

NOTICE

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FIRST DIVISION
AUGUST 31, 2009

No. 1-08-2734

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THAD THORNTON, et al.,)	Appeal from the
)	Circuit Court of
Plaintiffs-Appellees,)	Cook County.
)	
v.)	No. 07 L 004642
)	
HAMILTON SUNDSTRAND CORP.,)	
et al.,)	The Honorable
)	William D. Maddux,
Defendants-Appellants.)	Judge Presiding.

O R D E R

After an airline accident in Queensland, Australia on May 7, 2005, representatives of 14 Australian citizens killed in the accident filed a complaint in the circuit court against six defendants:¹ Hamilton Sundstrand Corp., Hamilton's employee Matthew Heir, and Honeywell International, Inc., the designers, manufacturers, and sellers of a ground proximity warning system (GPWS) attached to the accident aircraft; Jeppesen Sanderson, Inc. and the Boeing Company, the designers and sellers of navigation charts used by the flight crew; and M7 Aerospace, LP,

¹ The complaint named two additional defendants that have since been dismissed for lack of personal jurisdiction.

which purchased and assumed liability for the corporation that designed, manufactured, and sold the aircraft. The complaint included product liability, wrongful death, and negligence claims. The defendants moved to dismiss pursuant to the doctrine of forum non conveniens in favor of an action in Australia. Judge William D. Maddux found that public and private interest factors did not weigh in favor of the motion and denied it. We granted the defendants' petition for leave to file an interlocutory appeal under Supreme Court Rule 306(a)(2). 210 Ill. 2d R. 306(a)(2). Because we agree that public and private interest factors do not weigh in favor of dismissal, we affirm.

BACKGROUND

On May 27, 2005, an aircraft operated by Transair, an Australian airline, crashed in bad weather into a mountain ridge while on approach to Lockhart River airport in Queensland. All thirteen passengers and both crew members on board were killed. Because visibility was low, crew members attempted to perform a "non-precision instrument approach." To make that approach, the crew relied upon navigation charts and a GPWS, which used radio signals to determine the aircraft's altitude and provide aural and visual alerts if the aircraft approached terrain. The aircraft descended below the minimum altitude called for by the approach procedure and crashed 11 kilometers from the airport. No radio broadcasts were made indicating a problem with the aircraft or crew.

The Plaintiffs

The plaintiffs are representatives of 14 Australian citizens killed in the accident. Only one plaintiff, Gillian Hurst, is a United States citizen. None of the plaintiffs, including Hurst, reside in the United States.

The Defendants

All of the corporate defendants are incorporated in the United States. Mr. Heir is a resident of Rockford, Illinois, and has been employed by Hamilton since 1987.

Hamilton designed the GPWS when it had its headquarters in Rockford, Illinois. Hamilton sold its GPWS design to a predecessor of Honeywell in 1993, and moved its corporate headquarters to Connecticut in 1999. Honeywell built the GPWS attached to the accident aircraft in its facility in Redmond, Washington. Honeywell sold the GPWS from that facility.

Boeing's headquarters are in Cook County. Boeing acquired Jeppesen, which designed and sold the navigation charts used by the flight crew, in 2000. Jeppesen's principal place of business is in Denver, Colorado.

M7 is a limited partnership based in Texas. The plaintiffs allege that when M7 purchased Fairchild Aircraft, which designed, manufactured, and sold the accident aircraft, M7 assumed Fairchild's liabilities.

Location of Relevant Evidence

The plaintiffs' 26-count amended complaint alleged that

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defects in the GPWS gave the crew only delayed warnings which the crew may have believed were false, the layout of the navigational charts made it difficult to locate certain critical points along the approach path, and the design of the aircraft's cockpit placed essential displays outside the pilot's visual field. The evidence relevant to these claims is scattered in Australia and the United States.

There were two official Australian investigations into the accident, one conducted by the Australian Transport Safety Bureau (ATSB) and the other conducted by the Queensland state coroner. The documentary evidence concerning these investigations is in Australia. However, detailed findings of both investigations were included in the record supporting the defendants' petition for leave to appeal.

At the request of the ATSB, Honeywell performed a software simulation of the aircraft's approach to Lockhart River airport to determine what warnings the GPWS should have made. According to the ATSB's report, the simulation showed that the crew "received a one second 'terrain terrain' alert about 25 seconds prior to impact, followed by a second 'terrain terrain' alert and a continuous 'pull up' warning for the final 5 seconds of the flight." The plaintiffs assert, and the defendants do not dispute, that documents and witnesses related to this simulation are in the United States.

According to the deposition testimony of Paul Gipson,

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manager of product integrity for avionics at Honeywell, details of the design and manufacture of the GPWS are in Honeywell's facility in Redmond, Washington.

In an affidavit, Richard A. Fosnot, aviation safety manager for Jeppesen, stated that Jeppesen designed and created the navigation charts relied upon by the pilots in Colorado. Jeppesen maintains control over documents relating to those charts in Colorado. However, Fosnot added that the charts were prepared based upon information obtained from Airservices Australia, which remains "in the custody and possession of Airservices Australia in Australia."

The accident aircraft, an SA 227-DC Metro 23, was designed, manufactured, and sold in San Antonio, Texas by Fairchild Aircraft. M7 purchased Fairchild in 2003. M7 supplies spare parts for Metro 23 aircrafts from the same San Antonio facility.

According to the ATSB's accident report, evidence of the negligence of Transair and its pilots, such as air traffic controllers who contacted the pilots on the day of the crash, individuals with knowledge of Transair's training procedures, and documents and individuals related to the ATSB investigation, are located in Australia. The defendants contend this evidence is critical to their defense that the negligence of Transair and its pilots was the proximate cause of the crash.

The defendants also contend that evidence of the negligent oversight of the Civil Aviation Safety Authority (CASA), the

Australian equivalent of the Federal Aviation Administration, includes witnesses and documents in Australia.

The defendants filed a motion to dismiss based upon forum non conveniens in favor of an action in Australia, arguing that the majority of the liability evidence and all of the damages evidence is in Australia. The defendants did not seek a transfer to the state of Washington, where details of the design and manufacture of the GPWS are located, Colorado, where the navigation charts were designed and created, or Texas, where the aircraft was designed, manufactured, and sold.

After a hearing, Judge Maddux issued an order denying the defendants' motion. In the order, Judge Maddux found that Australia is an adequate forum, and that the plaintiffs' choice of forum deserves only limited deference because the plaintiffs are foreign to their chosen forum. However, Judge Maddux held that "the balance of the private and public interest factors do not strongly favor dismissal and the plaintiffs' choice of forum should not be disturbed." We granted the defendants' petition for leave to file an interlocutory appeal under Supreme Court Rule 306(a)(2). 210 Ill. 2d R. 306(a)(2).

ANALYSIS

"Forum non conveniens is an equitable doctrine founded in considerations of fundamental fairness and the sensible and effective administration of justice." Langenhorst v. Norfolk Southern Ry. Co., 219 Ill. 2d 430, 441, 848 N.E.2d 927 (2006),

citing Vinson v. Allstate, 144 Ill. 2d 306, 310, 579 N.E.2d 857 (1991). Under this doctrine, a trial court can transfer a case "when trial in another forum 'would better serve the ends of justice.'" Langenhorst, 219 Ill. 2d at 441, quoting Vinson, 144 Ill. 2d at 310. However, a trial court should make a transfer "only in exceptional circumstances when the interests of justice require a trial in a more convenient forum." (Emphasis in original.) Langenhorst, 219 Ill. 2d at 442.

"A trial court is afforded considerable discretion in ruling on a forum non conveniens motion." Langenhorst, 219 Ill. 2d at 441-42, citing Piele v. Skelgas, Inc., 163 Ill. 2d 323, 336, 645 N.E.2d 184 (1994). We will only reverse a trial court's ruling on a forum non conveniens motion if it abused its discretion "in balancing the relevant factors," meaning that "no reasonable person would take the view adopted by the circuit court." Langenhorst, 219 Ill. 2d at 442, citing Dawdy v. Union Pacific R.R. Co., 207 Ill. 2d 167, 177, 797 N.E.2d 687 (2003).

Deference to the Plaintiffs' Chosen Forum

Before weighing the relevant factors, we must determine the amount of deference to give to the plaintiffs' choice of forum. Langenhorst, 219 Ill. 2d at 448. Although a plaintiff generally has a substantial right to choose a forum and her choice "should rarely be disturbed," a plaintiff's choice "deserves less deference" when the chosen forum is neither the plaintiff's residence nor the site of the accident or injury. Dawdy, 207

Ill. 2d at 173-74. However, less deference is not the same as no deference. Elling v. State Farm Mutual Automobile Insurance Co., 291 Ill. App. 3d 311, 318, 683 N.E.2d 929 (1997).

None of the plaintiffs are residents in the United States. Although Gillian Hurst is a citizen in the United States, she resides in Australia, attenuating her connection with this forum. Phillips Electronics, N.V. v. New Hampshire Insurance Co., 312 Ill. App. 3d 1070, 1083, 728 N.E.2d 656 (2000). Nor did the accident occur in the United States. Thus, the plaintiffs' choice of forum is entitled to less than substantial deference.

Factors that Must Be Considered

A trial court must consider relevant private and public interest factors in deciding a forum non conveniens motion. Langenhorst, 219 Ill. 2d at 443. Each case must be considered on its unique facts, without emphasis on any one factor. Langenhorst, 219 Ill. 2d at 443. We have recently held that where a defendant only seeks an action in a single foreign jurisdiction, rather than an alternative United States court, the issue before the court is whether that foreign jurisdiction is more convenient. Vivas v. Boeing Co., No. 1-08-2726, 1-08-2740 (cons.), slip op. at 2 (June 15, 2009). When weighing the relevant factors, courts should be cognizant that "convenience, the touchstone of the forum non conveniens doctrine, has a different meaning today because we are connected by interstate highways, bustling airways, telecommunications, and the world

wide web." Woodward v. Bridgestone/Firestone, Inc., 368 Ill. App. 3d 827, 832, 858 N.E.2d 897 (2006), citing First American Bank v. Guerine, 198 Ill. 2d 511, 525, 764 N.E.2d 54 (2002).

Private Interest Factors

There are three private interest factors a trial court must consider when deciding a forum non conveniens motion: " '(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 Guerine, 198 Ill. 2d at 516.

Convenience of the Parties

The defendants contend that Judge Maddux abused his discretion by finding that no single forum is more convenient than another because the potential trial witnesses are scattered amongst various states (Washington, Colorado, and Texas) and countries (the United States and Australia).

To prevail on this factor, the defendants "must show that [the plaintiffs'] chosen forum is inconvenient to [the defendants] and that another forum is more convenient to all parties." Langenhorst, 219 Ill. 2d at 450. The defendants, United States corporations and a United States resident, have not provided any affidavits stating that Cook County is an inconvenient forum for them or any of their witnesses. See Langenhorst, 219 Ill. 2d at 450. Additionally, although it is

accorded little weight (Langenhorst, 219 Ill. 2d at 450), the parties' attorneys are located in Cook County.

Judge Maddux's assessment of the location of relevant witnesses is accurate; witnesses with knowledge of the design, manufacture and sale of the airplane and its components are scattered in several states, while witnesses with knowledge of the official investigation into the crash and pilot training are in Australia. That some witnesses are in Australia does not make that forum more convenient for all the parties (Langenhorst, 219 Ill. 2d at 450), including potential American witnesses. Judge Maddux did not abuse his discretion in finding that "no single forum enjoys a predominant connection to the litigation" (Woodward, 368 Ill. App. 3d at 834; Guerine, 198 Ill. 2d at 526), and thus the convenience-of-the-parties factor does not weigh in favor of dismissal.

Ease of Access to Evidence

The defendants contend that Judge Maddux did not properly consider the "enormous concentration of evidence and witnesses" in Australia.

While it is true that evidence generated by the two Australian investigations into the crash is in Australia, the final reports from each of those investigations has already been included in the record supporting this appeal. To the extent that further documentary evidence is located in Australia, "[t]he location of documentary evidence has become less significant

because today's technology allows documents to be copied and transported easily and inexpensively." Ammerman v. Raymond Corp., 379 Ill. App. 3d 878, 890, 884 N.E.2d 1221 (2008). The "damages evidence" located in Australia is of minimal value. The accident aircraft was completely destroyed in a remote mountain location. Further, because the plaintiffs' claims are based upon a product liability theory, the site of the accident is less important; "any local interest is largely supplanted by a more general interest in resolving a claim concerning an allegedly defective product and jury views of the accident site are generally unnecessary." Ammerman, 379 Ill. App. 3d at 886.

Significant evidence is also located in the United States: evidence regarding the design and manufacture of the GPWS is in Washington; evidence of the design and creation of the Jeppesen charts is in Colorado; and evidence regarding the design, manufacture, and sale of the accident aircraft is in Texas. Additionally, the defendants do not dispute that evidence of Honeywell's GPWS simulation is in the United States. Even granting the defendants' assertion that the information underlying the creation of the Jeppesen charts is in Australia, the ease of access to relevant evidence does not heavily favor transfer.

As a fall-back position, the defendants argue that Judge Maddux should have granted their motion because Illinois courts cannot compel the production of Australian witnesses and

evidence, including witnesses with knowledge of the allegedly negligent training and oversight of the pilots by Transair and CASA. This argument cuts both ways. "If the case remains in Illinois, witnesses in Australia are not compelled to come to the United States; and if the forum is changed to Australia, American witnesses are not compelled to appear in Australia." Woodward, 368 Ill. App. 3d at 835. The defendants attempt to make an Australian court appear more palatable by promising to produce any evidence within their control in an Australian court. The limitations of that promise are apparent; the defendants cannot produce former employees that may have knowledge relevant to the case or other relevant documents no longer in their possession.

Judge Maddux did not abuse his discretion in holding that the ease of access to the evidence does not support the defendants' motion.

Other Practical Problems

The defendants contend that Judge Maddux should have transferred the action because the parties most responsible for the crash, Transair and CASA, are not named parties. However, "it would have been premature for [Judge Maddux] to remove the case on the basis that a third-party cause of action may be filed, because the defendants have not filed such an action and the record contains no indication that they plan to do so." Woodward, 368 Ill. App. 3d at 835, citing Ellis v. AAR Parts Trading, Inc., 357 Ill. App. 3d 723, 746 n.5, 828 N.E.2d 726

(2005). We also note that the defendants provide no authority demonstrating that Transair and CASA cannot be joined in this action.

The defendants make a final contention that Judge Maddux improperly balanced the private interest factors by relying upon Boeing and Mr. Heir's mere presence in Illinois, rather than other practical problems favoring dismissal. Although not dispositive, a defendant's principal place of business is "one factor to be considered." Gridley v. State Farm Mutual Automobile Insurance Co., 217 Ill. 2d 158, 173, 840 N.E.2d 269 (2005); see also Berbiq v. Sears Roebuck & Co., 378 Ill. App. 3d 185, 190, 882 N.E.2d 601 (2007). Judge Maddux did not overly rely on Boeing's place of business or Heir's residence. In holding that "the private interest factors do not weigh strongly in favor of dismissal," he noted that the potential witnesses and sources of proof are scattered amongst the United States and Australia, the defendants failed to provide any affidavits asserting that a trial in Cook County is inconvenient for any witness, and documents relating to the manufacture and design of the airplane components at issue are in the United States. In sum, Judge Maddux did not abuse his discretion in finding the private interest factors do not weigh in favor of dismissal.

Public Interest Factors

In addition to the private interest factors discussed above, there are three public interest factors that a court must

consider when deciding a forum non conveniens motion: "(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." Langenhorst, 219 Ill. 2d at 443-44.

Interest in Deciding Controversies Locally

The defendants contend that Judge Maddux abused his discretion by favorably comparing the United States' interest in this case, rather than Illinois's, with Australia's interest. We disagree. As this court has noted, product liability cases are not "localized;" they have widespread "international implications." Woodward, 368 Ill. App. 3d at 836. "Illinois's interest in these cases is not unrelated to the interest of the United States as a whole." Woodward, 368 Ill. App. 3d at 836.

The defendant's reliance upon Berbig is misplaced. Berbig involved a choice between two states, Minnesota and Illinois, rather than two countries in a product liability action. Berbig, 378 Ill. App. 3d at 190. We reversed the trial court's denial of a forum non conveniens motion where the product was manufactured in South Carolina and the accident occurred in Minnesota. Berbig, 378 Ill. App. 3d at 190. Here, the defendants' only proposed alternative forum is Australia, not Washington, Colorado, or Texas, where the aircraft components were designed,

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manufactured, and sold. As we recently held, a motion seeking to transfer to relevant domestic forums rather than a foreign jurisdiction "would have posed a different question, and may have received a different answer." Vivas, No. 1-08-2726, 1-08-2740 (cons.), slip op. at 35.

Australia undoubtedly has an interest in the crash, as evidenced by the two official investigations into its causes and the Australian media's extensive coverage. Nonetheless, transfer on this basis alone is not justified given the United States' strong public interest in ensuring the safety of products developed, manufactured, and sold here.

Unfair Burdens on a Forum with Little Connection

The defendants contend that this case would unfairly burden Cook County taxpayers and jurors because Illinois has little connection with this case. But as we have noted, the issue on review is whether Australia is more convenient because the defendants do not seek transfer to another United States forum. Vivas, No. 1-08-2726, 1-08-2740 (cons.), slip op. at 2. Because the United States maintains a strong interest in this litigation as described above, the burden upon local taxpayers does not favor litigation in Australia.

Administrative Difficulties and Congested Dockets

The defendants contend that Judge Maddux abused his discretion in finding that the defendants failed to show "that an Australian trial would take place more quickly than a trial in

Cook County." The defendants presented only a statement from their own Australian counsel, Kenneth John Horsley, to demonstrate that an Australian court would dispose of this claim more quickly than Judge Maddux's court. Even taking that self-serving statement at face value, we note that Judge Maddux is "in the better position to assess the burdens on [his] own docket" and decide if a transfer to Australia is justified on this basis. Langenhorst, 219 Ill. 2d at 451. Given the relative insignificance of this factor in forum non conveniens analysis (Langenhorst, 219 Ill. 2d at 451), Judge Maddux did not abuse his discretion in holding that a transfer is not required.

The defendants also contend that a transfer is appropriate because Australian law is likely to apply to the plaintiffs' claims. Although this should be considered in forum non conveniens analysis, it is not necessarily dispositive. Woodward, 368 Ill. App. 3d at 837. Even assuming that Australian law would apply to at least some of the plaintiffs' claims, the weight of the other factors considered does not favor transfer, and we trust that the circuit court "is competent to determine which law applies to this controversy and to apply the law of Australia, if necessary." Woodward, 368 Ill. App. 3d at 837. Thus, Judge Maddux did not abuse his discretion in finding that the public interest factors do not weigh heavily in favor of a transfer to Australia.

As a final backstop, the defendants contend that Judge

Maddux failed to consider the individualized facts and circumstances of this case. The defendants point to Judge Maddux's order, issued on the same day as the order denying the defendants' motion in this case, that denied defendant Boeing's forum non conveniens motion in another case and used a similar analytical structure. This argument is patently without merit; the defendants provide no authority suggesting that a circuit court cannot structure orders analyzing similar issues similarly, and as noted throughout, Judge Maddux considered the particular circumstances of this case in denying the defendants' motion.

CONCLUSION

Judge Maddux properly weighed both the private and public interest factors at issue in denying the defendants' motion to dismiss based upon forum non conveniens in favor of an action in Australia. Because the weight of those factors does not strongly support the defendants' motion, we cannot say that Judge Maddux abused his discretion in denying it even though the plaintiffs' choice of forum is only entitled to limited deference. Because we find that forum non conveniens analysis does not support a transfer to Australia, we do not address the plaintiffs' alternative contention that Australia is not an available alternative forum.

Affirmed.

GARCIA, J., with R. GORDON, P.J., and HALL, J., concurring.

