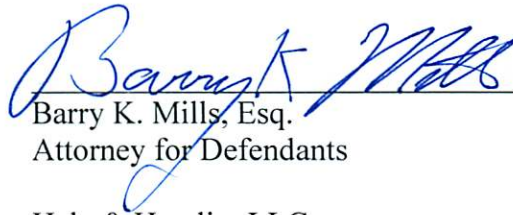


- D. The litigation arises from an accident that occurred in Hancock County in 2002, resulting in a trial in Penobscot County Superior Court.
- E. Plaintiff seeks an attachment of real estate located in Hancock County.
- F. Central Maine Power Company one of several regional offices in Cumberland County. Its Cumberland County regional office has no association with events or the people involved with this action.
- G. This litigation has no functional association with Cumberland County.

Dated: May 1, 2011



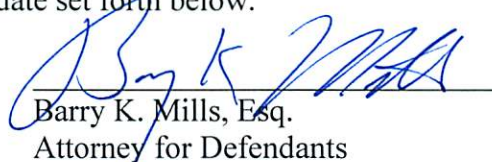
Barry K. Mills, Esq.
Attorney for Defendants

Hale & Hamlin, LLC
4 State Street, P.O. Box 729
Ellsworth, ME 04605
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tel (207) 667-2561

Certificate of Service

I, Barry K. Mills, a member of the firm of Hale & Hamlin, P.O. Box 729, Ellsworth, ME 04605, attorney for plaintiffs, hereby certify that a conformed copy of the within Motion for Change of Venue and for relief under 14 M.R.S.A. §508 has been delivered to plaintiff's attorney, John B. Lucy, Esq., by email and by mailing said document to his office address, Richardson, Whitman, Large & Badger, One Merchants Plaza, Suite 603, Bangor ME 04402, by course U.S. Mail, postage prepaid, on the date set forth below.

Dated: May 1, 2011



Barry K. Mills, Esq.
Attorney for Defendants

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MEMORNDUM OF LAW

I. Actions Seeking Relief from Fraudulent Conveyances are Local in Nature and Must Be Brought in the County Where the Land Is Located

Civil actions are either transitory or local. Generally stated, transitory actions may be brought in any county in which any party resides. 14 M.R.S.A. §501. However, a local action can be brought only in the county where the land is located. “Where an action, local in its nature, is brought in the wrong county, the defendant may either plead the fact, or demur, if it appears on the record, or take advantage of the objection at the trial.” *Blake v. Freeman*, 13 Me. 130, 134 (1836). “When a transitory action is filed in the wrong county the error of venue can be waived. However, when a local action is filed in the wrong county, the objection can be raised at any stage of the proceedings.” *Richardson v. Rich*, 66 Me. 249, 253-54 (1876).

The general rule was stated in *Venue of Action to Set Aside as Fraudulent Conveyance of Real Property*, 37 A.L.R. 2d 579 §1[b] as follows:

The majority of the courts which have been faced with the question have concluded that an action to have a fraudulent conveyance of real estate set aside is a local one which should ordinarily be tried in the county where the land is located. This result has usually been reached under statutes requiring actions affecting land, or for the determination of an interest therein, or to establish a lien against realty, to be brought where the land is located. And the result has been justified on the ground that the creditor is thereby protected against subsequent transfers of the land to other bona fide purchasers, and that this venue also protects the record titleholder, or the possessor of the property, by insuring that the action is brought in the vicinity where he is more likely to be informed of it.

See also 37 AmJur.2d, *Fraudulent Conveyances and Transfers*, §173. Representative cases include *Temple v. Feeney*, 7 Wash. App. 345, 348, 499 P.2d 1272, 1275 (Wash. Ct. App. 1972) (“In this state actions to set aside fraudulent conveyances of land are local actions and, therefore, are to be commenced in the county where the land is located,”); *Raynolds v. Row*, 184 Kan. 791, 793, 339 P.2d 358, 360 (1959) (“[I]f the subject of inquiry is a right or interest in land,

and if the judgment in the case will operate directly upon this right or interest, or will determine in any form any such right or interest, or bar any defendant therefrom, then the action is local and comes within the purview of the statute and must be brought in the county where the land is situated”); *Polmer v. Spencer*, 256 So. 2d 766, 770 (La. Ct. App. 1971) (mandatory venue is in the county where the immoveable property is located); *Marion v. Miller*, 239 Minn. 214, 217-18, 58 N.W.2d 185, 187 (1953) (“The great weight of authority supports the view that, under statutes the same as or similar to ours, actions to set aside conveyances of land fraudulent as to creditors affect the title to property and are local in character and triable in the county where the land is situated.”)

Cases dealing with venue issues when a complaint includes causes of action additional to requests for relief from fraudulent conveyances are collected in 37 A.L.R. 2d 579 §4, where the editors have summarized the general rule as follows:

Where an action to have a conveyance of realty set aside as fraudulent is joined with a claim for other relief ordinarily *requiring* trial in a county other than that where the land is located, some courts have taken the view that the action is properly brought in the other county. [Emphasis added.]

In the present case there is no rule that *requires* a trial in a venue other than Hancock County, where all of the defendants reside and are located. If this were a transitory action, venue would be proper in either Cumberland or Hancock County. 14 M.R.S.A. §505. This being a local action, however, venue is proper only in Hancock County.

**B. The Case Should Be Transferred to Hancock County
Superior Court Pursuant to 14 M.R.S.A. §508**


By any measure, plaintiff has chosen to file this case in county distant from all parties and witness – at a location that has nothing to do with the underlying issues and where Central Maine Power Company has only one of several regional offices. Under such conditions as those

alleged in this motion, the court should exercise its discretion to furnish defendants with relief under 14 M.R.S.A. §508, which reads as follows:

A presiding Justice of the Superior Court may, in the interests of justice and to secure the speedy trial of an action, or for other good cause, transfer any civil action or proceeding from the Superior Court in one county to another county. The Chief Justice of the Superior Court may, in the interests of justice and to secure the speedy trial of actions and the efficient scheduling of trials, or for other good cause, transfer any number of civil actions or proceedings from the Superior Court in one county to another county. Transfer may also be by consent of all parties to any civil action or proceeding, provided that the prior approval of the Chief Justice of the Superior Court is obtained.

It is difficult to imagine a case more appropriate for transfer to another county than this case.

Dated: May 1, 2011


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7-21-11 Motion for transfer back to
Hancock County Superior Court
denied. See Case Mgmt Order
No. 1.
