

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

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DENNIS CORRIVEAU AND :  
BETH ANNE CORRIVEAU, :  
 :  
Plaintiffs, : MEMORANDUM DECISION  
 : 3: 02 CV 360 (GLG)  
-against- :  
 :  
TIER TECHNOLOGIES, INC., :  
 :  
Defendant. :  
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This action, entitled "Petition to Discharge Invalid Mortgage," was originally commenced in Connecticut State Superior Court and removed to federal court on the basis of diversity jurisdiction, 28 U.S.C. § 1441, which is not challenged. Defendant now moves pursuant to 28 U.S.C. § 1404(a) for a change of venue to the United States District Court for the Eastern District of North Carolina, where a related action involving the same parties is pending. [Doc. # 10].

Background

A brief recitation of the background of this litigation is necessary to our decision on this motion. These alleged "facts" are taken from the pleadings in this case. Some are disputed and are set forth herein solely for the purpose of laying a foundation for the instant motion.

In 1999, plaintiff, Dennis Corriveau, executed and delivered to Tier Technologies, Inc., a mortgage encumbering certain real

estate in Meriden, Connecticut, owned by plaintiffs. (Plaintiff Beth Anne Corriveau was not a party to the mortgage, although she is an owner of the encumbered property.) The mortgage was given as security for certain obligations relating to a letter of credit given by Tier to First Union National Bank ("FUNB"), to collateralize an \$800,000 loan<sup>1</sup> from FUNB to Service Design Associates, Inc. ("SDA"), a corporation of which Dennis Corriveau was president and a principal shareholder.

According to defendant, Tier became involved in this transaction as a result of its interest in purchasing substantial assets of SDA that were encumbered by an FUNB loan. As a condition precedent to the closing of the asset purchase, SDA needed to obtain credit from FUNB, for which FUNB required a guaranty from Dennis Corriveau, individually, and a pledge of collateral for SDA's obligations from Tier. Tier guaranteed SDA's obligations by pledging a letter of credit as collateral, in exchange for which, Tier required SDA to indemnify Tier from any losses it might sustain. Additionally, Tier required Dennis Corriveau to guaranty SDA's obligations to Tier. As security for his guaranty, Dennis Corriveau pledged stock to Tier, granted Tier a security interest in his personalty, conveyed to Tier a deed of trust to his North Carolina home and a mortgage of the

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<sup>1</sup> There were actually two loans, one for \$500,000, which appears to have been repaid in full, and another for \$300,000, which was the subject of the substitution of collateral agreement that Corriveau negotiated with FUNB and which is discussed below.

Connecticut Property.

Subsequently, defendant alleges, Corriveau negotiated a modification of SDA's loan agreement, which allowed Tier to substitute a certificate of deposit for the letter of credit as collateral for the loan. Thereafter SDA defaulted on the \$300,000 loan, and FUNB realized on Tier's certificate of deposit, applying over \$200,000 of the certificate of deposit to pay off SDA's loan balance.

According to plaintiffs, the sole purpose of the Connecticut mortgage was to secure Mr. Corriveau's obligation to indemnify Tier for any draws made under the letter of credit. The letter of credit expired by its own terms on March 10, 2000, with no draws having been made. Plaintiffs then demanded that Tier release the mortgage, which it refused to do. On February 7, 2002, plaintiffs filed this action pursuant to Conn. Gen. Stat. §§ 49-8 and 49-13, seeking a declaration that the mortgage and lien created thereby are invalid, having abated in 2000, when the letter of credit expired. They also have asserted state-law claims for bad faith (Count Two), slander of title (Count Three), and violation of Connecticut's Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a, et seq. (Count Four), seeking damages for defendant's allegedly wrongful refusal to cancel the mortgage.

Tier answered plaintiffs' complaint and asserted a counterclaim against plaintiffs as a result of the more than \$200,000 that it was required to pay to FUNB when SDA defaulted

on the loan. In its counterclaim, Tier asks for a declaration that the mortgage on the Connecticut property is valid and enforceable and for a money judgment against Dennis Corriveau as a result of his guaranty and by way of contribution.

Prior to the filing of the instant action, in November of 2001, plaintiffs had filed a state court action in North Carolina against Tier, also seeking declaratory relief. In that action, plaintiffs contend that the substitution of the collateral agreement that Dennis Corriveau negotiated with FUNB discharged his guaranty of SDA's indemnity to Tier. Plaintiffs contend that the guaranty was limited to a loss resulting from the letter of credit, not the certificate of deposit that replaced it as security for the \$300,000 note. Among other relief, plaintiffs seek a declaration that the North Carolina deed of trust ceased to secure anything upon Tier's substitution of collateral for the note.<sup>2</sup>

Defendant removed the North Carolina state court action to the United States District Court for the Eastern District of North Carolina. Defendant, thereafter, answered the complaint and filed a counterclaim, seeking recovery of its loss on its

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<sup>2</sup> Defendant has not provided us with a copy of the pleadings in the North Carolina litigation. We are relying solely on the parties' description of the proceedings in their motion papers filed in this case. Based on the papers before the Court, it is unclear whether the North Carolina action involves only the North Carolina deed of trust or whether it also concerns other security pledged by Dennis Corriveau to guaranty SDA's promise to indemnify Tier.

certificate of deposit from Dennis Corriveau based on his guaranty of SDA's indemnity.

The court in North Carolina has issued a scheduling order and the parties have exchanged mandatory initial disclosures. Two months after the answer and counterclaim were filed in the North Carolina action, plaintiffs filed this action seeking the same declaratory relief with respect to the Connecticut mortgage as they seek with respect to the deed of trust in the North Carolina action, namely whether the substitution of collateral for the Note discharged plaintiff's guaranty to Tier. The parties in both actions are identical, and the counterclaims appear to be substantially the same.

#### **Discussion**

Defendant has moved for a change of venue pursuant to 28 U.S.C. § 1404, asserting that considerations of convenience and fairness dictate a change of venue to the United States District Court for the Eastern District of North Carolina. Plaintiffs have opposed this motion on the ground that North Carolina courts have no jurisdiction to discharge an invalid mortgage on Connecticut real property and, alternatively, that the factors to be considered under § 1404 do not favor transferring this action to North Carolina.

Defendant argues that the plaintiffs are residents of North Carolina, that most of the documentary evidence and witnesses in

this matter are in North Carolina, and that the operative transactions underlying the debt at issue occurred in North Carolina. It also contends that the operative documents require the application of North Carolina law by their terms. It further notes that none of the parties to this action reside in Connecticut (Tier is a California corporation), and no material witness to any issue is located in Connecticut.

Plaintiffs dispute whether the factors to be considered under a § 1404 motion warrant the transfer. Plaintiffs argue that there are significant evidence and witnesses located in Connecticut, particularly those related to plaintiffs' claim for damages. Plaintiffs further note that the defendant has not identified any witnesses in North Carolina other than plaintiff, Dennis Corriveau, who could provide relevant testimony in the case. Plaintiffs note that Connecticut law controls in this case, as specifically stated in the mortgage.<sup>3</sup> Plaintiffs also point to other factors which militate against the change of venue.

Plaintiffs' strongest argument, however, which defendant has failed to address,<sup>4</sup> is that under § 1404 this case can only be

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<sup>3</sup> The Mortgage provided at ¶ 12:

This Mortgage shall be governed by and construed according to the laws of the State of Connecticut.

<sup>4</sup> The time for filing a reply has long since expired.

transferred to another district "where it might have been brought." 28 U.S.C. § 1404(a). Plaintiffs argue that the North Carolina District Court is not a court where the action might have been brought. We agree.

Plaintiffs rely upon Conn. Gen. Stat. § 49-13(a), which provides that when a mortgage has become invalid, the person owning the property may bring a petition to the superior court within the judicial district in which the property is situated. The Connecticut statute sets forth the relief and the method for obtaining such relief and specifies the forum which can provide such relief. Plaintiffs note that mortgages, title, and other issues related to real property are matters of local law and procedure, citing, inter alia, Ivey v. Ivey, 183 Conn. 490, 492-93 (1981). Additionally, it has long been the law in Connecticut that the effect of instruments passing title to real estate must be determined by the law of the state in which the real estate is situated. New Haven Trust Co. v. Camp, 81 Conn. 539, 546 (1909). Consequently, plaintiffs argue that the North Carolina District Court does not have the power to discharge the mortgage or to determine title to Connecticut real property.

As plaintiffs point out, this Court can only transfer a case to another District "where it might had been brought." 28 U.S.C. § 1404(a); see Hoffman v. Blaski, 363 U.S. 335, 343-44 (1960). Thus, the transferor court may not transfer an action unless it first determines that, at the time the action was originally

filed, venue would have been proper in the proposed transferee district and that district would have had subject-matter jurisdiction and could have exercised personal jurisdiction over the defendant. 17 Moore's Federal Practice § 111.12[1][a](3d ed. 2002).

In this case, the real property encumbered by the mortgage is located in Connecticut; the mortgage is recorded in Connecticut; and any action to discharge that mortgage must be brought in Connecticut. Conn. Gen. Stat. § 49-13(a); see also Conn. Gen. Stat. § 51-345(b)(entitled "Venue in civil actions," which provides that actions involving title to land and to foreclose or redeem mortgages or liens upon real property shall be returnable to the judicial district where the land is located).

Courts have traditionally distinguished between transitory actions and "local" actions, which typically are in rem actions affecting title to real property. 17 Moore's Federal Practice § 110.20. The venue statutes apply only to transitory actions. Id. Under the "local action doctrine," a court may not exercise jurisdiction over any "local" action involving real property unless the property at issue is found within the territorial boundaries of the state where the court is sitting. Bigio v. Coca-Cola Co., 239 F.3d 440 (2d Cir. 2000). An action to discharge a mortgage on real property is a local action, since it directly affects title to real property. See Zartolas v.

Nisenfeld, 184 Conn. 471, 475 (1981)(holding that Connecticut is the only forum that can determine title to land in Connecticut); see also Chateau Lafayette Apartments, Inc. v. Meadow Brook National Bank, 416 F.2d 301 (5th Cir. 1969)(holding that, under Louisiana law, complaint to have mortgage cancelled was a local action, which had to be brought in the district where the property was located); Whalen v. Ring, 224 Iowa 267 (1937)(holding that an action for cancellation of real estate mortgages and decree estopping defendants from claiming any rights thereunder involves determination of rights or interest in real estate and hence must be brought in county wherein mortgaged property is situated); see generally 17 Moore's Federal Practice § 110.20[2]. Accordingly, we hold that this action to discharge a mortgage on real property located in Connecticut could not have been brought in the Eastern District of North Carolina. See Fall v. Eastin, 215 U.S. 1 (1909). For that reason, a change of venue under § 1404 is improper.

#### Conclusion

Therefore, defendant's motion for change of venue [**Doc. # 10**] is in all respects DENIED.

**SO ORDERED.**

**Dated: July 12, 2002**  
**Waterbury, CT**

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Gerard L. Goettel  
U.S.D.J.