

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-50984



ROBERT W. JOHNSON,

Plaintiff - Appellant

v.

LINEBARGER GOGGAN BLAIR & SAMPSON, L.L.P.,

Defendant - Appellee

A True Copy
Certified order issued Nov 22, 2019

Tyler W. Cawley
Clerk, U.S. Court of Appeals, Fifth Circuit

Appeal from the United States District Court
for the Western District of Texas

Before SMITH, DENNIS, and DUNCAN, Circuit Judges.

PER CURIAM:

In this civil rights action, the plaintiff filed a notice of appeal from an order of the district court transferring the case to the United States District Court for the Southern District of New York, pursuant to 28 U.S.C. § 1404(a).

“Federal appellate courts have jurisdiction over appeals only from (1) a final decision under 28 U.S.C. § 1291; (2) a decision that is deemed final due to jurisprudential exception or that has been properly certified as final pursuant to Fed. R. Civ. P. 54(b); and (3) interlocutory orders that fall into specific classes, 28 U.S.C. § 1292(a), or that have been properly certified for appeal by the district court, 28 U.S.C. § 1292(b).” *Askanase v. Livingwell, Inc.*, 981 F.2d 807, 809-10 (5th Cir. 1993). The transfer of a civil action to another district

No. 19-50984

court pursuant to § 1404 is interlocutory in nature and is not appealable prior to the entry of a final judgment. *Stelly v. Employers Nat'l Ins. Co.*, 431 F.2d 1251, 1253 (5th Cir. 1970), *cert. denied*, 401 U.S. 908 (1971). Accordingly, the appeal is DISMISSED for want of jurisdiction.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ROBERT W. JOHNSON,

§

Plaintiff,

§

v.

SA-19-CV-878-FB (HJB)

LINEBARGER, GOGGAN, BLAIR &
SAMPSON, LLP

§

Defendant.

§

ORDER

The matter before the Court is the status of the above referenced case. This case was automatically referred to the undersigned for disposition of Plaintiff's application to proceed *in forma pauperis* ("IFP") and a review under 28 U.S.C. § 1915(e), pursuant to this Division's September 29, 2017, Standing Order. After review of Plaintiff's complaint (Docket Entry 1-1), the Court is of the opinion venue should be TRANSFERRED to the Southern District of New York, pursuant to 28 U.S.C. § 1404(a).

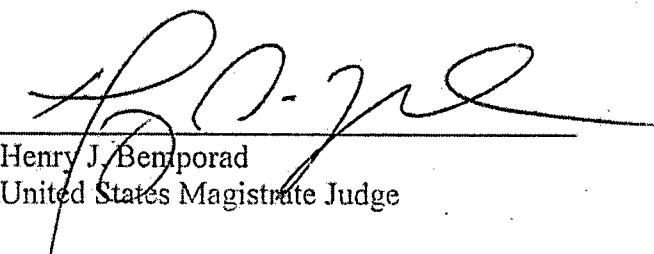
Section 1404(a) provides that, "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). Such a transfer is non-dispositive and may be ordered by a magistrate judge. *Shenker v. Murasky*, No. 95-CV-4692 (NG)(RML), 1996 WL 650974, at *1 (E.D.N.Y. Nov. 6, 1996) (citing *Michelli v. City of Hope*, No. 93-7582, 1994 WL 410964, at *6 n.1 (S.D.N.Y. Aug. 4, 1994)); *see Smith v. Carl Zeiss SMT, Inc.*, Civil Action No. 1:05cv570WJG-JMR, 2007 WL 686874, at *1 (S.D. Miss. Mar. 5, 2007) (citing *Shenker*, 1996 WL 650974, and *Harris v. Edward Hyman Co.*, 664 F.2d 943, 945 n.7 (5th Cir. 1981)) (holding motion to transfer venue is non-dispositive).

Plaintiff's complaint alleges that Defendant violated his constitutional rights in attempting to collect a debt on behalf of the New York State Thruway Authority.¹ (Docket Entry 1-1, at 3.) Plaintiff is a resident of Bronx County, New York, which is located in the Southern District of New York. *See* 28 U.S.C. § 112(b). Defendant is a law firm with an office located at 61 Broadway, Suite 2600, New York, NY 10006, which is in New York County, also located in the Southern District of New York. (See Docket Entry 1-1, at 6.) Although Defendant appears to have offices located in the Western District of Texas,² the complained-of letter originated from Defendant's New York office. (See *id.*)

As Plaintiff resides within the Southern District of New York, Defendant offices there, and the events giving rise to the lawsuit occurred there, it appears that Plaintiff's case should, for the convenience of the parties and witnesses, and in the interests of justice, be transferred to New York.

It is therefore ORDERED that Plaintiff's case is TRANSFERRED to the Southern District of New York.

SIGNED on September 12, 2019.



Henry J. Benporad
United States Magistrate Judge

¹ Plaintiff lists New York State Thruway Authority and an individual named Cristina Gonzalez as Defendants on his Civil Cover Sheet, but does not allege any claims against these two Defendants. (See Docket Entry 1-1.)

² Defendant's website states that its principal office is located in Austin, Texas, and the collection letter Plaintiff received lists a post office box in San Antonio, Texas as the payment address. (See Docket Entry 1-1, at 6; <https://www.lgbs.com/contact-us/> (last visited Sept. 12, 2019)).

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

OCT 18 2019

CLERK, U.S. DISTRICT CLERK
WESTERN DISTRICT OF TEXAS
BY 
DEPUTY

ROBERT W. JOHNSON,)
Plaintiff,)
V.) CIVIL ACTION NO. SA-19-CA-878-FB
LINEBARGER, GOGGAN, BLAIR &)
SAMPSON LLP,)
Defendant.)

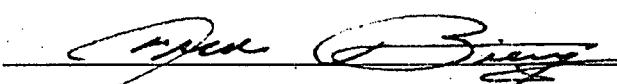
ORDER DENYING MOTION FOR REHEARING

Before the Court is plaintiff's *pro se* motion for rehearing. (Docket no. 5). This case has been transferred from this Court to the Southern District of New York. (Docket no. 2). When a case is transferred to a transferee district court, the transferor court loses all jurisdiction over the case. *In re Southwestern Mobile Homes, Inc.*, 317 F.2d 65, 66 (5th Cir. 1963); *Bustos v. Dennis*, Civil Action No. SA-17-CA-39-XR, 2017 WL 1944165, at *2 (W.D. Tex. May 8, 2017). Accordingly, this Court lacks jurisdiction to consider plaintiff's motion for reconsideration. Alternatively, even presuming that the Court had jurisdiction to reconsider the Order affirming the Magistrate Judge's decision to transfer this case to the Southern District of New York, it would deny such a request.

IT IS THEREFORE ORDERED that plaintiff's motion for rehearing (docket no. 5) is DISMISSED.

It is so ORDERED.

SIGNED this 18th day of October, 2019.


FRED BIERY
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ROBERT W. JOHNSON,)
Plaintiff,)
V.) CIVIL ACTION NO. SA-19-CA-878-FB
LINEBARGER, GOGGAN, BLAIR &)
SAMPSON LLP,)
Defendant.)

**ORDER AFFIRMING THE ORDER OF THE
MAGISTRATE JUDGE DATED SEPTEMBER 12, 2019**

Before the Court is plaintiff's notice of appeal, filed on September 23, 2019. (Docket no. 3).

The only order entered, and therefore the only order subject to appeal, is the September 12, 2019, Order (docket no. 2) of United States Magistrate Judge Henry J. Bemporad which *sua sponte* transferred this case to the Southern District of New York pursuant to 28 U.S.C. 1404(a).¹ After careful consideration, the Court is of the opinion that the Order should be affirmed and upheld without modification.

The standard of review for matters decided by a Magistrate Judge and appealed to the District Court is found in rule 72(a) of the Federal Rules of Civil Procedure. FED. R. CIV. P. 72(a). Rule 72(a) provides in part:

The district judge in the case must consider timely objections and modify or set aside any part of the other order that is clearly erroneous or is contrary to law.

Id.; see also W. DIST. LOC. R. app. C, 4(a) (citing 28 U.S.C. § 636(b)(1)(A) which provides that “[a] judge of the [district] court shall consider the appeal and shall set aside any portion of magistrate judge's order found to be clearly erroneous or contrary to law”).

¹A review of the docket sheet for the Southern District of New York (Foley Square) reflects that this case was “transferred in from the United States District Court for the Western District of Texas” on September 18, 2019, and assigned case number 1:19-cv-08662-UA. (SDNY CM/ECF, generally & docket no. 3).

The Court has reviewed the Order, the pleading on file and the entire record in this case, and finds the Order to be neither clearly erroneous nor contrary to law. Plaintiff's complaint alleges that defendant violated his constitutional rights in attempting to collect a debt on behalf of the New York State Thruway. Because plaintiff resides in the Southern District of New York, defendant offices there, and the events giving rise to this lawsuit occurred there, the Court agrees with the Magistrate Judge that this case was properly subject to transfer to the Southern District of New York for the convenience of the parties and witnesses, and in the interests of justice, pursuant to 28 U.S.C. § 1404(a).

IT IS THEREFORE ORDERED that the Order (docket no. 2) of the United States Magistrate Judge dated September 12, 2019, is AFFIRMED and upheld without modification.

It is so ORDERED.

SIGNED this 30th day of September, 2019.



FRED BIERY
UNITED STATES DISTRICT JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**