

No. 1-18-1380

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

TRACY REICHANBACH, personal representative of the)	Appeal from the
heirs of FABIAN REICHENBACH, deceased,)	Circuit Court of
)	Cook County.
Plaintiff-Appellee,)	
)	
v.)	
)	
HONEYWELL INTERNATIONAL, INC., a corporation;)	No. 16 L 11995
FRIEDRICH CHRISTIAN FLICK; and)	
HEICO OHMITE LLC, a limited liability company,)	
)	
Defendants)	
)	Honorable
(Heico Ohmite LLC, a limited liability company,)	Kathy M. Flanagan,
Defendant-Appellant).)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Delort and Justice Connors concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in denying the defendant’s *forum non conveniens* motion to transfer the lawsuit to DuPage County.

¶ 2 The defendant-appellant, Heico Ohmite LLC, appeals from the judgment of the circuit court of Cook County denying its motion to dismiss or transfer based upon the doctrine of *forum non conveniens*. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3 **BACKGROUND**

¶ 4 The plaintiff-appellee, Tracy Reichenbach, personal representative of the heirs of Fabian Reichenbach, deceased, is a resident of Switzerland. She initiated this matter after her husband was killed in a plane crash that occurred in France on August 24, 2012. Her husband was flying back to Switzerland on a chartered flight following a business trip in Belgium. The plane encountered severe weather, and ultimately crashed near Solemont, France. All four people on board were killed.

¶ 5 The plaintiff filed an amended complaint against the defendant in the circuit court of Cook County.¹ The complaint alleged that the plane's autopilot, which was designed and assembled by Honeywell, failed during the severe weather and caused the plane to crash. The complaint alleged that the defendant designed, manufactured, and sold to Honeywell, the resistors (define in a footnote) that were incorporated into the autopilot installed on the plane. The complaint further alleged that the resistors were defective and unreasonably dangerous at the time they left the defendant's control.

¶ 6 The defendant filed a motion to dismiss the amended complaint on the grounds of *forum*

¹ The plaintiff originally filed the complaint also against Honeywell International, Inc., (Honeywell) and Friedrich Christian Flick. However, the plaintiff later voluntarily dismissed the action against Flick, and the action against Honeywell was later dismissed due to lack of jurisdiction. The plaintiff has since filed a new action against Honeywell in Kansas.

*non conveniens*² pursuant to Supreme Court Rule 187 (eff. Jan. 1, 2018) (hereinafter, the *forum non conveniens* motion). In its *forum non conveniens* motion, the defendant argued that the lawsuit lacks any connection to Illinois, other than the fact that the defendant's headquarters are located in DuPage County, Illinois. The defendant urged that Switzerland is the jurisdiction with the most connections to the lawsuit and has the greatest interest in the outcome. The defendant alternatively argued that, should the lawsuit remain in Illinois, it should be transferred to DuPage County, where the defendant's headquarters are located, because Cook County has "absolutely no connection" to the lawsuit.

¶ 7 The plaintiff's response to the *forum non conveniens* motion argued that Illinois has a sufficient connection to the lawsuit, primarily because the defendant manufactured the resistors at issue in Illinois. The plaintiff's response did not specifically address the defendant's alternative argument that the lawsuit should be transferred from Cook County to DuPage County. However, the plaintiff did attach a copy of the defendant's registration with the Illinois Secretary of State for the year 2017, which identified Cook County as the location of the defendant's principal office.

¶ 8 The defendant filed a reply memorandum in support of its *forum non conveniens* motion. The reply memorandum attached an affidavit from its president, which stated that the defendant's headquarters are located in DuPage County, not Cook County.

¶ 9 The trial court then entered an order denying the defendant's *forum non conveniens* motion in its entirety. The trial court's analysis focused primarily on the defendant's claim that

² The *forum non conveniens* doctrine permits a trial court to decline jurisdiction where a trial in another forum with proper jurisdiction and venue would better serve the ends of justice. *Erwin ex rel. Erwin v. Motorola, Inc.*, 408 Ill. App. 3d 261, 273 (2011).

Switzerland is the more proper forum. The trial court's order weighed the factors relevant to a *forum non conveniens* analysis. The court found that "[w]hile both Illinois and Switzerland have a significant interest in this matter, it cannot be said that Switzerland has a significantly greater interest." The court noted that the plaintiff is not a resident of Cook County, and neither was her deceased husband, and so her choice of forum is entitled to less deference. Yet, the court acknowledged that "*less* deference does not equate with *no* deference, and a plaintiff's choice of forum must prevail if there is not a sustaining of the burden of proof by the moving party that a balancing of the factors weigh *strongly* in favor of the suggested forum." (Emphasis in original.) The court found that the defendant failed to meet its burden of demonstrating that the relevant factors, when viewed in their totality, strongly favored Switzerland as the lawsuit's forum. The court then concluded: "Further, while the defendant has alternatively argued that the case should be transferred to DuPage County, it has not [met] its burden in showing that the factors strongly weigh in favor of the transfer to the adjacent county." This appeal followed.

¶ 10

ANALYSIS

¶ 11 Although the trial court's order denying the defendant's *forum non conveniens* motion was not a final order, we note that we have jurisdiction to review this matter as the defendant filed a timely petition seeking leave to file an interlocutory appeal pursuant to Supreme Court Rule 306(a)(2) (eff. Nov. 1, 2017), which this court granted. Ill. S. Ct. R. 306(c)(1) (eff. Nov. 1, 2017).

¶ 12 The defendant's brief presents a single issue: whether the trial court abused its discretion when it denied the defendant's *forum non conveniens* motion to transfer the lawsuit to DuPage

County.³ It asks us to reverse the trial court's judgment and transfer the lawsuit to DuPage County.

¶ 13 The defendant argues that the trial court failed to actually undertake any analysis on the issue of whether the lawsuit should be transferred to DuPage County, and instead only focused on whether the lawsuit should be transferred to Switzerland. The defendant claims that, had the court engaged in the proper *forum non conveniens* analysis, it would have transferred the lawsuit to DuPage County, where the defendant's headquarters are located. The defendant also claims that it does not have any corporate offices or facilities in Cook County, that the plaintiff does not live in Cook County, and that there is no other factual link or public interest factor connecting the lawsuit to Cook County.

¶ 14 The plaintiff counters that the trial court did in fact carefully consider all the *forum non conveniens* arguments in the defendant's motion. The plaintiff notes that the factors analyzed in the trial court's order apply equally to both interstate and intrastate *forum non conveniens*. The plaintiff argues that the trial court properly denied the defendant's *forum non conveniens* motion because the defendant could not meet its heavy burden of proof based solely on the fact that its headquarters are located in DuPage County. The plaintiff additionally claims that there is a sufficient connection between the lawsuit and Cook County because the defendant previously manufactured its resistors, possibly including the ones at issue in the lawsuit, in Cook County until it moved its manufacturing facility to Mexico in 2003. The plaintiff also points out that the defendant's corporate registration with the Illinois Secretary of State lists its principal office in Cook County, which the defendant argues is an "administrative oversight."

³ The defendant is not appealing the part of the trial court's order which denied its request to transfer the lawsuit to Switzerland.

¶ 15 If more than one potential forum for a lawsuit exists, the equitable doctrine of *forum non conveniens* may be invoked to determine the most appropriate forum based on fairness and convenience. *Quaid v. Baxter Healthcare Corp.*, 392 Ill. App. 3d 757, 765 (2009). This doctrine allows a trial court to decline jurisdiction when trial in another forum would better serve the ends of justice. *Benedict v. Abbott Labs., Inc.*, 2018 IL App (1st) 180377, ¶ 27. *Forum non conveniens* is applicable when the choice is between interstate forums, as well as when the choice is between intrastate forums. *Id.*

¶ 16 In resolving *forum non conveniens* questions, the trial court must balance private interest factors as well as public interest factors. *Quaid*, 392 Ill. App. 3d at 765–66. 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. *Id.* at 766. The public interest factors include: (1) the interest in deciding localized controversies locally; (2) the unfairness of imposing the expense of a trial and the burden of jury duty on residents of a county with little connection to the litigation; and (3) the administrative difficulties presented by adding further litigation to court dockets in already-congested forums. *Id.*

¶ 17 The trial court must evaluate the total circumstances and facts of the case in deciding whether the defendant has proven that the balance of factors strongly favors transfer. *Id.* A trial court has considerable discretion in ruling on a *forum non conveniens* motion, and its decision to grant or deny that motion will not be reversed absent an abuse of discretion. *Id.* at 765. An abuse of discretion will be found where no reasonable person would take the view adopted by the trial court. *Hale v. Odman*, 2018 IL App (1st) 180280, ¶ 25.

¶ 18 We are not persuaded by the defendant’s argument that the trial court did not engage in a *forum non conveniens* analysis before declining the defendant’s request to transfer the lawsuit to DuPage County. The trial court stated in its order: “while the defendant has alternatively argued that the case should be transferred to DuPage County, it has not [met] its burden in showing that the factors strongly weigh in favor of the transfer to the adjacent county.” The fact that the trial court did not explicitly explain its reasoning does not suggest that the court failed to engage in a thorough analysis. A review of the trial court’s order demonstrates that the trial court applied the analysis which the trial court used for Switzerland was also applicable to DuPage County. The trial court spelled out those factors relevant *forum non conveniens* factors in this case. Moreover, the trial court was not required to spell out its reasoning in detail, as trial courts are merely *encouraged* to leave a better record of their *forum non conveniens* analyses. *First American Bank v. Guerine*, 198 Ill. 2d 511, 520 (2002).

¶ 19 Similarly, the defendant asserts that the trial court should have granted its *forum non conveniens* motion because the plaintiff did not explicitly oppose the defendant’s alternative argument to transfer the lawsuit to DuPage County. We reject this argument. First, the plaintiff opposed the defendant’s *forum non conveniens* motion in its entirety. And any event, it remained the defendant’s burden to prove that the factors weighed strongly in favor of transferring the lawsuit to DuPage County from Cook County, the plaintiff’s choice of forum. See *Benedict By & Through Benedict*, 2018 IL App (1st) 180377, ¶ 27 (the burden is always on *the movant* to show the need for a forum transfer).

¶ 20 When we balance the private factors in this case -- the convenience of the parties; the relative ease of access to sources of testimonial, documentary, and real evidence; and all other

practical problems that make trial of a case easy, expeditious, and inexpensive -- we find that they do not strongly weigh in favor of transferring the lawsuit to DuPage County. As the lawsuit is just now entering the discovery stages, no witnesses or evidence have been identified. Considering that the defendant's current headquarters is located in DuPage County⁴, there is a strong possibility that most of the witnesses will be traveling from DuPage County to Cook County for the trial. However, it is well-established that the inconvenience of traveling to an adjacent county is insufficient to overcome the deference given to the plaintiff's choice of forum. See *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 180 (2003) (trial in an adjacent county is conclusively not inconvenient for a defendant). This is especially true considering that the defendant's primary basis for transferring the case to DuPage County is the fact that most of its likely witnesses will have to travel to Cook County. Our supreme court has repeatedly recognized that no single *forum non conveniens* factor should be accorded central emphasis or conclusive effect. *Id.*

¶ 21 Additionally, the defendant argues that there is not a manufacturing site for the jury to visit in Cook County. Yet, there is not one in DuPage County, either. In fact, the defendant's manufacturing site is now located in Mexico. The defendant repeatedly argues that there is nothing connecting the lawsuit to Cook County. However the factors which defendant highlights as a closer nexus to DuPage County are illusory. In fact it is only the defendant's corporate headquarters which are located in DuPage County that defendant points to as the nexus which warrants transfer of the case to DuPage County. That is not sufficient.

⁴ We find that we need not engage in the disputed fact of whether the defendant's headquarters are actually located in DuPage County or Cook County, as it does not affect our analysis.

¶ 22 Turning to the public factors in this case -- the interest in deciding localized controversies locally; the unfairness of imposing the expense of a trial and the burden of jury duty on residents of a county with little connection to the litigation; and the administrative difficulties presented by adding further litigation to court dockets in already-congested forums -- we also find that they do not strongly weigh in favor of transferring the lawsuit to DuPage County. While Cook County is undoubtedly more congested than DuPage County, the trial court noted that Cook County “is quite efficient at disposing of its great number of jury cases over \$50,000.” Moreover, the court congestion factor, by itself, is relatively insignificant. *Dawdy*, 207 Ill. 2d at 181. The defendant also argues that “the residents of DuPage County have a strong connection with an action involving a business headquartered in DuPage County and a significant interest in having this controversy decided locally.” We reject this argument. The defendant used to manufacture its resistors, possibly including the ones at issue, in Cook County. And although the defendant claims it is an “administrative oversight,” its 2017 corporate registration with the Illinois Secretary of State listed a Cook County address for its principal office. More importantly, this court has previously recognized that product liability actions, such as in the lawsuit at issue, are not “localized” cases as they have national and international implications. *Vivas v. Boeing Co.*, 392 Ill. App. 3d 644, 661 (2009). Residents of both Cook County and DuPage County are equally interested in the safety of equipment installed on the planes that fly in our skies.

¶ 23 We emphasize, as the trial court did, that while the plaintiff’s choice of forum is entitled to *less* deference because the plaintiff is not a resident in Cook County, that does not equate to *no* deference. *Berry ex rel. Berry v. Electrolux Home Products, Inc.*, 352 Ill. App. 3d 731, 734 (2004). And it is evident that the defendant failed to prove that the balance of the *forum non*

conveniens factors *strongly* favors transferring the lawsuit to DuPage County. Under these circumstances, it cannot be said that no reasonable person would take the view adopted by the trial court. Accordingly, the trial court did not abuse its discretion, and we affirm its judgment denying the defendant's *forum non conveniens* motion in its entirety.

¶ 24

CONCLUSION

¶ 25 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.