2011 IL App (1st) 100750-U

SECOND DIVISION
January 10, 2012

No. 1-10-0750

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

YAVUZ ARIK, Special Administrator, *et al.*,	)	Appeal from the Circuit Court
	)	of Cook County
Plaintiffs-Appellees,	)	
	)	Nos. 08 L 12539, 08 L 12599,
v.	)	08 L 12604, 08 L 12625,
	)	08 L 13147, 08 L 13207,
	)	08 L 13260 & 09 L 6016
THE BOEING COMPANY, *et al.*,	)	
	)	Honorable
Defendants-Appellants.	)	William D. Maddux,
	)	Judge Presiding.

PRESIDING JUSTICE QUINN delivered the judgment of the court.
Justices Garcia and R.E. Gordon concurred in the judgment.

O R D E R

¶ 1 ***Held*:** Trial court's order denying defendants' motion to dismiss on *forum non conveniens* grounds is affirmed over defendants' contentions that the court abused its discretion in failing to grant the motion and transfer the case to the Republic of Turkey or the state of Washington.[1]

[1]Justice Robert Cahill participated in the oral argument in this case. Justice Cahill died on December 4, 2011. Justice Patrick J. Quinn read the briefs, reviewed the record and listened to oral arguments online.

¶ 2 This interlocutory appeal arises from consolidated wrongful death, product liability and negligence actions filed after an airplane flight crashed near Isparta, Turkey. Plaintiffs, the representatives of 32 of the 57 decedents who died in the crash, brought suit in Chicago, Illinois, against defendants, The Boeing Company (Boeing) and McDonnell Douglas Corporation (McDonnell), the designers and manufacturers of the airplane, and defendant Honeywell International Inc. (Honeywell), the designer and manufacturer of the airplane's enhanced ground proximity warning system (warning system). Defendants moved to dismiss on the grounds of *forum non conveniens*, arguing that the Republic of Turkey, or alternatively, the state of Washington was a more convenient forum to resolve this litigation. The circuit court denied the motion. We affirm.

¶ 3 On November 30, 2007, Atlasjet Airlines flight No. 4203, traveling from Istanbul, Turkey, to Isparta, Turkey, crashed into a mountain near Isparta. All 50 passengers and 7 members of the flight crew died in the crash. The subject aircraft, an MD-83, was owned by World Focus Airlines and operated by Atlasjet Airlines. World Focus and Atlasjet are Turkish corporations with headquarters in Istanbul.

¶ 4 Plaintiffs are representatives of 32 of the 57 decedents who died in the crash. Of the 32 decedents represented in this action, 31 were Turkish citizens and residents of Turkey. One of those 31 decedents was a dual Turkish and United States citizen who resided in Turkey at the time of the accident. One decedent was a citizen and resident of Austria. Plaintiffs are primarily Turkish citizens and residents. One of the plaintiffs, Yavuz Arik, is a United States citizen and resident of Maryland. Two of the plaintiffs, Tolga Tezcan and Esra Ozdemir, are United States

residents. Tezcan resides in Chicago, Illinois, and Ozdemir resides in Miami Beach, Florida. One of the plaintiffs, Vedat Kurnaz, is an Austrian citizen and resident.

¶ 5 Defendants are United States corporations. Defendant Boeing is a Delaware corporation with its headquarters in Chicago. Defendant McDonnell, a Maryland corporation, is a wholly-owned Boeing subsidiary with its headquarters in Chicago. McDonnell designed, manufactured and assembled the subject aircraft in the state of California in 1994. Defendant Honeywell is a Delaware corporation with its headquarters in Morristown, New Jersey. Honeywell is registered to do business in Illinois, is a resident of Cook County, Illinois, and maintains a registered agent for service of process in Illinois. Honeywell designed and manufactured the aircraft's warning system in the state of Washington and tested the system in the United Kingdom. All three defendants' attorneys' offices are in Chicago.

¶ 6 Plaintiffs' complaints against defendants included claims for product liability and for the negligent design, manufacture and assembly of the MD-83 aircraft and its components, specifically the warning system. The warning system monitors the aircraft's altitude and warns the flight crew with visual and audio messages when the aircraft's terrain clearance position is unsafe or when the aircraft's terrain closure rate is excessive. Plaintiffs alleged that the warning system on the MD-83 aircraft was defectively designed, manufactured and assembled and failed to provide the necessary visual and audible alerts to the flight crew as the aircraft approached mountainous terrain near Isparta. Plaintiffs claimed that had the warning system functioned properly, the accident could have been averted by the pilots.

¶ 7 On April 28, 2009, the trial court consolidated eight cases concerning the plane crash.

Defendants moved to dismiss all eight cases on the ground of *forum non conveniens* in favor of an action in the Republic of Turkey. Defendants argued that this action should proceed in Turkey because it arose out of a domestic Turkish airline crash that occurred in Turkey and a majority of the victims were Turkish citizens. Defendants also pointed out that much of the evidence regarding damages was in Turkey. Alternatively, defendants argued that the action should be transferred to the state of Washington where the warning system was designed and manufactured.

¶ 8 Defendants Boeing and McDonnell conceded that the evidence related to the aircraft's design and assembly, including witnesses and documents, is located in the United States, specifically in the states of California and Washington. Thomas Dodt, Boeing's chief engineer for air safety investigation, averred in his affidavit that Boeing's commercial aircraft operations are based in the state of Washington, with some activity in other states depending on the model aircraft at issue. Activities in connection with the design, manufacture, assembly and testing of the subject aircraft were based primarily in the state of California. Documents related to, and Boeing employees with knowledge of, the design, manufacture, assembly and testing of the subject aircraft are located primarily in the state of California, although some are in Washington.

¶ 9 Defendant Honeywell conceded that the warning system was designed and manufactured in the state of Washington and that evidence related to the design and manufacture of the warning system, including witnesses and documents, is located in the state of Washington. Honeywell identified various employees in Washington who were involved in the design and

manufacture of the warning system. Honeywell also identified five employees who were involved in testing the warning system in the United Kingdom before the system was placed into production. One of those five employees resides in Washington. The other four employees reside in the United Kingdom. Documentary evidence related to the testing of the warning system is in Washington and the United Kingdom.

¶ 10 Because the crash occurred in Turkey, the official investigation into the crash was conducted by Turkish authorities. The United Sates, as the country of manufacture and design of the subject aircraft, participated in the investigation. United States accredited representatives from the National Transportation Safety Board and the Federal Aviation Administration (FAA) traveled to Turkey and visited the crash site.

¶ 11 Dodt averred in his affidavit that a member of Boeing's air safety investigation team was assigned to coordinate Boeing's assistance with the investigation of the crash. Defendants Boeing and Honeywell served as technical advisors to the United States accredited representatives. The role of the accredited representatives and the technical advisors was to assist the Turkish authorities. The Turkish authorities had sole control and authority over the investigation. Dodt averred that Boeing's role in the investigation was limited.

¶ 12 During the investigation, the aircraft wreckage was recovered and stored in Turkey. A portion of the flight deck control pedestal was sent to defendant Boeing in California for examination and analysis. The examination was conducted by Boeing under FAA supervision. After the examination, the pedestal was returned to Turkey. Dodt averred that the aircraft wreckage remained in Turkey in the custody of the Turkish authorities. Dodt also averred that

the documentary evidence in Boeing's possession regarding the investigation is located in the state of Washington or California. He said all Boeing employees with knowledge regarding the investigation reside in the states of Washington and California. Dodt resides in Washington.

¶ 13 The aircraft's cockpit voice and flight data recorders were sent to Germany and examined by the German Federal Bureau of Aircraft Accidents Investigation. Both recorders were returned to Turkey after the examination and are in the custody of the Turkish authorities.

¶ 14 Honeywell conceded that after the crash it inspected, analyzed and tested the warning system in Washington. Honeywell identified 10 employees who were involved in that inspection, analysis and testing but did not say where those employees reside. Honeywell also identified a total of seven employees who participated in the crash investigation and serviced the warning system before the crash. All seven of those employees reside in the United Kingdom.

¶ 15 On February 18, 2010, the trial court entered a written order, denying defendants' motion. The court made the following findings in the order.

¶ 16 First, the court found that Turkey was an adequate alternative forum for this litigation. Plaintiffs argued that Turkey was not an adequate forum because: (1) a Turkish court may decline jurisdiction over the defendants; (2) Plaintiffs' claims may be barred by Turkey's statute of limitations; (3) Turkish law does not provide for pre-trial discovery; and (4) Turkey's requirement that a claimant pay a court fee of 5.4% of the amount of the substantive claim imposes a significant barrier on the plaintiffs. In rejecting plaintiffs' arguments, the court noted:

"[d]efendants have agreed to consent to jurisdiction in Turkey and accept

> service of process there, which establishes availability. Additionally, any procedural differences, such as the inability to conduct pre-trial discovery should not be given much weight. [Citation.] *** Thus giving undue weight to a lack of pre-trial discovery would make an American forum more attractive to foreign litigants. Accordingly, the differences between Illinois and Turkish law do not completely deprive the plaintiffs of a remedy."

¶ 17 Second, the court found that plaintiffs' choice of forum, Chicago, was entitled to less deference given the facts of this case. The court noted that the crash occurred in Turkey, 31 of the 32 decedents represented in this action were Turkish citizens and the overwhelming majority of the plaintiffs are Turkish citizens and residents with only one plaintiff being a United States citizen.

¶ 18 Third, the court found that, despite having given less deference to the plaintiffs' choice of forum, the facts of this case illustrate that the private and public interest factors did not favor dismissal for *forum non conveniens*. The private interest factors did not favor dismissal because: (1) defendants could not claim that Turkey was a more convenient forum for them, since the defendants are American corporations, two of which are headquartered in Chicago, and their attorneys' offices were also in Chicago; (2) Turkey did not offer greater ease of access to documents or witnesses where potential evidence and witnesses were scattered among various states and countries; (3) the documents related to the design and manufacture of the warning system were in the United States; and (4) the site of the crash in a product liability case is less important because the jury does not need to view the site of the crash to resolve claims of a

defective product.

¶ 19 The public interest factors did not favor dismissal because: (1) defendants failed to show that a Turkish trial would be quicker than a trial in Chicago; (2) Illinois residents have an interest in resolving defective product claims against corporations that are headquartered in Chicago and taking advantage of Illinois law; and (3) in a product liability case, the location of the crash site is less important.

¶ 20 With respect to defendants' alternative argument that the case should be transferred to the state of Washington, the court first found that Washington was an adequate alternative forum based on defendants' consent to jurisdiction in Washington. However, the court concluded that the private and public interest factors did not favor dismissal for *forum non conveniens*. The private interest factors did not favor dismissal because, as mentioned, documents and trial witnesses were scattered throughout different states and no one state was more convenient than another. The public interest factors likewise did not favor dismissal to Washington because, contrary to defendants' argument, Washington's proximity to California, where the subject aircraft was designed and manufactured, was not a significant factor given that we live in an "age of telecommunications" where documents can readily be sent electronically to Illinois. The court also rejected defendants' argument that Washington is a more expeditious jurisdiction because the issue of court congestion can be nullified with strict adherence to case management orders.

¶ 21 On March 22, 2010, defendants filed a petition with this court for leave to appeal the trial court's denial of its *forum non conveniens* motion. We denied defendants' petition on April 29,

2010. On June 3, 2010, defendants petitioned the Illinois Supreme Court for leave to appeal. Our supreme court denied defendants' petition on September 29, 2010, and issued a supervisory order, directing us to vacate our April 29, 2010, order and grant defendants' petition for leave to appeal. On November 10, 2010, we complied with the supreme court's supervisory order and this interlocutory appeal followed.

¶ 22 On appeal, defendants contend the trial court erred in denying their motion to dismiss for *forum non conveniens*. This is an interlocutory appeal taken under Supreme Court Rule 306 (Ill. S. Ct. R. 306). The rule provides that a party may petition for leave to appeal to this court "from an order of the circuit court allowing or denying a motion to dismiss on the grounds of *forum non conveniens* ***." Ill. S. Ct. R. 306(a)(2).

¶ 23 *Forum non conveniens* is an " ' equitable doctrine founded in considerations of fundamental fairness and the sensible and effective administration of justice.' " *Vivas v. The Boeing Company*, 392 Ill. App. 3d 644, 656, 911 N.E.2d 1057 (2009) (quoting *Langenhorst v. Norfolk Southern Ry. Co.*, 219 Ill. 2d 430, 441, 848 N.E.2d 927 (2006). This doctrine allows a trial court to transfer a case when a "trial in another forum 'would better serve the ends of justice.' " *Langenhorst*, 219 Ill. 2d at 441 (quoting *Vinson v. Allstate*, 144 Ill. 2d 306, 310, 579 N.E.2d 857 (1991).

¶ 24 The burden is on the party seeking dismissal, in this case defendants, to show that the relevant factors " 'strongly favor' " transfer. *Langenhorst*, 219 Ill. 2d at 443 (quoting *Griffith v. Mitsubishi Aircraft International Inc.*, 136 Ill. 2d 101, 107, 554 N.E.2d 209 (1990); *Vivas*, 392 Ill. App. 3d 644 (in product liability and negligence case where airplane crash was in the

Republic of Peru with primarily Peruvian decedents, burden was on defendants to show factors strongly favoring transfer to Peru); *First American Bank v. Guerine*, 198 Ill. 2d 511, 517, 764 N.E.2d 54 (2002) (plaintiffs have a substantial interest in choosing a forum where their rights will be vindicated, and plaintiffs' forum choice should rarely be disturbed unless other factors strongly favor transfer).

¶ 25 In determining whether other factors strongly favor transfer, the trial court is afforded "considerable discretion." *Langenhorst*, 219 Ill. 2d at 441. This court will reverse a circuit court's decision on a *forum non conveniens* motion only if the defendants show that the court abused its discretion in balancing the relevant factors. *Vivas*, 392 Ill. App. 3d at 657. "A circuit court abuses its discretion in balancing the relevant factors only where no reasonable person would take the view adopted by the circuit court." *Langenhorst*, 219 Ill. 2d at 442. The issue before us is whether the trial court acted in a way that no reasonable person would, not what decision we would have reached if we were reviewing the facts on a clean slate. *Vivas*, 392 Ill. App. 3d at 657.

¶ 26 Here, we find that a reasonable person could have taken the view adopted by the trial court. Generally, a plaintiff's choice of forum will prevail if the venue is proper and the inconvenience factors attached to the chosen forum do not greatly outweigh the plaintiff's substantial right to try the case in the chosen forum. *Guerine*, 198 Ill. 2d at 520. Before weighing these factors, the trial court must first determine how much deference to give to a plaintiff's choice of forum. *Vivas*, 392 Ill. App. 3d at 657; *Langenhorst*, 219 Ill. 2d at 448. If the plaintiff chooses a forum other than where he resides, his choice is not entitled to the same

deference as the choice of his home forum. *Vivas*, 392 Ill. App. 3d at 657. Here, because most of the plaintiffs were Turkish, their selection of a foreign forum, Chicago, deserved less deference. See *Vivas*, 392 Ill. App. 3d at 657; *Langenhorst*, 219 Ill. 2d at 448; *Griffith*, 136 Ill. 2d at 106. The trial court reasonably accorded less deference to plaintiffs' choice of forum.

¶ 27 Next, the trial court had to consider both the private and public interest factors in deciding a *forum non conveniens* motion without emphasizing any one factor. *Vivas*, 392 Ill. App. 3d at 658. The private interest factors include: " '(1) the convenience of the parties; (2) the relative ease of access to sources of testimonial, documentary, and real evidence; and (3) all other practical problems that make trial of a case easy, expeditious, and inexpensive.' " *Langenhorst*, 219 Ill. 2d at 443 (quoting *First American Bank v. Guerine*, 198 Ill. 2d 511, 516-17, 764 N.E.2d 54 (2002); *Dawdy*, 207 Ill. 2d at 172.

¶ 28 First, the convenience of the parties did not weigh in favor of transfer to Turkey. Defendants failed to show that plaintiffs' chosen forum is inconvenient for them. See *Langenhorst*, 219 Ill. 2d at 450 ("the defendant must show that the plaintiff's chosen forum is inconvenient to the defendant"). Here, defendants are American corporations. Two of the defendants, Boeing and McDonnell, are headquartered in Chicago, plaintiffs' chosen forum. See *Vivas*, 392 Ill. App. 3d at 658. All three defendants' attorneys' offices are also in Chicago.

¶ 29 Second, the relative ease of access to sources of testimonial, documentary and real evidence did not require transfer to Turkey. The trial court noted that potential witnesses and evidence were scattered among different states and countries and correctly concluded that this factor did not favor any one forum. See *Vivas*, 392 Ill. App. 3d at 659, and cases cited therein.

Contrary to defendants' argument, we cannot say that the trial court abused its discretion because it misstated, grossly expanded and placed undue weight on this principle. See *Woodward v. Bridgestone/Firestone Inc.*, 368 Ill. App. 3d 827, 834, 858 N.E.2d 897 (2006) (where potential witnesses are "scattered among different forums," no one forum is more convenient).

¶ 30 We are likewise unpersuaded by defendants' argument that the trial court abused its discretion by giving disproportionate weight to plaintiffs' theory of liability and the location of evidence to support that theory while discounting the enormous concentration of evidence in Turkey necessary for defendants to receive a fair trial. Although most of the evidence regarding the crash and potential damages is in Turkey, this is a product liability case and all the evidence relevant to the design, manufacture and assembly of the aircraft and its warning system is in the United States. See *Vivas*, 392 Ill. App. 3d at 658-59 (affirming trial court's denial of a motion to dismiss for forum non conveniens because witnesses related to design, manufacture and testing of subject aircraft were scattered throughout the United States); *Woodward*, 368 Ill. App. 3d at 834 (same).

¶ 31 In considering access to evidence, we note that although some of the documents regarding the crash are in Turkey, many of the documents regarding the crash are also in the United States as a result of the American authorities and defendants' cooperation with the Turkish authorities in the crash investigation. We also note that all of the documents relating to design, manufacture and assembly of the subject aircraft and the warning system are in the United States. See *Vivas*, 392 Ill. App. 3d at 659. But, as noted by the trial court, the location of documents and records is not a significant factor in *forum non conveniens* analysis given that in

this modern "age of telecommunications," documents can easily be sent electronically to Illinois. *Vivas*, 392 Ill. App. 3d at 659; *Woodward*, 368 Ill. App. 3d at 834.

¶ 32 Contrary to defendants' argument, the compulsory process of unwilling witnesses and the cost of obtaining willing witnesses does not favor dismissal in favor of Turkey. " 'If the case remains in Illinois, witnesses in [Turkey] are not compelled to come to the Untied States, and if the forum is changed to [Turkey], American witnesses are not compelled to appear in [Turkey].' " *Vivas*, 392 Ill. App. 3d at 659 (quoting *Woodward*, 368 Ill. App. 3d at 835).

¶ 33 Finally, the court was required to consider " 'all other practical problems that make trial of a case easy, expeditious, and inexpensive.' " *Langenhorst*, 219 Ill. 2d at 443 (quoting *Guerine*, 198 Ill. 2d at 516-17). This factor also does not support transfer to Turkey. All three defendants' and some of the plaintiffs' attorneys maintain offices in Illinois. See *Vivas*, 392 Ill. App. 3d at 660. Although little weight should accorded this factor, a court may still consider it in a *forum non conveniens* analysis. *Vivas*, 392 Ill. App. 3d at 660; *Dawdy*, 207 Ill. 2d at 179.

¶ 34 For these reasons, we cannot say that the trial court abused its discretion in weighing the private interest factors.

¶ 35 The trial court was also required to consider the public interest factors. These factors are: " '(1) the interest in deciding controversies locally; (2) the unfairness of imposing trial expense and the burden of jury duty on residents of a forum that has little connection to the litigation; and (3) the administrative difficulties presented by adding litigation to already congested court dockets.' " *Vivas*, 392 Ill. App. 3d at 660 (quoting *Langenhorst*, 219 Ill. 2d at 443-44).

¶ 36 The second and third factors are not at issue before us because defendants do not

challenge the trial court's application of these two factors. Rather, defendants argue that the court erred in its analysis of the public interest factors by overemphasizing the location of defendants' headquarters and the interest that this gives Illinois' citizens in deciding this litigation. Defendants claim that Turkey has a greater interest in the resolution of this case because the underlying accident involved a Turkish airline, operating a domestic Turkish flight, that crashed on Turkish soil and killed primarily Turkish citizens. Defendants maintain that "whatever general interest U.S. citizens have in ensuring the safety of products made by U.S. corporations pales in comparison to the much more specific interest of Turkish citizens in determining who is responsible for this crash."

¶ 37 We are unpersuaded by defendants' argument because product liability actions are not localized cases; rather, they are cases with international implications. *Woodward*, 368 Ill. App. 3d at 836. Americans, just as much as Turks, have an interest in the safety of Boeing airplanes. *Vivas*, 392 Ill. App. 3d at 661. Americans also have an interest in ensuring the safety of the products that American corporations, such as Boeing, McDonnell and Honeywell, build and ship throughout the world. See *Vivas*, 392 Ill. App. 3d at 661 and cases cited therein. Although the location of a corporate headquarters is not a dispositive factor, it is still a factor a court may consider. *Gridley v. State Farm Mutual Automobile Insurance Co.*, 217 Ill. 2d 158, 173, 840 N.E.2d 269 (2005).

¶ 38 We also note that the strong American interest in this case is highlighted by the involvement of both the American defendants and American authorities in the Turkish investigation of this crash. See *Vivas*, 392 Ill. App. 3d at 661-62. Significant parts recovered

from the aircraft, such as the flight deck control pedestal, the warning system and the cockpit voice/data recorder, were examined and analyzed in the United States and Germany, not Turkey. The examination of the flight deck control pedestal was conducted by defendant Boeing under FAA supervision. The documentary evidence related to Boeing's examination of the control pedestal is located in the United States. Given defendants' involvement in the investigation and their knowledge of the American authorities interest in the investigation, it seems disingenuous for defendants to now claim that the Untied States has little interest in this tragedy. *Vivas*, 392 Ill. App. 3d at 662. In light of this, Turkey's interest in this litigation does not require a transfer and the circuit court did not abuse its discretion in concluding that the public interest factors did not favor transfer to Turkey.

¶ 39 After considering the private and public interest factors, the court was required to balance these factors without emphasizing any one factor. *Langenhorst*, 219 Ill. 2d at 443. Here, the court did just that and we cannot say it abused its discretion in doing so. Although plaintiffs' choice of a foreign forum deserved less deference, the private and public interest factors did not weigh strongly in favor of transfer to Turkey. See *Vivas*, 392 Ill. App. 3d at 663, and cases cited therein.

¶ 40 We likewise find that the trial court did not abuse its discretion in concluding that the balance of the private and public interest factors did not favor dismissal with transfer to the state of Washington. Although Washington was an adequate alternative forum, the private and public interest factors did not weigh strongly in favor of transfer. Of the private interest factors, defendants argue that the majority of documents and witnesses related to the design and

manufacture of the airplane's warning system are located in or near Washington. Defendants also argue that Washington is more proximately located to California, where the subject aircraft was designed and manufactured. As mentioned, because the evidence in this case is scattered throughout different states and countries, no one forum is more convenient than another. *Woodward*, 368 Ill. App. 3d at 834. As noted by the trial court, Washington's proximity to California is not a significant factor where documents can be e-mailed, copied, faxed or otherwise sent to Illinois. *Woodward*, 368 Ill. App. 3d at 834. With regard to the public interest factors, defendants argue that Washington is a more expeditious jurisdiction. However, court congestion is a relatively insignificant factor and the trial court is in a better position than this court to assess the burdens on its own docket. *Berbig v. Sears Roebuck & Co.*, 378 Ill. App. 3d 185, 189, 882 N.E.2d 601 (2007); *Langenhorst*, 219 Ill. 2d at 451.

¶ 41 For the reasons stated, we affirm the trial court's order denying defendants' motion to dismiss on *forum non conveniens* grounds.

¶ 42 Affirmed