2014 IL App (1st) 132327-U

FIRST DIVISION
July 28, 2014

No. 1-13-2327

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GRAMERCY EMERGING MARKETS FUND, BALKAN VENTURES LLC, and RILA VENTURES, LLC Plaintiffs-Appellants, v. ALLIED IRISH BANKS, P.L.C., THE BULGARIAN AMERICAN ENTERPRISE FUND, and FRANK BAUER Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County No. 12 L 2134 Honorable Raymond W. Mitchell, Judge Presiding.

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Hoffman and Cunningham concurred in the judgment.

ORDER

Held: Trial court did not abuse its discretion in granting defendants' motion to dismiss on *forum non conveniens* grounds having found that the relevant factors strongly favored Bulgaria over a Cook County forum.

¶ 1 Plaintiffs Gramercy Emerging Markets Fund (Gramercy), Balkan Ventures LLC (Balkan), and Rila Ventures LLC (Rila) appeal a trial court order granting defendants' motion to dismiss on *forum non conveniens* grounds. The trial court found that the relevant factors

strongly favored trial in Bulgaria rather than plaintiffs' choice of Cook County. For the following reasons, we affirm.

¶ 2 I. BACKGROUND

¶ 3 In 1989, the United States Congress passed the Support for East European Democracy Act (SEED) to encourage American investment in Eastern European countries. Pursuant to this legislation, defendant Bulgarian American Enterprise Fund (BAEF) was created to promote American investment in Bulgaria and foster the development of the Bulgarian private sector. With federal funding, BAEF founded the Bulgarian American Credit Bank (the Bank) in Sofia, Bulgaria to provide loans to small- and medium-sized businesses in that country. In 2008, BAEF gave notice that it had entered into an agreement with defendant Allied Irish Bank (AIB) to sell 49.99% of its shares in the Bank. The sale of stock from BAEF to AIB was finalized on August 28, 2008. Defendant Frank Bauer (Bauer) served as President and Chief Executive Officer of BAEF between 1991 and 2012 and as the executive director of the Bank from 1997 until 2008. Plaintiff Gramercy is incorporated in the Cayman Islands and operates out of Greenwich, Connecticut. Plaintiffs Rila and Balkan are wholly owned subsidiaries of Gramercy, are incorporated in the state of Delaware, and operate out of Greenwich, Connecticut. At all relevant times, plaintiffs were minority shareholders in the Bank.

¶ 4 Plaintiffs allege that the sale of stock to AIB triggered a statutory tender offer under Bulgaria's Public Offering Securities Act (POSA). POSA requires that a shareholder who purchases more than 50% of a company's stock offer to purchase the stock held by the minority shareholders at the same price. This rule applies when a single investor purchases 50% or more of the voting shares of a publicly traded company and, more relevant to the instant case, when two shareholders "together [hold] more than 50 per cent of the voting shares and *have made an*

agreement to pursue a common policy related to the management of the***company through the joint exercise of the voting rights held by them." (Emphasis added.) Plaintiffs allege that, at a meeting in Chicago, a voting agreement was formed between AIB and BAEF because AIB wanted to "consolidate [the Bank] for book (if not for tax) purposes," and, because AIB skirted the requirement to purchase plaintiffs' shares for the same price at which AIB purchased the shares from BAEF, plaintiffs lost $40 million. Before the stock sale closed, plaintiffs brought their concerns about the proposed transaction to two governmental bodies in Bulgaria, the Bulgarian Financial Supervision Commission and the Commission for Protection of Competition. Neither entity found that AIB was required to make a tender offer under POSA and both approved the sale.

¶ 5 Subsequently, plaintiffs filed this action in the circuit court of Cook County on February 24, 2012 alleging: (1) tortious interference with prospective business advantage against BAEF; (2) breach of fiduciary duty against BAEF; (3) breach of fiduciary duty against AIB; (4) aiding and abetting tortious interference and breach of fiduciary duty against Bauer and BAEF; and (5) civil conspiracy against all defendants. In their complaint, plaintiffs alleged that the shareholder voting agreement was agreed upon at a four-person meeting in Chicago in January of 2008 among BAEF's CEO, Frank Bauer; BAEF's associate secretary and outside legal counsel; AIB's general manager of corporate development; and the director of AIB's Central European Division. Defendants timely filed a motion to dismiss based on *forum non conveniens* pursuant to Illinois Supreme Court Rule 187 (eff. Aug. 1, 1986) and the parties engaged in discovery on issues of fact raised by the motion. On June 27, 2013, the trial court granted defendants' motion to dismiss on *forum non conveniens* grounds and plaintiffs now appeal.

¶ 6 II. JURISDICTION

¶ 7 As a threshold issue, we address defendants' contention that this court lacks jurisdiction because, pursuant to Supreme Court Rule 187, an order dismissing an action under the doctrine of *forum non conveniens* requires that two conditions be satisfied. Ill. S. Ct. R. 187 (eff. Aug. 1, 1986); *Peile v. Skelgas*, 163 Ill. 2d 323, 334 (1994). Therefore, according to defendants, a dismissal for *forum non conveniens* is conditional and non-final and an appeal is necessarily interlocutory in nature and appellate review must be sought pursuant to Supreme Court Rule 306 (eff. Jan. 1, 2003) governing interlocutory appeals. Defendants contend that since plaintiffs appealed as of right pursuant to Supreme Court Rule 301 (eff. Feb. 1, 1994) and not pursuant to Rule 306, this court lacks jurisdiction. In response, plaintiffs argue that no case law precludes them from appealing an order granting defendants' *forum non conveniens* motion as of right under Rule 301. Plaintiffs note that the trial court's order dated June 27, 2013 dismissed the case pursuant to Rule 187 and also stated, "This is a final order that disposes of the case in its entirety." On September 11, 2013, we took defendants' motions to dismiss appeal for lack of jurisdiction as well as plaintiffs' motion in opposition with the case.

¶ 8 Our review shows that a *forum non conveniens* motion need not always be appealed pursuant to Rule 306. The relevant language of Rule 301 states: "Every final judgment of a circuit court in a civil case is appealable as of right. The appeal is initiated by filing a notice of appeal. No other step is jurisdictional. An appeal is a continuation of the proceeding." Ill. S. Ct. R. 301 (eff. Feb. 1, 1994). Rule 306, on the other hand, states: "A party may petition for leave to appeal to the Appellate Court from the following orders of the trial court ***(2) 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) (eff. Jan. 1, 2003).

¶ 9 We have clearly allowed petitions for leave to appeal from a ruling on a *forum non conveniens* motion pursuant to Rule 306(a)(2). See e.g., *First American Bank v. Guerine,* 198 Ill. 2d 511, 514 (2002); *Estate of Rath v. Abbott Laboratories, Inc.*, 2012 IL App (5th) 10096, ¶ 12; *Dowd v. Berndtson*, 2012 IL App (1st) 122376, ¶ 1. However, we have also considered—without analysis—appeals from a ruling granting a *forum non conveniens* motion pursuant to Rule 301. *Nemanich v. Dollar Rent-A-Car Services, Inc.*, 90 Ill. App. 3d 484, 488-89 (1980); *Kerry No. 5, LLC v. Barbella Group, LLC*, 2012 IL App (1st) 102641, ¶ 3. These two cases were decided before and after Rule 306 was amended to include appeals from trial court orders allowing a motion to dismiss on *forum non conveniens* grounds, and not only orders *denying* a *forum non conveniens* motion as the rule had previously been written. Compare 134 Ill. 2d R. 306 with 210 Ill. 2d R. 306. Therefore, defendants' reading of and reliance on *Quaid v. Baxter Healthcare Corp.*, 392 Ill. App. 3d 757, 763-64 (2009) is incorrect. *Quaid* only confirms that appeals from orders granting or denying a motion to dismiss on *forum non conveniens* grounds may be interlocutory pursuant to the amended version of Rule 306. The case does not go as far as to exclude the possibility that a party could also appeal from a final order on the same motion pursuant to Rule 301. We decline defendants' invitation to conclude that appeals from orders granting or denying motions to dismiss on *forum non conveniens* grounds *must* be appealed pursuant to Rule 306.

¶ 10 III. STANDARD OF REVIEW

¶ 11 "The doctrine of *forum non conveniens* is founded in considerations of fundamental fairness and sensible and effective judicial administration." *Gridley v. State Farm Mutual Automobile Insurance Co.*, 217 Ill. 2d 158, 169 (2005). The doctrine presupposes the existence of more than one forum in which jurisdiction may be obtained over the parties and the subject

matter of a case and in which the controversy may be tried. *Id.* The doctrine does not exclude the possibility that an action may be more convenient in an international forum. *Id.*

¶ 12 Resolving a *forum non conveniens* motion lies within the sound discretion of the trial court, but that discretion should be exercised only in exceptional circumstances when the interests of justice require a trial in a more convenient forum. *Langenhorst v. Norfolk Southern Ry. Co.*, 219 Ill. 2d 430, 442 (2006). On appeal, the trial court's decision will be reversed only if it can be shown that the court abused its discretion in balancing the relevant factors. *Bland v. Norfolk & Western Ry. Co.*, 116 Ill. 2d 217, 223 (1987). "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. In other words "it is not [a reviewing court's] duty to reweigh the various factors" (*Bishop v. Rockwell International Corp.*, 194 Ill. App. 3d 473, 477 (1990)) nor is the issue "what decision [the reviewing court] would have reached if [it] were reviewing the facts on a clean slate" (*Vivas v. Boeing Co.*, 392 Ill. App. 3d 644, 657 (2009)) but whether any reasonable person would have decided as the trial court did. *Id.*

¶ 13 Illinois courts analyze both private interest and public interest factors in applying the equitable doctrine of *forum non conveniens.* 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. *Guerine*, 198 Ill. 2d 511, 516 (2002) (citing *Griffith v. Mitsubishi Aircraft International, Inc.*, 136 Ill. 2d 101 (1990)). 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 fora. *Id.* at 517. "The court does not weigh the private interest factors *against* the public interest factors. Rather the court must evaluate the total circumstances of the case in determining whether the balance of factors strongly favors dismissal." *Fennell v. Illinois Central Ry. Co.*, 2012 IL 113812, ¶ 17. See also *Langenhorst*, 219 Ill. 2d at 442.

¶ 14 IV. ANALYSIS

¶ 15 Before weighing the relevant factors, we must first decide how much deference to give to plaintiffs' choice of forum (*Langenhorst*, 219 Ill. 2d at 448) and second, we must decide whether the alternate forum is both available and adequate. *Stonnell v. International Harvester Co.*, 132 Ill. App. 3d 1043 (1985).

¶ 16 A. Home Forum Deference—Residency and Injury

¶ 17 The plaintiffs' right to select the forum is substantial, and unless the factors weigh strongly in favor of dismissal, the plaintiffs' choice of forum should rarely be disturbed. *Dawdy v. Union Pacific Ry. Co.*, 207 Ill. 2d 167, 173 (2003). That is, the battle over forum begins with the plaintiffs' choice already in the lead. *Guerine*, 198 Ill. 2d at 521. Yet, plaintiffs' chosen forum receives "somewhat less deference when neither the [plaintiffs'] residence nor the site of the accident or injury is located in the chosen forum." *Id.* at 517. The trial court's June 27, 2013 order stated that plaintiffs' right to select the forum is substantial, but because plaintiffs were not suing in the forum of their residency and there was scant evidence that an injury occurred in Chicago, it was less reasonable to assume that plaintiffs' choice of forum was convenient.

¶ 18 Plaintiffs contend that in an international *forum non conveniens* case, any U.S. forum would qualify as their home forum despite plaintiffs' residency, or place of incorporation in the case of a business, in another state. Plaintiffs argue that substantial deference was due to their choice of forum because plaintiffs are U.S. resident corporations seeking to litigate in a U.S.

forum. The trial court abused its discretion, plaintiffs argue, in according "less weight" to plaintiffs' forum choice. In response, defendants contend that plaintiffs' argument is without support in Illinois case law and that the federal cases on which plaintiffs rely do not apply to Illinois courts' *forum non conveniens* analyses. Defendants also contend that U.S. corporations doing business abroad should be accorded less deference than a U.S. citizen in their choice of forum. Defendants assert that because plaintiffs voluntarily invested not only in the Bank, and other Bulgarian corporations, plaintiffs submitted to the jurisdiction of the Bulgarian courts to resolve disputes regarding their Bulgarian investments. Accordingly, defendants contend that plaintiffs' decision to file a suit in Illinois that asserts a claim arising from one of those Bulgarian investments should be given less deference.

¶ 19 At the outset, we note that the plaintiffs have not supplied any Illinois *state* cases which stand for the proposition that, when U.S. corporations face transfer to a foreign forum, any U.S. state court is due "full deference" as plaintiffs' home forum. Plaintiffs ask us to extrapolate from federal cases to arrive at such a conclusion.[1] For example, plaintiffs rely on *Adelson v. Hananel*, 510 F.3d 43 (1st Cir. 2007), which acknowledges that the "home forum" for a U.S. plaintiff may be any federal district, not necessarily the one in which the plaintiff resides. Similarly, *Reid-Whalen v. Hansen*, 933 F.2d 1390 (8th Cir. 1991) acknowledges that U.S. citizens should rarely be denied access to courts of the United States. Notably, however, the court in *Hansen* stated that courts have "partially discounted" a plaintiff's U.S. citizenship if the plaintiff is an American corporation doing extensive foreign business and brings an action for injury occurring in a foreign country. *Id.* at 1395 (citations omitted). Plaintiffs also rely on *Interpane Coatings, Inc.*

[1] Plaintiffs note that the trial court also mentioned the federal cases at issue but it is the conclusion of the trial court—that plaintiffs' choice was entitled to "less weight"—that is critical to our review under the abuse of discretion standard.

v. Australia & New Zealand Banking Group, Ltd.,, 732 F. Supp. 909, 915 (N.D. Ill. 1990), in which the court granted "some deference" to an American corporation who had chosen to sue an Australian bank in Illinois. Yet, while federal courts may consider any federal district a "home forum" whether or not the plaintiffs reside in said forum, the federal courts do not ignore residency completely. The Seventh Circuit stated that: "it is less reasonable to assume that the forum is a convenient one" when the plaintiff sues in a district other than its residence, and therefore a plaintiff's choice applies with less force. *Gullone v. Bayer Corp.*, 484 F.2d 951, 956 (7th Cir. 2007).

¶ 20 The expectation that all state courts should be deemed a "home forum" as readily as a district court for all U.S plaintiffs facing a foreign forum is not part of the case law of Illinois.[2] Instead, Illinois cases seem concerned with plaintiffs' residency, not only their U.S. citizenship (See e.g., *In re Marriage of Ricard & Sahut*, ¶¶ 15, 46 (reviewing the parties' residence in addition to their citizenship)). Further, "by giving plaintiff's choice of forum more or less weight***the current [Illinois analysis] takes into account the plaintiff's status as a resident or a nonresident of the forum chosen" ensuring that the choice "will not be accorded undue deference." *Griffith*, 136 Ill. 2d at 107-08 (according the non-resident plaintiff's choice of forum less deference). In a similar case to the one at bar, we accorded "some" deference to the plaintiffs' choice of forum. *Vivas*, 392 Ill. App. 3d at 644 (giving the plaintiffs' choice of Cook County "some" deference when six out of forty-nine plaintiffs were U.S. citizens, five of which were New York residents, and one was an Illinois resident).

[2] We acknowledge the recent Pennsylvania case which reversed the trial court's granting of defendants' *forum non conveniens* motion in *Bochetto v. Piper Aircraft Co.*, 2014 WL 2566282 (June 9, 2014). On review, the appellate court found that the trial court had erred in failing to consider the action's connections to the United States as a whole. The Pennsylvania court identified the U.S.'s general interest in ensuring that American manufacturers are deterred from producing defective products.

¶ 21 Here, plaintiff companies are not residents of Cook County, but instead can be considered residents of Connecticut, where they exercise corporate functions, or Delaware in the case of the two subsidiaries who are incorporated in that state. 805 ILCS 5/5.05 (West 2010). According "some" but not substantial deference to the plaintiffs' choice of Cook County, we proceed with the plaintiffs' forum choice in the lead.

¶ 22 Apart from requesting substantial deference because the alternate forum is foreign, plaintiffs contend the situs of the injury in Chicago entitles them to substantial deference. Plaintiffs rely on several pieces of evidence to say that a voter shareholder agreement was in place after the January 2008 meeting in Chicago: (1) when BAEF was looking to sell even more of the Bank's shares after the transaction at bar, its legal counsel assured AIB that the sale would ensure that AIB and BAEF collectively held more than 50% of the Bank's voting rights; (2) the Austrian bank with whom the Bank had a credit facility required that AIB and BAEF collectively hold over 50% of the voting shares; and finally, (3) the email correspondence in which BAEF revealed it wanted to call a meeting of the Bank's supervisory board on behalf of AIB, which plaintiffs argue AIB could not have done on its own. Plaintiffs also contend that their injuries were felt in the United States. In response, defendants dispute that a shareholders' agreement was ever in place by pointing to an email in which BAEF's attorney wrote to AIB saying he "would rather not commit to a shareholders agreement if there is some simpler way to help [AIB] solve their consolidation issue." Even if such an agreement had been made, defendants argue that the trial court properly concluded that any injury could not have occurred until the closing of the stock sale in August 2008 in Bulgaria.

¶ 23 Illinois courts give substantial deference to the plaintiffs' choice of forum if it was the site of the injury. *Fennell*, 2012 IL 113812, ¶ 18. Here, however, there was a series of negotiations

and communications about a stock sale and only in August 2008 would AIB and BAEF have been able to vote pursuant to an illicit shareholder agreement. Moreover, it is not at clear that any injury "took place" at the Chicago meeting based on the almost immediate follow-up email from BAEF's attorney that distanced that company from the possibility that a shareholder agreement would be made saying BAEF "would rather not commit to a shareholders agreement." Additionally, a letter from AIB to its Irish regulators explained that it did not intend to adopt a common policy towards the management of the Bank with any other shareholder. With this in mind, it would be very hard to argue that the plaintiffs incurred their alleged injury in Chicago. Nevertheless, discovery is not complete because "requiring extensive investigation prior to deciding a *forum non conveniens* motion would defeat the purpose of" the motion. *Gridley,* 217 Ill. 2d at 167. No one conclusion about the location of the injury can be drawn from the evidence produced thus far.

¶ 24 Even if the plaintiffs' allegations are true, the Cook County forum choice is only entitled to standard deference because, on the whole, Chicago was not the location of a substantial portion of acts that gave rise to plaintiffs' alleged injury. *Koss Corp. v. Sachdeva*, 2012 IL App (1st) 120379. See also *Lambent v. Goodyear Tire & Rubber Co.*, 332 Ill. App. 3d 373 (2002); *Jones v. Searle Laboratories*, 93 Ill. 2d 366 (1982). In *Koss*, we accorded *standard* deference to the plaintiff's forum choice because—despite not being a home forum or the site of the injury—a "substantial portion of the acts that gave rise to the plaintiff's injury" occurred there. *Koss Corp.*, 2012 IL 120397, ¶ 120. In comparison to *Koss*, the instant "injury" should, *at the very most*, be accorded standard deference. The other, non-Chicago meetings about the sale between BAEF and AIB took place not only outside Cook County but outside the United States. Only one of at least four meetings about the allegedly illicit sale took place in Chicago, which is unlike *Koss*.

¶ 25 B. Available and Adequate Forum

¶ 26 Next, we assess the availability and adequacy of the alternate forum, Bulgaria. Neither party contests the fact that Bulgaria is an available forum to hear this case; but, relying on their respective legal experts, the parties disagree about the adequacy of that forum. Addressing Bulgarian courts' "adequacy," plaintiffs allege that Bulgarian courts are undeniably corrupt and they would not receive a fair trial in that forum. Plaintiffs further claim they would be disadvantaged by the Bulgarian courts' limited and rudimentary discovery mechanisms which provide for pre-trial depositions only in rare circumstances, do not permit discovery through written interrogatory, and offer no right to a jury trial for civil claims brought by a private litigant. Plaintiffs' expert concedes that all civil actions are tried before professional judges trained as lawyers and that Bulgarian law would provide redress for the damages caused by the alleged actions of the defendants. Plaintiffs' expert does not address any corruption in Bulgaria's courts. Plaintiffs' expert states that plaintiffs would be required to pay a $1.4 million filing fee for this case which is equivalent to 4% of the damages requested in their complaint. Addressing this concern, defendants' expert states in his declaration that a successful plaintiff is entitled to recover its entire filing fee. Furthermore, defendants' legal expert generally affirms that the Bulgarian legal system is developed and its procedures do not deviate in any significant way from those of other European courts, and all litigants can achieve resolution of all legal disputes in the Bulgarian courts.

¶ 27 An alternative forum is adequate if it provides the plaintiffs with a fair hearing to obtain some remedy for the alleged wrong; that forum need not provide the exact same remedy and may not be circumvented because foreign law may be less favorable. *Marriage of Ricard*, 2012 IL App (1st) 111757, ¶ 64 (citing *Philips Electronics N.V. v. New Hampshire Insurance Co.*, 312

Ill. App. 3d 1070, 1085 (2000)). The alternative forum may be avoided when "the application of the foreign law presents a danger that plaintiffs would be deprived of any remedy or treated unfairly." *Philips Electronics*, 312 Ill. App. 3d at 1085. We acknowledge that the filing fee in Bulgaria is a relevant factor and disproportionate to the filing fees in the United States. However, federal courts that have had an opportunity to consider foreign countries' filing fees in the *forum non conveniens* context have considered the financial resources of the plaintiffs to pay the fees. Compare *Altmann v. Republic of Austria*, 317 F.3d 954, 972-73 (9th Cir. 2002) (noting that the cost of a lawsuit alone does not render a foreign forum inadequate); *Mercier v. Sheraton International, Inc.*, 981 F.2d 1345, 1353n. 7 (1st Cir. 1992) (observing that Turkish courts typically set plaintiff's bond at 15% of the recovery sought, and that the bond is a recoverable cost in the event the plaintiff prevails) with *Bridgestone/Firestone North American Tire, LLC v. Garcia*, 991 So.2d 912 (2008) (finding that the trial court did not abuse its discretion in concluding that Argentina's 3% filing fee would deprive appellees of a remedy in that foreign forum). The record contains no information about the hardship that such a filing fee would have on the instant plaintiffs and, as such, the trial court did not give undue weight to the filing fee requirement. Given that plaintiffs' own legal expert opined that Bulgarian law would provide redress for plaintiffs' claims, we agree with the trial court's conclusion that Bulgaria is an adequate forum.

¶ 28 C. Private Interest Factors

¶ 29 Now, we turn to the private and public interest factors analysis.

¶ 30 1. Convenience of the Parties

¶ 31 We now address the first of the private interest factors, convenience of the parties. The three plaintiffs are incorporated in either the Cayman Islands or Delaware and all three have their

principal places of business in Connecticut. The record reveals that Gramercy, in addition to shares in the Bank, owns shares of two other Bulgarian companies and that they hired Bulgarian legal counsel to represent their opposition to AIB's prospective purchase in 2008. Furthermore, plaintiffs will send a representative to the Bank's supervisory meetings that will take place in Bulgaria for the next few years. Finally, in 2007, plaintiffs obtained approval from Bulgarian regulators to increase their ownership of the Bank's stock to 49.9%. The record is silent on plaintiffs' connections to Cook County.

¶ 32 Defendant BAEF is incorporated in Delaware had an office in Cook County until December 2012, four years after the transaction at issue and several months after the suit was filed. Defendants strongly disagree with plaintiffs' characterization of its former Cook County office as BAEF's "headquarters." BAEF currently maintains an office in Bulgaria and another office outside of Cook County in Homer Glen, Illinois. Parties dispute the significance of the Homer Glen office. Plaintiffs believe the proximity of the office to Cook County, the employee located in that office who is a registered agent, and the fact that the board meetings of BAEF are regularly held in the United States, all demonstrate that Cook County would be more convenient for BAEF than Bulgaria. Defendants emphasize that the Homer Glen employee is part-time, merely collects mail and processes invoices, and that the office contains no documents relevant to the case. Defendants state, via a declaration of Frank Bauer, that after 2003, BAEF began to shift its operations from Chicago to Sofia, Bulgaria.

¶ 33 AIB is an Irish bank with its headquarters in Dublin, Ireland. It has four principal locations, including an office in New York which had 66 employees during the relevant time period. AIB had an office in Cook County until March 2007, before the transaction at issue took place. AIB has no significant presence in Bulgaria other than the at-issue transaction. AIB

attests that it would be far more convenient to defend claims that it violated Bulgarian law before a Bulgarian court. Plaintiffs urge the court to rely on the fact that AIB still does business in Chicago, and that it has initiated lawsuits in Cook County.

¶ 34 Frank Bauer, CEO of BAEF, lives in Wayne County, Illinois, and as an officer of BAEF and the Bank, he worked out of BAEF's Bulgaria office, the BAEF Chicago office until 2012, or from his home in Wayne County. Bauer states that he has spent considerable time in Bulgaria and would not be inconvenienced by a trial there. Bauer took 64 trips to Bulgaria in a span of just five years as an officer of BAEF. Finally, defendants contend that the fact that any of the defendants conducts business in Illinois is not determinative of convenience.

¶ 35 With respect to the parties' convenience, we do not find that the trial court abused its discretion in concluding that while the residency of the parties favors Illinois other relevant factors, including the international nature of the parties' businesses, detract from that conclusion. First, we acknowledge that BAEF had one of two main offices in Chicago until December 20, 2012 and its meetings are in the United States. *Elling v. State Farm Mutual Automobile Insurance Co.*, 291 Ill. App. 3d 311, 316 (1997). But, defendants have asserted—with a declaration from Bauer—that Cook County has not been the location of BAEF's headquarters at least since 2006. Additionally, we consider that BAEF's singular purpose was to foster business *in Bulgaria.* That is, even though it had an office in Cook County for a number of years, it was looking to carrying out its business elsewhere. In this way, BAEF is unlike defendants who have an office in Illinois *and* carry out business in Illinois. *Ellis v. AAR Parts Trading, Inc.*, 357 Ill. App. 3d 723 (2005) (affirming the trial court's decision denying defendants' *forum non conveniens* motion in part because two of them were Illinois resident corporations *doing business in Illinois*). With respect to the office in Homer Glen, defendants have demonstrated that their

funding source, the United States Agency for International Development, required them to transfer "almost all of BAEF's documents" to Bulgaria, the Homer Glen office maintains no documents, and the one employee works there is not listed as a potential material witness in this case. Second, Bauer's residence in Illinois indicates his relative convenience to attend trial in Cook County, but defendants have provided information casting doubt on that seemingly forgone conclusion, namely, the number of trips Bauer took to Bulgaria as an officer of BAEF. Finally, plaintiffs are investment companies specializing in emerging market investments who have invested in two other Bulgarian entities and who, in 2007, sought and received permission from the Bulgarian National Bank to purchase 49.9% of the Bank's stock. The trial court properly found "all these considerations relevant." There was no abuse of discretion in its analysis of both residency, favoring Cook County, as well as the nature of the parties' businesses, favoring Bulgaria.

¶ 36 2. Relative Ease of Access to Sources of Testimonial, Documentary and Real Evidence

¶ 37 The second private interest factor, the relative ease of access to sources of testimonial, documentary, and real evidence, strongly favors Bulgaria. We first address the location of witnesses. Defendants have identified 27 witnesses or people with information about the transaction. Excluding AIB's lawyer and BAEF's expert who should not be accorded undue weight (*Bland v. Norfolk & Western Ry. Co.*, 116 Ill. 2d 217, 227 (1987)), defendants have listed the following as potential material witnesses or people with information about the transaction at issue: one Illinois resident, three other U.S. residents, thirteen Bulgaria residents, two Poland residents, and six Ireland residents. Clearly, the 4 people who reside in the United States are outnumbered by the 13 Bulgaria residents. Furthermore, three of defendants' U.S. residents—whom plaintiffs complain the trial judge ignored—were listed as having knowledge of the

transaction, not as potential material witnesses. We have no indication that there were ever any more than two employees at the Chicago office of BAEF. Further, none of AIB's potential witnesses hail from the New York or previously closed Chicago offices. At the very least, plaintiffs' assertion that the witnesses are "scattered" among the United States, Ireland, Poland and Bulgaria is not correct given that 13 out of 25 of defendants' witnesses reside in Bulgaria and 21 out of 25 of the witnesses reside in Europe.

¶ 38 With respect to the possibility of live testimony from the witnesses, Bulgaria is also the favored forum. As previously stated, Bauer took 64 trips to Bulgaria over a five-year period and the AIB witnesses who reside outside Bulgaria have taken many more trips to Bulgaria than to the United States. Finally, defendants state that both Bauer and Falk, BAEF's attorney in Chicago, have agreed to travel to Bulgaria for trial, but that no European witnesses have agreed to travel to Illinois. Defendants have also supplied mileage distances for our consideration. See *Dawdy*, 207 Ill. 2d at 177 (stating that an appellate court may take judicial notice of mileage distances). Sofia, Bulgaria is 699 miles from Warsaw, Poland and 1,560 miles from Dublin, Ireland. Chicago is 4,724 miles from Warsaw and 3,709 miles from Dublin. Thus, Bulgaria is significantly closer for many potential witnesses or people with information about the transaction at issue. Plaintiffs dispute that the Bulgarian witnesses identified by BAEF will actually be called to testify and they argue that the trial court abused its discretion by considering those witnesses in its calculus of convenience. But, defendants have supplied sufficient information to prove the relevancy of their listed witnesses stating that each of the witnesses has knowledge of the absence of a shareholder agreement between AIB and BAEF. Cf. *Schoon v. Hill*, 207 Ill. App. 3d 601, 608 (1991) (noting that the third-party defendant failed to show that his potential witnesses have evidence that the third-party defendant would use in his defense).

¶ 39 The method by which a court could obtain testimony from the witnesses and the location of documentary evidence are additional considerations within the second private interest factor.

¶ 40 There are three avenues to obtain evidence located in other countries in this case: the European Council Regulation 1206/2001, the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters, and letters rogatory. The European Council Regulation, which would apply to all Polish, Irish and Bulgarian witnesses—21 out of 25 potential witnesses or people with knowledge of the transaction—provides that the direct taking of evidence be secured by "the most rapid means possible" including by teleconference and videoconference or by sending a representative of the requesting state to the witness' location in the European Union preferably within 90 days. The Hague Convention calls for a letter of request to be sent to a signatory of the Convention in which the witness is located and mandates that such requests should be executed within 90 days. Ireland is not a signatory to the Hague Convention. Finally, letters rogatory are a method for gathering evidence used in the absence of an international convention. In essence, a letter rogatory is a "formal request from a court in one country to the appropriate judicial authorities in another country that can effectuate service of process." *Magness v. Russian Federation*, 247 F.3d 609, 614 n. 10 (5th Cir. 2001). See also Vienna Convention on the Law of Treaties, Art. 5. The letter typically contains instructions to the receiving state in which the evidence is located as to what type of assistance is required, including what questions are to be asked of the witness in that state and what documents that witness should produce. While plaintiffs' claim that letters rogatory are sufficient methods for gathering evidence, defendants' expert relies on language from the U.S.'s Department of State website that conveys that the execution of letters rogatory "may take a year or more worldwide" because they are "customarily transmitted via the diplomatic channel, a time-consuming means

of transmission." Defendants' Exh. 11 (citing "Preparation of Letters Rogatory." U.S. Department of State, *available at* http://travel.state.gov). If the trial were to proceed in Bulgaria, the European witnesses' testimony would be governed by Regulation 1206/2001 while the U.S. witnesses' testimony could be secured under the Hague Convention. If the trial were to proceed in the United States, Polish and Bulgarian witnesses' testimony can be secured under the Hague Convention and Irish witnesses' testimony can be secured with letters rogatory.

¶ 41 With this information, the only method that is prone to protracted processing is letters rogatory. We do not find an abuse of discretion in the trial court's finding that "the Hague Convention or letters rogatory [require] the use of consular and diplomatic channels which will be more difficult, more costly, and less efficient." Because a Bulgarian forum would eliminate the need for letters rogatory, this factor favors a Bulgarian forum.

¶ 42 We recognize that the location of documents has become a less significant factor in the age of Internet and world-wide delivery services. *Fennell*, 2012 IL 113812, ¶ 36. Given defendants' identification of specific categories of documents and their locations, we find that this factor strongly favors Bulgaria. The majority of BAEF's documents are in Bulgaria with limited relevant documents at BAEF's lawyers' offices in Chicago. The majority of AIB's documents are in Ireland or Poland and some are exclusively in Bulgaria, including shareholder meeting minutes and the approvals of the transaction from the Bulgarian entities. Plaintiffs, without specificity, say that the evidence is scattered among the United States, Poland, Ireland and Bulgaria, while all three defendants indicate that the vast majority of the relevant documents are either in Bulgaria or significantly closer to Bulgaria than the United States or Cook County.

¶ 43 3. Practical Considerations

¶ 44 The third and final private interest factor asks a court to account for practical considerations. The trial court concluded that practical considerations, including the "cost of translation of both testimony and of relevant documents will be substantially increased by keeping the case in Illinois." Contesting that conclusion, plaintiffs argue that 99.7% of the evidence produced so far is in English and would not require translation for trial in Cook County and furthermore, the testimony of Bauer, BAEF's legal counsel, and AIB's employee witnesses would not need to be translated. Plaintiffs contend that all parties agree on POSA's interpretation and application and that an Illinois court can apply foreign law when there are policy reasons or strong connections to the forum court.

¶ 45 This case, at its core, hinges on a Bulgarian law and the selling of stock in a Bulgarian bank to an international, non-U.S. bank. Until now, discovery reveals that the majority of documents are in English, favoring a Cook County forum. But, the parties agree that discovery is not yet complete and that some documents will need translation in either forum. It is the translation services for witnesses, rather than documents, that strongly support the Bulgarian forum. Of AIB and BAEF's combined Bulgarian witnesses, defendants confirm via interrogatory responses that a few can speak English while the rest are "non-native English speakers." The number of witnesses who would be entitled to translation services in Cook County is greater than the number of witnesses whose testimony would need translation in Bulgaria, making a trial in Cook County more expensive and protracted. Moreover, the need for expert testimony on Bulgarian law, even if the law is allegedly "straightforward," is also a valid consideration. The Illinois Supreme Court cautions against the need to apply the law of a foreign jurisdiction, whether of another state (*Gridley*, 217 Ill. 2d at 175) or a foreign country (*Searle Laboratories*, 93 Ill. 2d at 375). Finally, we have stated that when a company with a defined lifespan has a

singular purpose to foster growth in the private sector of a foreign country, there is little connection to the forum in which only one meeting was held. We find that it was not an abuse of discretion to find that the practical considerations, and the private interest factors as a whole, favored a Bulgarian forum.

¶ 46 II. Public Interest Factors

¶ 47 We next consider the public interest factors: (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 fora. *Fennell v. Illinois Central Ry. Co.*, 2012 IL 113812, ¶ 17. See also *Langenhorst,* 219 Ill. 2d at 442.

¶ 48 1. Local Controversies Decided Locally

¶ 49 In support of the Cook County forum, plaintiffs argue that BAEF maintained its headquarters in Chicago for most of its existence, BAEF was created with taxpayers' money, and its board is comprised entirely of U.S. citizens. Because the alternate forum is located abroad, plaintiffs urge the court to take the national interest of the United States into account, asserting that the policies of the federal legislation that created BAEF will only be accomplished if the injured investors can seek redress in U.S. courts. Plaintiffs further assert that AIB, Bauer and BAEF all conduct business throughout the United States. Defendants, on the other hand, reiterate that the matters at issue involve a Bulgarian corporation (the Bank), a foreign bank (AIB), and Bulgarian law that has no comparison in the United States. Defendants also note that at least four meetings took place in Bulgaria between December 2007 and August 2008 leading up to the sale of the Bank's stock, while only one meeting took place in Chicago during the same

time period. AIB notes that plaintiffs invested in the Bank, not the American taxpayer-funded BAEF, and that Bulgaria's strong interest in the case was evident when, on plaintiffs' request, Bulgaria's regulators considered AIB's investment prior to the sale. Finally, defendants contend that Bulgarian courts have an interest in ensuring investments in Bulgarian entities are made in accordance with Bulgarian law.

¶ 50 We agree with the trial court in concluding that Bulgaria has a significant connection to the controversy while Illinois has little connection. One strong indication of the Bulgarian interest in this case is the letters of approval of the transaction at issue from the Bulgarian National Bank and the Commission for Protection of Competition, the latter of which was nearly ten pages long and had a detailed explanation of the legal and business landscape of the transaction. By transferring the case to Bulgaria, the conclusions reached by those entities will be reconciled with the plaintiffs' allegations of impropriety. In so concluding, we agree with the reasoning of the Seventh Circuit when it commented on the same SEED legislation at issue here, conceding that U.S. taxpayers have an interest in ensuring that federal funds are being used properly but also acknowledging that Bulgaria may have an equal or greater interest than the United States in "guarding against the extortion of its own businesses [the Bank]." *Stroitelstvo Bulgaria, Ltd.*, 598 F.3d at 425.

¶ 51 2. Unfairness of Jury Duty

¶ 52 This controversy involves the composition of shareholders of a Bulgarian bank and jurors in Cook County would have at best an attenuated connection to a foreign bank's stockholders. Moreover, the Bank has a full banking license issued by the Bulgarian National Bank. Jury duty should not be imposed on Cook County residents who have scant, if any connection to any of the parties or law at issue.

¶ 53 3. Congested Forum

¶ 54 The trial court found that the likelihood of a congested forum was a neutral factor. Our supreme court has recognized that a trial court is in a better position than a reviewing court to assess the burdens on its own docket. *Boner v. Peabody Coal Co.*, 142 Ill. 2d 523, 539 (1991). Therefore, we defer to the finding of the trial court and decline plaintiffs' invitation to find an abuse of discretion on this issue.

¶ 55 We agree with the trial court that the relevant factors in their totality strongly favor transfer to Bulgaria. *Dawdy*, 207 Ill. 2d at 176. The trial court did not abuse its discretion in balancing the relevant factors and we conclude that a reasonable person could have decided as the trial court did.

¶ 56 Affirmed.