

Having found that minimum contacts exist, I must decide whether compelling these out-of-territory defendants to submit to jurisdiction in the Virgin Islands comports with traditional notions of fair play and substantial justice. *Grand Entm't Group, Ltd. v. Star Media Sales, Inc.*, 988 F.2d 476, 481 (3d Cir.1993) (citing *International Shoe*, 326 U.S. 310 at 316, 66 S.Ct. 154). Applying these considerations here, I find it reasonable to assert jurisdiction over Citibank and Citigroup. The burden on the defendants to defend this lawsuit in the Virgin Islands is not severe, most of the relevant documents have already been filed in this Court and several airlines make daily flights connecting New York and St. Thomas. The Virgin Islands obviously has a valid interest in protecting its residents from out-of-state financial institutions. Resolving the case in this Court is just as efficient as trying it in New York and there is no evidence that the interests of New York or the Virgin Islands would be better served if this matter were not litigated in this jurisdiction. See, e.g., *Mesalic*, 897 F.2d at 701 (citing *Asahi Metal Indus. Co. v. Superior Ct.*, 480 U.S. 102, 113, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987)). Accordingly, I find that this Court has general jurisdiction over the defendants and that litigating this matter in this forum comports with the Constitution's due process requirements.

B. VENUE IN THIS COURT IS PROPER UNDER 28 U.S.C. § 1391(A)

Defendants also argue that this is an improper venue in which to litigate this dispute. (Mem. in Supp. of Defs.' Mot. to Dismiss at 20-21.) I agree with the plaintiffs, however, that the Virgin Islands is a proper choice of venue. (Pls.' Mem. of Law in Opp'n to Mot. to Dismiss at 24-29.) Although the plaintiffs agreed to submit to the jurisdiction of New York courts and to waive the defense of an inconvenient forum, they did not agree to sue or be sued exclusively in New York. The Amended 1999 Note states that

the undersigned [Epstein] hereby irrevocably submits to the jurisdiction of any New York state or federal court sitting in New York City, and the undersigned hereby irrevocably agrees that any action may be heard and determined in such New York state court or in such federal court. The undersigned hereby irrevocably waives, to the fullest extent he may effectively do so, the defense of an inconvenient forum to the maintenance of any action in any jurisdiction.

(Mem. In Support of Defs.' Mot. To Dismiss, Ex. D at 10.) The Amended 1999 Note, however, does not limit "the undersigned" to a specific forum or bar the plaintiffs from suing the defendants in any forum having personal jurisdiction over the defendants. Moreover, under the federal venue statute, a diversity case such as this can be brought in a "district where any defendant resides, if all defendants reside in the same State." 28 U.S.C. § 1391(a). This statute further provides that "[f]or purposes of venue ..., a defendant that is a corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced." 28 U.S.C. 1391(c). Because I have found that both Citibank and Citigroup are subject to this Court's personal jurisdiction and are thus deemed residents of the Territory for venue purposes, venue is proper in the Virgin Islands under section 1391(a)(1). In addition, these claims may be litigated in a "district in which a substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. § 1391(a)(2). The solicitation of the plaintiffs while they were in the Virgin Islands and the mailing of documents to the plaintiffs constitute a sufficiently substantial part of the events giving rise to this action to render venue proper under section 1391(a)(2). Accordingly, I will deny the defendants' request to dismiss this matter for improper venue.

C. THIS CASE NEED NOT BE TRANSFERRED TO NEW YORK

Anticipating that I might find that jurisdiction and venue are proper in this Court, the defendants have requested that I transfer this case to the United States District Court for the Southern District of New York. They aver that this claim actually arose in New York and that the clauses in the agreements stipulating to the application of New York Law and the plaintiffs' agreement to submit to the jurisdiction of New York courts require that this matter be litigated in New York. (Mem. Of Law in Support of Defs.' Mot. to Dismiss at 22-32.)

Transfer to a new forum under the federal venue statute requires that the transfer be "[f]or the convenience of the parties and witnesses [and] in the interest of justice." 28 U.S.C. § 1404(a). Citibank and Citigroup bear the burden of establishing by a preponderance of the evidence that transfer is necessary. *In re Charles Schwab & Co. Sec. Litig.*, 69 F.Supp.2d 734, 735 (D.Vi.1999) (citing *Shutte v. Armco Steel Corp.*, 431 F.2d 22, 25 (3d Cir. 1970)). Although a trial judge is afforded great discretion in deciding this motion, he or she should not disturb a plaintiffs choice of forum unless the balance of factors strongly weighs in favor of transfer. *Jackson v. Executive Airlines, Inc.*, Civ. No.2000-121, 2001 WL 664673, *2, 2001 U.S. Dist. 8004 LEXIS at *7 (D.V.I. June 7, 2001). A defendant seeking a transfer will not overcome this presumption unless the defendant can prove that the "balance of convenience of the parties is *strongly* in favor of defendant." *Shutte.*, 431 F.2d at 25. Among the factors to be considered in making this determination are:

(1) plaintiffs choice of forum; (2) defendant's preference; (3) where the claim arose; (4) convenience to the parties; (5) convenience to witnesses—but only to the extent that the witnesses may actually be unavailable for trial in one of the fora; (6) location of books and records; (7) practical considerations that could make the trial easier, more expeditious, or less expensive; (8) congestion of the possible fora; and (9) the familiarity of the trial judge with the applicable state law in diversity cases.