro se.

Pat S. Genis, US Department of Justice, Tax Division, Dennis John Quinn, Carr Maloney PC, Washington, DC, Steven William Ray, Ray & Isler, P.C., Vienna, VA, for Defendants.

MEMORANDUM OPINION

BATES, J.

*1 Plaintiff, appearing *pro se,* brought this action alleging that the Internal Revenue ("IRS"), the Fairfax Bar Association, and Swart Lalande & Associates ("Swart") violated her rights to due process during the levy of her wages by the IRS. Pursuant to Rule 12(b)(3) and 12(b)(6) of the Federal Rules of Civil procedure, defendant Swart has filed a motion to dismiss based on plaintiff's failure to state a valid claim and improper venue. Alternatively, defendant Swart requests that the Court transfer the case. Because the Court finds that venue is improper in this district, the case will be transferred in its entirety to the United States District Court for the Eastern District of Virginia.

FACTUAL ALLEGATIONS

Plaintiff alleges that on or about March 26, 2004, her employer, the Fairfax Bar Association, informed her that the IRS was levying her wages. Complaint ("Compl.") at 3. The IRS levy notice was dated March 15, 2004, for taxes owed for the years 1992 and 1993. *Id.* Plaintiff alleges that the IRS did not provide any documents regarding her due process rights. *Id.* She claims she telephoned the number on the levy notice and spoke to an IRS agent in Memphis, Tennessee, who refused to give her any information on the levy. *Id.* Plaintiff alleges that defendant Swart, an accounting firm, supported the illegal levy process. *Id.* at 5.

On or about April 5, 2004, plaintiff alleges that the IRS began to levy her wages. *Id.* She sent a letter to the Fairfax Bar Association informing them that they had a fiduciary duty to ensure that the IRS was levying her wages in accordance with the law. *Id.* at 4. Despite the notice to her employer, the IRS allegedly continued to erroneously levy her wages. *Id.* Plaintiff sent numerous letters to IRS service centers and other government officials, but received no responses to her inquiries. *Id.*

STANDARD OF REVIEW

A party's *pro se* pleadings are to be liberally construed. *Harris v. Kerner,* 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972)(per curiam); *United States v. Palmer,* 296 F.3d 1135, 1143 (D.C.Cir.2002). In reviewing the sufficiency of a complaint under Rule 12 of the Federal Rules of Civil Procedure, the court must consider the facts presented in the pleadings as true and construe them and all reasonable inferences in the light most favorable to the plaintiff. *Moore v. United States,* 213 F.3d 705, 713 n. 7 (D.C.Cir.), *cert. denied,* 531 U.S. 978, 121 S.Ct. 426, 148 L.Ed.2d 434 (2000). The court may dismiss a complaint on the ground that it fails to state a claim upon which relief can be granted if it appears that the plaintiff can prove no set of facts in support of his claim that would warrant relief. Fed.R.Civ.P. 12(b)(6); *Kowal v. MCI Communications Corp.,* 16 F.3d 1271, 1276 (D.C.Cir.1994); *Thomas v. District of Columbia,* 887 F.Supp. 1, 5 n. 2 (D.D.C.1995). To prevail on a motion to dismiss for improper venue, the defendant must present facts that defeat the plaintiff's assertion of venue. *Flynn v. Veazy Construction Corp.,* 310 F.Supp.2d 186, 190 (D.D.C.2004).

DISCUSSION

*2 Plaintiff's complaint alleges that the defendants violated 26 U.S.C. § 6331. When jurisdiction is premised on a federal question, venue is determined by 28 U.S.C. § 1391(b), which provides that a civil action can be brought only in

> (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

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In this district, the courts have applied a liberal interpretation of the venue requirements. *See Williams v. United States*, 932 F.Supp. 357, 363 (D.D.C.2003). Venue should be accepted "if the activities that transpired in the forum district were not insubstantial in relation to the totality of the events giving rise to plaintiff's grievance." *Lamont v. Haig*, 590 F.2d 1124, 1134 n. 62 (D.C.Cir.1978); *Thornwell v. United States*, 471 F.Supp. 344, 356 (D.D.C.1979). That being said, it remains true that venue is only proper in the District of Columbia "if sufficient activity giving rise to the plaintiff's cause of action" occurred here. *Franz v. United States*, 591 F.Supp. 374, 378 (D.D.C.1984). Courts should examine challenges to venue carefully to avoid the danger that a party is manufacturing venue in the District of Columbia. *Cameron v. Thornburgh*, 983 F.2d 253, 256 (D.C.Cir.1993); *Dickson v. United States*, 831 F.Supp. 893, 896 n. 3 (D.D.C.1993).

The requirements of the venue statute have not been met in this case. First, not all of the defendants reside in the District of Columbia. The complaint names defendants with addresses in Virginia, Washington, Pennsylvania, Tennessee, California, and the District of Columbia. In addition, plaintiff's claim arises from events that occurred in the state of Virginia--plaintiff resides in Virginia and her wages were levied by the IRS at her place of employment, the Fairfax Bar Association, in Fairfax, Virginia. Since the "events having operative significance in the case" did not occur here, venue is not proper in this Court. *See Lamont*, 590 F.2d at 1134.

Having determined that plaintiff's claim is not properly here, the Court must determine whether to transfer the action to an appropriate venue or to dismiss the claim. Under 28 U.S.C. § 1406(a), a district court may transfer a civil action to a district in which the case might have been brought. *See Zakiya v. United States*, 267 F.Supp.2d 47, 59 (D.D.C.2003). The Court may transfer a case in the interest of justice. 28 U.S.C. § 1406(a); *see also Cellutech, Inc. v. Centennial Celluar Corp.*, 871 F.Supp. 46, 50 (D.D.C.1994). The decision to transfer is an action within the Court's discretion. *Naartex Consulting Corp. v. Watt*, 722 F.2d 779, 789 (D.C.Cir.1983); *Crenshaw v. Antokol*, 287 F.Supp.2d 37, 42 (D.D.C.2003). However, the interest of justice generally favors transferring the case to a proper venue rather than dismissing the claim. *Davis v. American Soc'y of Civil Engineers*, 290 F.Supp.2d 116, 120 (D.D.C.2003). A transfer is favored over dismissal because it will allow "an expeditious and orderly adjudication on the merits." *Sinclair v. Kleindienst*, 711 F.2d 291, 293-94 (D.C.Cir.1983).

***3** In the interest of justice, then, the Court will transfer this case to a proper venue. As stated above, plaintiff resides in Fairfax, Virginia, and her cause of action arose there. Therefore, the Court will transfer the case to the United States District Court for the Eastern District of Virginia.

CONCLUSION

Based on the foregoing, the Court finds that venue is improper in this district. In the interest of justice, the case will be transferred pursuant to 28 U.S.C. § 1406(a) to the United States District Court for the Eastern District of Virginia. A separate Order accompanies this Memorandum Opinion.

ORDER

In accordance with the Memorandum Opinion issued this *28th* day of September, 2004, it is ORDERED that the case is TRANSFERRED to the United States District Court for the Eastern District of Virginia pursuant to 28 U.S.C. § 1406(a).

Not Reported in F.Supp.2d, 2004 WL 2418306 (D.D.C.), 94 A.F.T.R.2d 2004-6207

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