

FILED

AUG 22 2001

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

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

FILED

AUG 17 2001

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

EQUAL EMPLOYMENT OPPORTUNITY §  
COMMISSION, §  
Plaintiff, §

v. §

REGIS CORPORATION, §  
Defendant. §

CAUSE NO. SA-01-CA-0394-OG

A 01 CA 551 IN

**ORDER DENYING DEFENDANT'S MOTION TO DISMISS AND  
GRANTING DEFENDANT'S ALTERNATIVE MOTION TO TRANSFER VENUE**

Defendant Regis Corporation seeks dismissal for improper venue or in the alternative for a transfer of venue to the Austin Division based on "convenience" pursuant to 28 U.S.C. § 1404(a). (Docket no. 3.) Regis does not argue its motion to dismiss, and it is clear that venue is proper in this District. 42 U.S.C. § 2000e-5(f)(3). Therefore, the Court will address the motion to transfer.

The EEOC filed this potential class action against Regis alleging that plaintiffs, former hair stylists employed by Regis, and other similarly situated individuals were subjected to a sexually hostile work environment in violation of Title VII at Regis's salon located in Barton Creek Mall in Austin.

"For 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). Whether to transfer a case under this statute is a decision that rests within the sound discretion of the trial court. See Jarvis Christian College v. Exxon Corp., 845 F.2d 523, 528 (5th Cir. 1988). In reaching its decision, a court must consider several factors: the

4

availability and convenience of witnesses and parties, the location of counsel, the location of books and records, the cost of obtaining attendance of witnesses and other trial expenses, the place of the alleged wrong, the possibility of delay and prejudice if transfer is granted, and the plaintiff's choice of forum. See, e.g., Hogan v. Malone Lumber, Inc., 800 F.Supp. 1441, 1443 (E.D. Tex. 1992); United Sonics v. Shock, 661 F.Supp. 681, 682-83 (W.D. Tex. 1986); Greiner v. American Motor Sales Corp., 645 F.Supp. 277, 278 (E.D. Tex. 1986); Coons v. American Horse Show Ass'n, Inc., 533 F.Supp. 398, 400 (S.D. Tex. 1982). Defendant bears the burden of demonstrating to the Court that it should transfer the case. Peteet v. Dow Chemical Co., 868 F.2d 1428, 1436 (5th Cir. 1989).

The availability and convenience of witnesses is arguably the most important of the factors listed. Fletcher v. Southern Pac. Transp. Co., 648 F.Supp. 1400, 1401-02 (E.D. Tex. 1986); 15 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3851 at 415 (1986). In considering the availability and convenience of witnesses, a court must concentrate primarily upon the availability and convenience of key witnesses. Continental Airlines Inc. v. American Airlines, Inc., 805 F.Supp. 1392, 1396 (S.D. Tex. 1992). Regis has presented the affidavits of 24 witnesses, all of whom live and work in or around Austin. According to Regis, all are "key witnesses" because they either worked directly with the individuals who allegedly suffered a hostile work environment at the Barton Creek Mall salon or are the alleged harassers. Most of the potential witnesses are hair stylists who assert in affidavits that it will severely inconvenience them to travel to San Antonio to testify because it will cause them loss of income, loss of customer goodwill, and will inconvenience their employers and co-workers by leaving them short-handed. Further, most of the witnesses no longer work for Regis, so they cannot be

said to be under Regis' control.

Although the distance from San Antonio to Austin is not great, the Court notes from experience that the drive can take between one to two hours, depending on where in Austin one is traveling from, and traffic and road conditions during the trip. The Court finds that an approximate three hour round trip, combined with waiting time in the courthouse rotunda prior to testifying can cause a financial hardship to a hair stylist whose pay depends on the number of customers served. In addition, several of the witnesses work at a salon on South Lamar in Austin, multiplying the hardship to their customers and their employers.

Also militating strongly in favor of transfer is the fact that the alleged harassment occurred in Austin. Because this case is in its early stages, no lengthy delay or prejudice will result from a transfer. The location of records is a non-factor since they can easily be transported to any court. Although both attorneys are located in San Antonio, the Court gives this factor the least weight in its considerations. Dupre v. Spanier Marine Corp., 810 F.Supp. 823, 826 (S.D. Tex. 1993). The only factors against transfer are the facts that the EEOC chose this forum and according to the EEOC, the plaintiffs are located in San Antonio. "As a general rule, plaintiff's choice of forum is entitled to great deference." Henderson v. AT&T, 918 F.Supp. 1059, 1066 (S.D. Tex. 1996). When the other factors weigh strongly in favor of transferring the case, the plaintiff's choice of forum cannot be considered as controlling. Id., at 1065. Although both plaintiffs apparently reside in San Antonio, the EEOC has made no showing that, unlike the 24 witnesses tendered by Regis, it would create a severe hardship for the plaintiffs to travel to Austin. Finally, as this suit was filed as a class action suit concerning unlawful employment practices occurring at Regis's Austin facility, it is likely that more potential plaintiffs will be

located in Austin.

Having considered all of the factors presented by the parties, the Court is of the opinion that the balance of factors mandates transfer. Defendant's motion to dismiss is DENIED, and its motion to transfer is GRANTED. It is ORDERED that this case is transferred to the United States District Court for the Western District of Texas, Austin Division.

SIGNED and ENTERED this 17 day of August, 2001.

  
\_\_\_\_\_  
ORLANDO L. GARCIA  
UNITED STATES DISTRICT JUDGE