UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TWILIGHT TRANSPORT, INC.,	
Plaintiff,	Case No. 19-cv-1253
v.	
GENERAL MOTORS, LLC,	Judge John Robert Blakey
Defendant.	

ORDER

Plaintiff Twilight Transport, Inc. sues Defendant General Motors, LLC under the Illinois Consumer Fraud and Deceptive Practices Act relating to Defendant's Certified Pre-Owned Vehicle program. Defendant moves to dismiss pursuant to Rule 12(b)(7) for failure to join a necessary party, and in the alternative, to transfer this action to the Southern District of Texas. [21]. For the reasons stated below, this Court denies Defendant's motion.

STATEMENT

Defendant maintains the "GMC Certified Pre-Owned" (CPO) program, through which it, and authorized dealers, sell used cars. [17] ¶ 9.[1] Defendant represents that CPO vehicles must meet certain criteria, including passing a 172-point vehicle inspection and reconditioning process. *Id.* ¶ 10. Although Defendant delegates pre-sale vehicle inspection and reconditioning to authorized dealers, it represents that the vehicle and the CPO benefits come from Defendant. *Id.* ¶ 11.

In September 2018, Plaintiff's president, David Wilkozek, used Defendant's CPO website to purchase a truck. *Id.* ¶ 22. Defendant's website advertised the truck on its CPO website as meeting the strict criteria for CPO vehicles. *Id.* ¶ 14. Non-party West Point GMC Buick of Houston, Texas (West Point) offered for sale the truck that Wilkozek wanted to buy. *Id.* ¶ 22. Plaintiff ultimately purchased the truck from West Point; soon after the truck was shipped to Illinois, however, Plaintiff discovered multiple problems with the truck, including unrepaired accident damages, paint flaws, and broken glass under the seats. *Id.* ¶¶ 27, 31. Plaintiff claims that the truck should have failed 21 out of 172 items on Defendant's 172-point inspection checklist. *Id.* ¶ 38. Plaintiff sues Defendant under the Illinois Consumer Fraud and Deceptive

[1] This Court takes these facts from Plaintiff's amended complaint [17].

Business Practices Act (Consumer Act) to redress its alleged injuries. *See generally id.*

Courts may dismiss a complaint where a plaintiff fails to join a necessary party under Rule 19. Fed. R. Civ. P. 12(b)(7). Dismissal under Rule 19 involves a two-step inquiry. *Davis Cos. v. Emerald Casino, Inc.*, 268 F.3d 477, 481 (7th Cir. 2001). First, this Court must decide if a party is necessary to the case. *Id.*; Fed. R. Civ. P. 19(a). Second, if a party is necessary but cannot be joined, this Court must determine under Rule 19(b) "whether, in equity and good conscience, the action should proceed among the existing parties" without the necessary person "or should be dismissed." *Davis*, 268 F.3d at 481; Fed. R. Civ. P. 19(b). In considering a Rule 12(b)(7) motion, this Court must accept the complaint's allegations as true. *Davis*, 268 F.3d at 479 n.2.

Defendant's motion fails at the first step of the Rule 19 inquiry, because West Point is not a necessary party. When determining whether a party is necessary, this Court considers whether: (1) it can accord complete relief to the existing parties; (2) the absent party's ability to protect its interest will be impaired if not joined; and (3) the existing parties may be subject to a risk of multiple or inconsistent obligations without joinder. Fed. R. Civ. P. 19(a); *Askew v. Sheriff of Cook Cty., Ill.*, 568 F.3d 632, 635 (7th Cir. 2009).

First, complete relief can be granted to the existing parties in West Point's absence. Although Defendant argues that it "cannot refund purchase money" because West Point sold the truck, *see* [22] at 6, Plaintiff does not sue for that purchase money. Rather, Plaintiff sues Defendant for alleged misrepresentations Defendant made on its CPO websites, and for allegedly refusing to stand behind its CPO certifications. *See* [17] ¶¶ 45, 53–54, 56, 63–65. The conduct for which Plaintiff seeks to hold Defendant liable thus concerns how Defendant held itself out to Plaintiff; West Point's presence as a party remains unnecessary to this Court's analysis on that issue.

Second, Defendant fails to demonstrate that West Point's ability to protect its interest will be impaired if not joined in this action. On this point, Defendant contends that West Point will be unable to defend itself against allegations that "it committed an error or fraud thousands of miles from the Court presiding over the case." [22] at 6. But again, the amended complaint seeks to hold Defendant liable for its own conduct, not for West Point's actions or inactions. *See* [17]. Thus, West Point's interest (to the extent it has any at all) will not be impaired if not joined here.

Third, nothing in the current record suggests that adjudicating this case in West Point's absence would subject Plaintiff or Defendant to a substantial risk of double, multiple, or otherwise inconsistent obligations. Defendant argues that omitting West Point exposes Defendant to refunding or returning money that Plaintiff paid for the truck, even though Defendant did not sell the truck. [22] at 6–7. But, as discussed above, Defendant's liability to Plaintiff, if any, does not flow from

the purchase contract for the truck. Rather, Plaintiff sues for statutory damages under the ICFA, which stem from Defendant's alleged representations and business practices. This factor thus also disfavors Defendant.

In sum, the factors under Rule 19(a)(1) demonstrate that West Point is not a necessary party to this action. Accordingly, this Court denies Defendant's motion to the extent it seeks dismissal pursuant to Rule 12(b)(7).

Defendant argues in the alternative that this Court should transfer this case to the Southern District of Texas under 28 U.S.C. § 1404(a). [22] at 12–13. This Court considers the following factors on a motion to transfer: (1) whether venue is proper in both districts; (2) whether a transfer will better serve the convenience of the parties and witnesses; and (3) whether a transfer will better serve the interest of justice. *See Craik v. Boeing Co.*, 37 F. Supp. 3d 954, 959 (N.D. Ill. 2013) (citing *Coffey v. Van Dorn Iron Works*, 796 F.2d 217, 219 (7th Cir. 1986)). The moving party has the burden of establishing that "the transferee forum is clearly more convenient." *Coffey*, 796 F.2d at 219–20. The plaintiff's choice will otherwise receive deference: "unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed." *In re Nat'l Presto Indus., Inc.*, 347 F.3d 662, 664 (7th Cir. 2003) (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947)). The task of weighing these factors "is committed to the sound discretion of the trial judge." *Coffey*, 796 F.2d at 219.

Here, neither party disputes that venue is proper in this district and would also be proper in the Southern District of Texas. *See* [22] at 13; [26] at 10. Defendant, however, fails to establish that the Southern District of Texas constitutes a more convenient forum for the parties and their witnesses. In briefing and at oral argument, defense counsel represented that he anticipates that all but two witnesses will be located in Houston. *See, e.g.*, [29] at 6. Defense counsel, however, offers no actual evidence to substantiate that representation; thus, this Court does not place weight upon the relative convenience to these purported witnesses in its analysis. *See, e.g.*, *Moore v. Motor Coach Indus., Inc.*, 487 F. Supp. 2d 1003, 1008 (N.D. Ill. 2007) (refusing to consider convenience to certain witnesses in conducting transfer analysis where party failed to provide "any affidavits or other actual evidence specifying" those witnesses and their purported testimony); *cf. Simonian v. Monster Cable Prod., Inc.*, 821 F. Supp. 2d 996, 999 (N.D. Ill. 2010) (granting venue transfer motion where the defendant "provided evidence via affidavit" showing that its witnesses were all located in California). Moreover, even if this Court accepted Defendant's representation that many of its witnesses are located in Houston, according to the Amended Complaint, Plaintiff and a number of its anticipated non-party witnesses reside in Illinois. *See* [26] at 11; [17] ¶¶ 4, 30–31. In this Court's analysis, the convenience to the parties and witnesses thus does not favor transfer.

Finally, Defendant has not addressed, either in its briefs or at oral argument, the third factor of a venue transfer analysis: whether a transfer will better serve the interest of justice. *See, e.g.*, [22] [29]. Thus, based upon the entire record before it, this Court finds that Defendant has failed to meet its burden to demonstrate that this Court should disturb Plaintiff's choice of forum.

For the above reasons, Defendant's motion [21] is denied. All dates and deadlines stand.

Dated: June 26, 2019

Entered:

John Robert Blakey
United States District Judge