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Summary of Provincial Gov't of Marinduque v. Placer Dome, Inc., 131 Nev. Adv. Op. 63076 (June 11, 2015)

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CIVIL PROCEDURE: FORUM NON CONVENIANS

Summary

The Court affirmed the district court's order dismissing the complaint for forum non conveniens. The Court found the lower court properly gave less deference to the respondent's choice of a Nevada forum and did not abuse its discretion by dismissing the case because the case lacked any bona fide connection to this state, adequate alternative fora existed, and the burdens of litigating in Nevada outweighed any convenience to the respondent. Furthermore, the Court held the district court imposed appropriate conditions on dismissal to ensure the existence of an adequate alternative forum for this litigation.

Background

Appellant, the Provincial Government of Marinduque in the Philippines ("The Province"), brought suit against respondent Placer Dome, Inc. ("PDI"), a large conglomerate based in British Columbia, Canada. The Province alleged a number of environmental and health hazards resulting from PDI's mining operations within their province.

The incidents in question were investigated in part by U.S. organizations, but the many witnesses relevant to the subject matter of the suit reside in either Canada or the Philippines. The Province brought suit in Nevada because PDI owns subsidiaries with substantial mining operations in the state, and the Province sought to pierce the corporate veil and establish personal jurisdiction over PDI.

PDI moved to dismiss for forum non conveniens and argued that either the Philippines or British Columbia would provide a better forum. The district court granted the motion after an analysis of forum non conveniens, on the condition that PDI waive its personal jurisdiction, statute of limitations, and forum non conveniens arguments in British Columbia and Ontario and stipulate both monetary and injunctive relief would be available in British Columbia and Ontario. PDI agreed to these conditions and the district court dismissed the suit without prejudice. The Province appealed arguing the district court should have granted their choice of forum more deference, and that public and private interests favor its forum choice.

Discussion

The Court reviewed the appeal under the abuse of discretion standard.² The Court reviewed the district court's forum non conveniens analysis by considering what level of deference was owed to the plaintiff's forum choice, whether an adequate forum exists, and by weighing the public and private interest factors relevant to the forum.

¹ By Stacy Newman

² *Payne v. Eighth Jud. Dist. Ct.*, 97 Nev. 228, 229, 626 P.2d 1278, 1279 (1981).

The Province's Choice of a Nevada Forum was Entitled to Less Deference

The Court acknowledged that although the plaintiff's choice of forum is normally entitled to great deference, a foreign plaintiff's choice of any United States forum is entitled to less deference.³ The court reasoned that although the goal of obtaining personal jurisdiction usually triggers additional deference of the forum choice, this extra additional deference only occurs when there are bona fide connections to the state and convenience favors litigating the case in that state. The court found the link between Province's forum choice and its attempt to establish personal jurisdiction through Nevada was "tenuous."

The District Court Did Not Abuse its Discretion in its Analysis of the Public Interest Factors

The Court found the appellant failed to prove the district court abused its discretion by determining public interest factors weighed against litigating the case in Nevada. The relevant public interest factors in a forum non conveniens analysis include local interest in the case, the district court's familiarity with applicable law, and burdens on the local courts and jurors, court congestion and the costs of resolving a dispute unrelated to the plaintiff's chosen forum.⁴

The Court determined there was not enough local interest in the matter, despite that some Marinduqueños live in Nevada. The Court also found that the district court did not abuse its discretion by determining that Canadian courts would be better suited to adjudicate the legal questions surrounding the case, and the complexity of the case would impose heavy burdens on Nevada courts. The court notes that even the preliminary question of determining whether personal jurisdiction exists would require extensive discovery and hearings, and the existence of this dispute weighs against litigating the suit in Nevada.

The District Court Did Not Abuse its Discretion by Finding that the Private Interest Factors Favored Dismissal for Forum Non Conveniens.

The Court found the appellant failed to prove the district court abused its discretion by determining private interest factors weighed against litigating the case in Nevada. Relevant private interest factors may include the location of a defendant corporation, access to proof, the availability of compulsory process for unwilling witnesses, the cost of obtaining testimony from willing witnesses, and the enforceability of a judgment.⁵

In its analysis, the Court noted the district court's finding that no parties, witnesses, or documents resided in Nevada, and that certain witnesses The Province named in its complaint reside in Canada, where compulsory process is possible. Finally,

³ Pollux Holding Ltd. v. Chase Manhattan Bank, 329 F.3d 64, 71(2d Cir. 2003).

⁴ Lueck v. Sundstrand Corp., 236 F.3d 1137, 1147 (9th Cir. 2001).

⁵ *Id.* at 1145.

because PDI is incorporated in Canada, the Court did not find the district court abused its discretion by determining a judgment would be more readily enforced in Canada.

Finding that Litigating in Nevada would not Harass, Oppress, or Vex PDI did not Require the District Court to Deny the Motion to Dismiss for Forum Non Conveniens.

The Court found the district court did not abuse its discretion in dismissing the case despite a finding that litigating in Nevada would not harass, oppress, or vex PDI. Although such a finding helps weigh in favor of keeping the plaintiff's choice of forum, it was not dispositive and in this case, and did not outweigh all other factors against litigating in Nevada.

The District Court Properly Exercised its Discretion in Imposing Conditions on Dismissal for Forum Non Conveniens.

Although the Province argued for different conditions surrounding the dismissal for forum non conveniens, the Court determined the district court did not abuse its discretion for imposing other conditions agreed to by the respondent. The Court found that the conditions (that PDI waive its personal jurisdiction, statute of limitations, and forum non conveniens arguments in British Columbia and Ontario and stipulate both monetary and injunctive relief would be available in British Columbia and Ontario) "merely ensured" Province's ability to sue PDI in the alternative fora.

Conclusion

Because of a lack of any bona fide connection to the state, the existence of alternative fora, and the weighing of public and private interests, the Court found the district court acted properly in affording less deference to the appellant's choice of a Nevadan forum, and affirmed the dismissal for forum non conveniens.