

## Client can't move fee dispute out of Mass. federal court

*Boston law firm benefits from 'removed action' venue statute*

By: Pat Murphy | May 23, 2019

A Chicago company sued in Massachusetts state court by law firm Riemer & Braunstein over nonpayment of fees could not obtain a change of venue after removing the case to federal court in Boston, a U.S. District Court judge has ruled.

Defendant Monroe Capital Management Advisors argued that the U.S. District Court for the Northern District of Illinois — in which it resided — or the Northern District of Texas — where the Boston law firm represented the defendant in the matter giving rise to the disputed fees — were more appropriate venues.

But Judge Allison D. Burroughs concluded that the client could not meet its heightened burden under the venue statute governing removed actions, 28 U.S.C. §1441.

"Here, Riemer & Braunstein brought this action in Suffolk County Superior Court," Burroughs wrote. "Monroe removed this action to the District of Massachusetts, which is the proper venue for an action removed from Suffolk County Superior Court. Accordingly, venue in the District of Massachusetts is proper."

In addition, the judge ruled that the defendant fell short in making a case for transfer of venue under 28 U.S.C. §1404(a).

"Where the effect of transfer would be to merely shift inconvenience from Monroe to Riemer & Braunstein, the convenience of the parties factor is neutral and does not outweigh the presumption in favor of Riemer & Braunstein's selected forum," the judge wrote.

The 14-page decision is *Riemer & Braunstein LLP v. Monroe Capital Management Advisors LLC, et al.*, Lawyers Weekly No. 02-273-19. The full text of the ruling can be found [here](#).

### Good strategy?

Riemer & Braunstein attorney Peter H. Sutton represents the firm, and Benjamin D. Stevenson of Boston is counsel for the defendant. Both lawyers declined to comment.

Linda Sandstrom Simard, a professor at Suffolk University Law School, viewed the ruling as a proper exercise of judicial discretion.

"The defendant was trying to rely upon the federal venue rule, but that rule is not applicable when a case is removed from state court," Simard said. "The case was properly filed in state court according to Massachusetts venue rules, and then the defendant removed it properly. When you remove a case, the proper venue for the removed case is the federal district that encompasses the state court where the case was originally filed."

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— Julie R. Bryan, Boston





Boston business litigator Julie R. Bryan agreed that §1441, the removed action venue statute, gave Riemer & Braunstein an advantage in keeping the case in Massachusetts once the firm filed the action in state court.

“The statute places a much higher burden on the defendant who wants to change venue,” she said. “They have to show that the factors weigh pretty heavily in favor of moving the case to another venue when the case started in Massachusetts state court.”

Bryan speculated that the firm may have made a strategic decision to file the case in state court first — even though it knew it would be removed — given the greater burden the defendant had in changing venue under the removed action venue statute.

“Certainly, the plaintiff could have brought the case in federal court because there is diversity amongst the parties,” Bryan said. “Maybe they were thinking that they’d have a better shot at keeping it in Massachusetts if they started in state court. I don’t know that for a fact, but it’s an interesting strategic consideration.”

Edward S. Cheng, a business litigator in Boston, said the result in the case was as expected.

“It shouldn’t come as a surprise to anybody that if you try to avoid paying fees to a corporate entity in a particular state, you can get sued in that state,” Cheng said, noting that the decision was consistent with the general rule that the plaintiff in a case gets to choose venue.

“That’s why sometimes there’s a race to file first,” he said.

### **Fee fight**

According to the pleadings, the defendant first retained Boston-based Riemer & Braunstein in 2005. Over the years, the firm has represented the defendant, a Delaware LLC headquartered in Chicago, in more than 20 matters.

In 2016, the defendant retained the firm to represent it as a secured senior lender in the bankruptcy case of a company that Monroe indirectly owned. The Chapter 11 case was filed in the U.S. Bankruptcy Court for the Northern District of Texas.

The defendant became the target of a complaint filed in the bankruptcy case on behalf of a committee of unsecured creditors and retained Riemer & Braunstein to represent it in the adversary proceeding. The firm’s Boston lawyers later obtained a dismissal or summary judgment with respect to the vast majority of the 28 claims in the adversary proceeding.

In January 2018, the defendant retained local counsel to replace Riemer & Braunstein as lead counsel in the Texas adversary proceeding. Riemer & Braunstein for a short period remained in the case, providing support as co-counsel.

The firm billed the defendant \$127,000 for work in December 2017. The firm’s invoices for January 2018 brought the total balance due to \$392,000.

However, the defendant objected to the January billing and sought to negotiate a discount. When the defendant refused a demand to pay all amounts due, the firm withdrew as counsel in the Texas bankruptcy case on the ground of nonpayment of fees. The defendant responded by terminating the firm from all non-adversary proceeding matters.

In October 2018, the firm brought breach of contract and related claims against the defendant in Suffolk Superior Court, seeking payment of \$395,000. The defendant removed the case to Massachusetts federal court on the ground of diversity jurisdiction. The defendant followed up by moving to dismiss for improper venue. In the alternative, the defendant sought transfer of venue to Illinois or Texas.

### **Removed action statute controls**

In moving to dismiss, the defendant argued that the question of whether venue in the District of Massachusetts is proper is controlled by 28 U.S.C. §1391(b).

In particular, the defendant contended that, even assuming the truth of the plaintiff's allegations, the law firm was unable to show in accordance with §1391(b)(2) that Massachusetts is "a judicial district in which a substantial part of the events or omissions given rise to the claim occurred."

But Burroughs observed that §1391(b) did not apply because the case had been removed from state court.

"The venue of removed actions is governed by Section 1441(a), which allows for civil actions brought in state court to be removed to the federal district court 'embracing the place where [the state] action is pending,'" the judge wrote.

Given that Riemer & Braunstein had filed the action in Superior Court and the defendant had removed the case to Massachusetts federal court, the judge concluded that §1441(a) dictated that venue in the District of Massachusetts was proper.

Under 28 U.S.C. §1404(a), a District Court has the discretion to transfer an action brought in a proper venue to any other district in which the case could have been brought "for the convenience of parties and witnesses, in the interest of justice."

Burroughs explained that the analysis of a motion to transfer under §1404(a) involves a weighing certain factors, including: (1) the plaintiff's choice of forum; (2) the relative convenience of the parties; (3) the convenience of the witnesses and location of documents; (4) any connection between the forum and the issues; (5) the law to be applied; and (6) the state or public interests at stake.

The judge concluded that the defendant failed to demonstrate it was entitled to a change of venue under that alternate ground. In addition to finding that the "convenience of the parties" factor was neutral and did not outweigh the presumption in favor of the plaintiff's selected forum, the judge found the convenience of witnesses was not a factor that weighed in favor of transfer.

"To the extent any third-party witnesses are required to testify to the quality of Riemer & Braunstein's work product, such as Monroe's successor counsel in the Adversary Proceeding, the witnesses are limited in number, are dispersed between Illinois and Texas, and Riemer & Braunstein has agreed that they may be deposed where they are located, which makes neither forum more convenient than Massachusetts, where most of the party witnesses reside," the judge wrote.

Burroughs added that the physical location of documentary evidence did not support the defendant's request for a change of venue given that technological advances allow documents to be stored and sent electronically.

Burroughs further found that the fact that Massachusetts law governed the case also tipped the scales in favor of the law firm's preferred forum.

"Although courts in the Northern District of Illinois or the Northern District of Texas could ably handle Massachusetts state law claims, this factor weighs slightly against transfer because it is 'plausible' that this Court is 'more familiar' with and better situated to apply Massachusetts law," she wrote.

## **Riemer & Braunstein LLP v. Monroe Capital Management Advisors LLC, et al.**

**THE ISSUE:** Is a Chicago company sued by law firm Riemer & Braunstein in Massachusetts state court over nonpayment of fees entitled to a change of venue after removing the case to federal court in Boston?

**DECISION:** No (U.S. District Court)

**LAWYERS:** Peter H. Sutton and Dennis E. McKenna, of Riemer & Braunstein, Boston (plaintiff)

Benjamin D. Stevenson of Stevenson, McKenna & Callanan, Boston (defense)

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