IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

NP 301, LLC, Plaintiff, v. LIBERTY MUTUAL INSURANCE COMPANY, and ARCH INSURANCE COMPANY, Defendants/Third-Party Plaintiffs, v. METCON, INC., Third-Party Defendant.	:	CIVIL ACTION NO. 1:20-CV-02298-LMM

ORDER

This matter is before the Court on Defendants Liberty Mutual Insurance Company's and Arch Insurance Company's (collectively "Defendants") Motion to Dismiss [7]; Defendants' Motion to Transfer to the Eastern District of North Carolina [10]; Plaintiff NP 301 LLC ("NP 301")'s Motion for Leave to File Surreply in Opposition to Defendant's Motion to Transfer [22], and Plaintiff's Motion for Leave to file Surreply in Opposition to Defendant's Motion to Dismiss [27]. After due consideration, the Court

enters the following Order:

I. BACKGROUND[1]

Plaintiff NP 301 is a Georgia limited liability company with its principal place of business in Atlanta, Georgia. Plaintiff owns the Springhill Suites Hotel in Lumberton, North Carolina. The hotel was constructed pursuant to a written contract between Plaintiff and third-party Defendant, Metcon, Inc. ("Metcon"). The construction contract states that "it shall be governed by the law of the place where the Project is located."

On September 10, 2015, Metcon, as principal, furnished NP 301 with a "Maintenance Bond" (the "Bond") issued by Defendants Liberty Mutual Insurance Company ("Liberty") and Arch Insurance Company ("Arch") in the sum of $300,000 for a period of three years starting September 11, 2016. The Bond provides:

> [T]he Principal shall remedy without cost to the Obligee any defect which may develop during a period of Three (3) years from 09/11/2016 (the date of completion, acceptance of the work performed under the contract and the end of the one year maintenance period) provided such defects are caused by defective or inferior materials or workmanship.

Plaintiff alleges that Metcon defaulted on its obligation by failing to repair its defective work on the hotel. Subsequently, Plaintiff gave Defendants timely notice of the defect and made demand on Defendants to pay the $300,000 sum of the Bond. Defendants refused to make payment of any kind.

[1] Unless otherwise indicated, all facts are taken from the Complaint [1-3] and construed in the light most favorable to Plaintiff as the nonmoving party.

Based on the foregoing, Plaintiff filed suit against Defendants in the Superior Court of Gwinnett County on April 27, 2020, alleging that Defendants (1) breached the surety bond; and (2) acted in bad faith, so as to entitle Plaintiff to attorneys' fees and additional damages provided by O.C.G.A. § 10-7-30. Defendants timely removed the case to this Court on May 29, 2020. Dkt. No. [1]. Defendants now move to dismiss Plaintiff's claim for bad faith and attorneys' fees pursuant to O.C.G.A. § 10-7-30 [7] and to transfer this case to the Eastern District of North Carolina [10]. The Court will address each motion in turn.

II. MOTION TO DISMISS

a. Legal Standard

Federal Rule of Civil Procedure 8(a)(2) requires that a pleading contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). While this pleading standard does not require "detailed factual allegations," the Supreme Court has held that "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)).

To withstand a Rule 12(b)(6) motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Id. (quoting Twombly, 550 U.S. at 570). A complaint is plausible on its face when the plaintiff pleads factual content necessary for the

court to draw the reasonable inference that the defendant is liable for the conduct alleged. Id. (citing Twombly, 550 U.S. at 556).

At the motion to dismiss stage, "all well-pleaded facts are accepted as true, and the reasonable inferences therefrom are construed in the light most favorable to the plaintiff." FindWhat Inv'r Grp. v. FindWhat.com, 658 F.3d 1282, 1296 (11th Cir. 2011) (quoting Garfield v. NDC Health Corp., 466 F.3d 1255, 1261 (11th Cir. 2006)). However, this principle does not apply to legal conclusions set forth in the complaint. Iqbal, 556 U.S. at 678.

b. Discussion

In support of its motion to dismiss Plaintiff's bad faith claim, Defendants argue that North Carolina law governs for two reasons and therefore precludes recovery under O.C.G.A. § 10-7-30. Dkt. No. [7-1] at 5. First, the Bond incorporates by reference the construction contract, which contains a choice-of-law provision specifying the application of North Carolina law. See id. Second, even absent the choice-of-law provision, under Georgia's of choice-of-law rules[2], Georgia follows the doctrine of *lex loci contractus*; thus, contracts are governed by the law of the place where they are made. See id. at 5-6; see also Boardman Petroleum, Inc. v. Federated Mut. Ins. Co., 135 F.3d 750, 752 (11th Cir. 1998). Because the Bond was both signed by Defendants and delivered to Metcon for execution in North Carolina, Defendants argue that North

[2] Federal courts sitting in diversity apply the choice-of-law principles of the forum state. Baragona v. Kuwait Gulf Link Transport Co., 688 F. Supp. 2d 1353, 1354 (N.D. Ga. 2007).

Carolina law should apply to Plaintiff's bad faith claim. Dkt. No. [7-1] at 6-7. Under North Carolina law, an obligee may not assert a bad faith cause of action against a surety; Defendants thus ask the Court to dismiss Plaintiff's bad faith claim. See id. at 8-9; see also Cincinnati Ins. Co. v. Centech Bldg. Corp., 286 F. Supp. 2d 669, 690-91 (M.D.N.C. 2003).

In response, Plaintiff does not contest Defendants' arguments with respect to the Bond's incorporation of the construction contract or the absence of a bad faith cause of action against a surety under North Carolina law; rather, Plaintiff argues that a claim for bad faith pursuant to O.C.G.A. § 10-7-30 sounds in tort. See Dkt. No. [16] at 1, 3. In tort cases, Georgia follows the traditional doctrine of *lex loci delecti*. Dowis v. Mud Slingers, Inc., 621 S.E.2d 413, 419 (Ga. 2005). "The general rule is that 'the place of the wrong, the locus delecti, is the place where the injury was suffered rather than the place where the act was committed, or, as it is sometimes more generally put, it is the place where the last event necessary to make an actor liable for the alleged tort takes place." Risdon Enters., Inc. v. Colemill Enters., Inc., 324 S.E.2d 738, 740 (1984). Plaintiffs argue that Georgia law should apply because Plaintiff felt the injury at its headquarters in Memphis, Tennessee and—in the absence of a Tennessee statute—Georgia law should govern. See Dkt. No. [16] at 10.

As a preliminary matter, the Court grants Plaintiff's Motion for Leave to File a Surreply. Dkt. No. [27]. The Court has considered the surreply attached to Plaintiff's motion.

Turning back to the issue at hand, O.C.G.A. § 10-7-30 provides for attorneys' fees and up to a 25% penalty "[i]n the event of the refusal of a corporate surety to commence the remedy of a default covered by, to make payment to an obligee under, or otherwise to commence performance in accordance with the terms of a contract of suretyship within 60 days after receipt from the obligee of a notice of default or demand for payment, and upon a finding that such refusal was in bad faith." Plaintiff urges the Court to rely on In re Commerical Money Center, Inc., Equipment Lease Litigation, in which a district court in Ohio—sitting in diversity—determined the plaintiff's claims under O.C.G.A. § 10-7-30 sounded in tort. 603 F. Supp. 2d 1095, 1111 (N.D. Ohio. 2009). In so holding, the court analogized to cases in which Georgia courts treated claims against insurers for bad faith failure to settle insurance suits as tort claims. See id. at 1110 (citing Delancy v. St. Paul Fire & Marine Ins. Co., 947 F.2d 1536, 1545-46 (11th Cir. 1991) and Arrow Exterminators, Inc. v. Zurich Am. Ins. Co., 136 F. Supp. 2d 1340, 1354 (N.D. Ga. 2001)).

Defendants respond that In re Commercial Money Center erred in comparing Plaintiff's claim under O.C.G.A. § 10-7-30 to a tort claim for bad faith failure to settle. See Dkt. No. [19] at 9. The Court agrees; O.C.G.A. § 10-7-30 is more akin to a claim under O.C.G.A. § 33-4-6. That statute provides for attorneys' fees and up to a 50% penalty "[i]n the event of a loss which is covered by a policy of insurance and the refusal of the insurer to pay the same within 60 days after a demand has been made by the holder of the policy and a finding has been made that such refusal was in bad faith." Indeed, Georgia courts have observed that O.C.G.A. § 33-4-6 is "virtually identical to

O.C.G.A. § 10-7-30" and, as such, courts are "constrained" by decisions interpreting O.C.G.A. § 33-4-6 when analyzing O.C.G.A. § 10-7-30. Columbus Fire & Safety Equipment Co., Inc. v. American Druggist Ins. Co., 304 S.E.2d 471, 473 (Ga. Ct. App. 1983); see also Ayers Enters., Ltd. v. Exterior Designing, Inc., 829 F. Supp. 1330, 1332 n.2 (N.D. Ga. 1993).

To that end, courts have soundly rejected the notion that claims under O.C.G.A. § 33-4-6 sound in tort. When interpreting O.C.G.A. § 33-4-6, courts have repeatedly held that the duty of good faith arises out of the insurance contract and therefore "a bad faith claim pursuant to O.C.G.A. § 33-4-6 is more similar to a breach of contract claim than a tort claim." Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. EPT Mgmt. Co., No. 1:06-cv-024-CAP, 2006 WL 8433523, at *3 (N.D. Ga. Dec. 11, 2006); Deep Sea Financing, LLC v. British Marine Luxembourg, S.A., No. CV 409-022, 2010 WL 3463591, at *3 (N.D. Ga. Sept. 1, 2010) ("[Section 33-4-6] does not create a separate tort that can be maintained independently of a plaintiff's contractual claim."); Great Southwest Exp. Co., Inv. v. Great Am. Ins. Co. of New York, 665 S.E.2d 878, 881 n.3 (Ga. Ct. App. 2008) (rejecting the plaintiff's contention that a claim for refusal to pay also arises under the common law of tort and observing "absent some relationship beyond the relation of insurer and insured, O.C.G.A. § 33-4-6 provides the exclusive remedy."). In other words, "where the relationship between the plaintiff and the defendant insurance company is simply contractual, the mere breach of an ordinary contract does not constitute a tort." Headrick v. State Farm Fire and Cas. Ins. Co., No. 4:08-cv-0004, 2008 WL11322195, at *3 (N.D. Ga. Mar. 28, 2008) (citing Globe Life &

Accident Ins. Co. v. Ogden, 357 S.E.2d 276, 277 (1987). By contrast, the Delancy case—upon which In re Commercial Money Center relied—addressed a situation in which an insurer violated a duty *independent* of the insurance contract. 947 F.2d at 1545-47.

Notwithstanding, Plaintiff urges the Court to disregard cases interpreting O.C.G.A. § 33-4-6 and find that O.C.G.A. § 10-7-30 sounds in tort because "Georgia courts have not expressly stated one way or the other." Dkt. No. [27] at 8. But Plaintiff offers no authority or persuasive argument for distinguishing the two statutes—the only difference between the two being that § 33-4-6 applies to the liability of insurance companies on insurance contracts while § 10-7-30 applies to the liability of sureties on suretyship contracts. See Columbus Fire & Safety Equip. Co., 304 S.E.2d at 473. Nor can the Court reconcile Plaintiff's unsupported argument that "the existence of these bad faith statutes" indicates a "special relationship between the insured/insurer and the oblige/surety" with the caselaw discussed above. See Dkt. No. [27] at 6. Thus, the Court finds that Plaintiff's claims under O.C.G.A. § 10-7-30 sound in contract, not tort.

Moreover, because the duty of good faith arises out of contractual duties, courts have held that a plaintiff may not recover under O.C.G.A. § 33-4-6 unless Georgia law applies to the insurance contract. Stated otherwise, contractual choice-of-law provisions specifying the application of another state's laws preclude relief under O.C.G.A. § 33-4-6. See Jewell v. Atlantic Specialty Ins. Co., No. 1:18-cv-0586-CAP, 2018 WL 894944, at *4 (N.D. Ga. Apr. 4, 2018) (holding that the plaintiff could not state a claim for bad faith under O.C.G.A. § 33-4-6 because the insurance contract specified that the contract was governed by the laws of the District of Columbia); Deep Sea

Financing, 2010 WL 3463591, at *3 (holding an agreement that an insurance policy shall be governed by the laws of Mexico precluded relief pursuant to O.C.G.A. § 33-4-6, notwithstanding the plaintiff's choice of forum); Pinkerton & Laws, Inc. v. Royal Ins. Co. of Am., 227 F. Supp. 2d 1348, 1357 (N.D. Ga. 2002) (finding O.C.G.A. § 33-4-6 "not applicable if the laws of some other state should be applied to the issues in this case."). Thus, the Court likewise finds that a plaintiff cannot recover under O.C.G.A. § 10-7-30 unless Georgia law applies to the surety bond.

Here, it is undisputed that the Bond incorporates by reference the contract between Plaintiff and Metcon. See, e.g., Dkt. No. [16] at 3. Because Plaintiff's bad faith claim arises out of the duties contemplated by that contract, which contains a choice-of-law provision applying North Carolina law, Plaintiff's bad faith claims pursuant to O.C.G.A. § 10-7-30 must be dismissed. Defendants' motion to dismiss Plaintiff's claims for attorneys' fees and bad faith under O.C.G.A. § 10-7-30 [7] is therefore **GRANTED.**

III. MOTION TO TRANSFER

a. Legal Standard

"For the convenience of parties and witnesses, in the interest of justice," the Court "may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). Because "[t]he federal courts traditionally have accorded a plaintiff's choice of forum considerable deference," the "burden is on the movant to establish that the suggested forum is more convenient." In re Ricoh Corp., 870 F.2d 570, 573 (11th Cir. 1989) (per curiam). "The plaintiff's choice of forum should not be disturbed unless it is clearly

outweighed by other considerations." Robinson v. Giarmarco & Bill, P.C., 74 F.3d 253, 260 (11th Cir. 1996) (quotation omitted). However, the plaintiff's choice of forum "is entitled to less weight when none of the parties resides" in the district in which the plaintiff brings suit. Ramsey v. Fox News Network, LLC, 323 F. Supp. 2d 1352, 1355 (N.D. Ga. 2004).

"The question of whether to transfer venue is a two-pronged inquiry." Collegiate Licensing Co. v. Am. Cas. Co. of Reading, Pa., 842 F. Supp. 2d 1360, 1366 (N.D. Ga. 2012) (quotation omitted). "First, the alternative venue must be one in which the action could have been brought by the plaintiff." Id. (quotation omitted). Second, the Court must weigh the private and public factors, which include:

> (1) the convenience of the witnesses; (2) the location of relevant documents and the relative ease of access to sources of proof; (3) the convenience of the parties; (4) the locus of operative facts; (5) the availability of process to compel the attendance of unwilling witnesses; (6) the relative means of the parties; (7) a forum's familiarity with the governing law; (8) the weight accorded a plaintiff's choice of forum; and (9) trial efficiency and the interests of justice, based on the totality of the circumstances.

Manuel v. Convergys Corp., 430 F.3d 1132, 1135 n.1 (11th Cir. 2005). After weighing these factors, if the Court finds that "the transfer would merely shift inconvenience from one party to the other, or if the balance of all factors is but slightly in favor of the movant, plaintiff's choice of forum should not be disturbed and transfer should be denied." Sarvint Techs., Inc. v. Omsignal, Inc., 161 F. Supp. 3d 1250, 1266 (N.D. Ga. 2015) (quotation omitted).

b. Discussion[3]

As an initial matter, Plaintiff does not dispute that this action could have been brought in the Eastern District of North Carolina. See Dkt. No. [15] at 11. Accordingly, the Court need only consider the second step of the transfer inquiry—that is, weighing the private and public factors. As set forth above, Defendants bear the burden of establishing that the Eastern District of North Carolina is the more convenient forum for this action. See In re Ricoh Corp., 870 F.2d at 573. The Court will address each factor in turn.

1. Convenience of the Witnesses

The most important § 1404(a) factor is the convenience of witnesses. Sarvint, 161 F. Supp. 3d at 1266. Although the Court considers the convenience of party witnesses, the critical determination under this factor is the convenience of the forum to key non-party witnesses. See Ramsey, 323 F. Supp. 2d at 1356. "Party witnesses are the parties themselves and those closely aligned with a party, and they are presumed to be more willing to testify in a different forum, while there is no such presumption as to non-party witnesses." Id. Key witnesses are those with information regarding the liability of a defendant and are accorded more weight than damages witnesses "due to the fact that without liability, there are no damages to recover." Id. at 1357. Moreover, the "true concern is not merely

[3] Additionally, the Court grants Plaintiff's Motion for Leave to File a Surreply. Dkt. No. [22]. The Court has considered the surreply attached to Plaintiff's motion.

'convenience' of the witnesses, but the likelihood that key witnesses will be able to testify at trial." Sarvint, 161 F. Supp. 3d at 1267.

Defendants argue that this factor heavily favors transfer because the primary non-party witnesses, including subcontractors hired by Metcon, will be those involved in the construction of the hotel—all of whom are North Carolina entities. See Dkt. Nos. [10-1] at 7; [20-4]; [20-5]; [20-6]; [20-7].[4] According to Defendants, then, the key witnesses all reside in North Carolina. Dkt. No. [20] at 5. Defendants also cite to records from the North Carolina Secretary of State indicating that two of the entities—Pinkerton & Laws, Inc., and Intertek/PSI—that Plaintiff has identified as employing potential non-party witnesses have offices in North Carolina and thus will not be inconvenienced by a transfer. See Dkt. Nos. [20-1]; [20-2].

Plaintiff responds that the primary non-party witnesses are those who can shed light on the discovery of the latent defects in the hotel, the notice Plaintiff provided to Defendants and Metcon, and Defendants' alleged failure to make payment on the Bond. See Dkt. No. [15] at 3. Plaintiff identifies a number of its employees, former employees, contractors, and consultants involved in discovering the defects and fixing the hotel who live in the Atlanta area. See id.

[4] In its Surreply, Plaintiff argues that the Court cannot consider the cited documents from the North Carolina Secretary of State because they are hearsay. See Dkt. No. [22] at 4. However, it is well-settled that courts may take judicial notice of public records maintenance by a secretary of state. See, e.g., Willis v. Homes of Light, LLC, No. 1:18-cv-3514-ELR-JKL, 2018 WL 4850134, at *1 n.1 (N.D. Ga. Aug. 21, 2018).

The Court, however, finds this factor is neutral as to transfer. Defendants urge the Court to disregard Plaintiff's proffered witnesses because they are all either personnel of or closely aligned with Plaintiff and can be expected to attend a trial wherever it is held. See Dkt. No. [20] at 4. It is true that the Court gives "less weight to inconvenience to witnesses who are employed by a party, because the party can ensure their presence at trial." Sarvint, 161 F. Supp. 3d at 1267; see also George v. Academy Mortg. Corp. (UT), No. 1:16-cv-471-CAP, 2016 WL 11575080, at *2 (N.D. Ga. July 12, 2016) (rejecting the defendants' argument that litigating in Georgia—rather than Utah—would inconvenience its own employee witnesses because such an argument "is essentially about the inconvenience and excess costs the defendant would suffer, not the witnesses."). But in making this argument, Defendants inappropriately attempt to shift the burden to Plaintiff to demonstrate that the Northern District of Georgia is a *more* convenient forum. It is axiomatic that Defendants bear the burden to establish the need for transfer. In re Rico Corp., 870 F.2d at 573. Defendants offer only their own unsupported assertions that the primary non-party witnesses, including subcontractors hired by Metcon, would prefer the Eastern District of North Carolina. Because Defendants have not specifically identified any key non-party witnesses who would be inconvenienced, the Court finds this factor neutral as to transfer.

2. Location of Relevant Documents and the Relative Ease of Access to Sources of Proof

Neither party disputes that the location of the physical documents does not

play a substantial role in the Court's analysis in light of the availability of electronic storage and transfer of information. See, e.g., George, 2016 WL 11575080, at *2 (explaining that "electronic storage and transfer of information largely obviates any problems that may arise if this case is litigated in Georgia."). Instead, Defendants contend that transfer is proper because parties and witnesses will need access to the hotel, which is located in North Carolina. See Dkt. No. [10] at 7-8. However, Defendants offer only a cursory explanation as to why they would be unable to inspect the hotel if this case is not transferred, particularly in light of the relative proximity of the districts. See Dkt. No. [20] at 6. As such, the Court finds this factor weighs only slightly in favor of transfer.

3. Convenience of the Parties

Although Plaintiff owns a hotel in the Eastern District of North Carolina, it chose to file suit in the Northern District of Georgia, where it has its principal place of business. Dkt. No. [1-3] ¶ 1. Defendants are headquartered in Boston and New Jersey, and their registered agents are all located in the Northern District of Georgia. Id. ¶¶ 2-3. Nevertheless, Defendants argue that Metcon, the third-party defendant will be inconvenienced absent a transfer because Metcon is not registered to do business in Georgia. See Dkt. No. [10-1] at 15. However, Defendants offer nothing beyond speculation as to the travel and related expenses that Metcon might incur. See id. Moreover, Defendants' insistence that Plaintiff will not be inconvenienced by a transfer because it owns a hotel in North Carolina ignores the well-settled principle that "[t]he plaintiff's choice of forum

should not be disturbed unless it is clearly outweighed by other considerations." See Robinson, 74 F.3d at 260 (quotation omitted). Thus, this factor weighs against transfer.

4. Locus of Operative Facts

The Court finds that the locus of operative facts—that is, the site of the events from which the claims arise—is in the Eastern District of North Carolina because that is where the hotel is located and where the alleged breach of the maintenance obligation occurred. Indeed, Plaintiff concedes that its consultants and contractors did a great deal of work in North Carolina. See Dkt. No. [15] at 15. Notwithstanding, Plaintiff urges the Court that the importance of this factor is undermined because the individuals who worked in North Carolina "all came back to Georgia," and the Bond was allegedly delivered to Plaintiff in Georgia. See id. The Court is not persuaded. Plaintiff offers no support for its insistence that all persons involved in the building and repairs of the hotel returned to Georgia. Moreover, the core of this controversy concerns the damages arising from the alleged breach of the maintenance obligations—not the validity of the Bond itself. Cf. Hanover Ins. Co. v. Paint City Contractors, Inc., 299 F. Supp. 2d 554, 558 (E.D. Va. 2004) (finding that although the bond at issue was executed in another forum, the enforceability of the bond was not at issue and therefore the locus of operative facts was where the alleged breach of a contract to repair and paint certain oil tanks occurred). Accordingly, this factor weighs in favor of transfer.

5. Availability of Process to Compel the Attendance of Unwilling Witnesses

Federal district courts have absolute subpoena power to compel attendance at depositions and at trial of witnesses who live within 100 miles. See Fed. R. Civ. P. 45(c). The Court's ability to use compulsory process to obtain live testimony of key witnesses is an important factor. See Ramsey, 323 F. Supp. 2d at 1356-57. Defendants argue that most of the non-party witnesses live and work in North Carolina, and therefore this Court "has a greater risk of having unwilling witnesses who cannot be compelled by process to attend" than the Eastern District of North Carolina. Dkt. No. [10-1] at 10. But as discussed, Defendants have not identified any witnesses—much less made a showing via affidavit—who would be unwilling to travel to the Northern District of Georgia to testify. See George, 2016 WL 11575080, at *2 (finding this factor did not weigh in favor of transfer Utah where the defendant made no showing that potential witnesses would be unwilling to travel to Georgia). Thus, the Court finds this factor neutral as to transfer.

6. Relative Means of the Parties

Defendants are large insurance companies, while Plaintiff's sole asset appears to be the hotel in North Carolina. See Dkt. No. [10-1] at 10. Nevertheless, Defendants once again argue that Metcon's interests necessitate a transfer because Metcon is a local contractor with no known connection to Georgia. See id. Defendants, however, offer no evidence as to Metcon's means relative to

Plaintiff's means. Nor do Defendants seriously contest that they are large companies with significant resources. See id.; see also Dkt. No. [20] at 9. Thus, the Court finds the relative means of the parties weighs against transfer.

7. Forum's Familiarity with the Governing Law

Because the federal district court in either forum would be perfectly capable of applying the governing law, the Court finds this factor is neutral.

8. Plaintiff's Choice of Forum

"The federal courts traditionally accord plaintiff's choice of forum considerable deference." In re Ricoh Corp., 870 F.2d at 573 (citation omitted). However, that choice "has minimal value, or should be given less consideration . . . where none of the conduct complained of occurred in the forum selected." Eagle North Am., Inc. v. Tronox, LLC, 407cv131, 2008 WL 1891475, at *5 (S.D. Ga. Apr. 29, 2009) (citation omitted); see also Griffin Capital Co., LLC v. Essential Props. Realty Tr., Inc., No. 1:18-cv-42550-MHC, 2019 WL 5586547, at *3 (N.D. Ga. Jan. 18, 2019) (collecting cases). Thus, the Court finds this factor weighs only slightly against transfer.

9. Trial Efficiency and the Interests of Justice

Last, the Court considers the public interest factors of systemic integrity and fairness in "the interest of justice." Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 30 (1988). The Court also considers matters of trial efficiency including "access to evidence, availability of witnesses, the cost of obtaining witnesses, the possibility of a jury view, and all other practical problems that make trial of a

case easy, expeditious and inexpensive." Nam v. U.S. Xpress, Inc., No. 1:10-CV-3924-AT, 2011 WL 1598835, at *12 (N.D. Ga. Apr. 27, 2011) (quotation omitted). Defendants argue that a transfer will promote efficiency because (1) the Northern District of Georgia has "zero" local interest in this dispute; and (2) Metcon's subcontractors "have every incentive to keep themselves as far away from this litigation as possible" and will likely need to be subpoenaed to testify. Dkt. Nos. [10-1] at 12; [20] at 10. Plaintiff does, however, reside in this district and has demonstrated that some of its witnesses reside in the Atlanta metropolitan area. See Dkt. No. [15] at 4. While the Court accords no weight to either parties' bare speculation as to the willingness (or unwillingness) of out-of-state witnesses to testify, the Court finds that each party has otherwise raised some meritorious considerations; this factor is therefore neutral in the Court's analysis.

10. Conclusion

In sum, the Court finds that of the nine factors, one weighs in favor of transfer; one weighs slightly in favor of transfer; two weigh against transfer; one weighs slightly against transfer; and four are neutral. Because the balance of factors together is not "strongly in favor" of transfer, the Court concludes that this case should not be transferred. Sarvint, 161 F. Supp. 3d at 1266 ("[I]f the balance of all factors is but slightly in favor of the movant, plaintiff's choice of forum should not be disturbed and transfer should be denied.") (quotation omitted).

IV. CONCLUSION

Defendants' Partial Motion to Dismiss [7] is **GRANTED**, and Plaintiff's claims

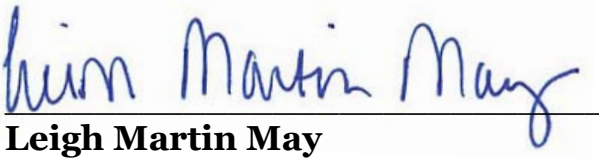
under O.C.G.A. § 10-7-30 are **DISMISSED.**

Defendants' Motion to Transfer to the Eastern District of North Carolina [10] is **DENIED.**

Plaintiff's Motion for Leave to File Surreply in Opposition to Defendant's Motion to Transfer [22] is **GRANTED.**

Plaintiff's Motion for Leave to file Surreply in Opposition to Defendant's Motion to Dismiss [27] is **GRANTED.**

IT IS SO ORDERED this 7th day of August, 2020.



Leigh Martin May
United States District Judge