STATE OF MICHIGAN

COURT OF APPEALS

COOPER TIRE & RUBBER COMPANY, FORM RITE CORP., FABEX, INC., COOPER TYRE & RUBBER COMPANY UK, LIMITED, SIEBE AUTOMOTIVE UK, LIMITED, and SIEBE AUTOMOTIVE NORTH AMERICA MEXICO,

Plaintiffs-Appellants,

v

KEVIN MOORE, HOWARD DUXBURY, SUZANNE SMITH, D. JAMES DAVIS, TI GROUP, INC., TI GROUP AUTOMOTIVE SYSTEMS CORPORATION, TI GROUP AUTOMOTIVE SYSTEMS NA, INC., TI GROUP AUTOMOTIVE SYSTEMS USA, INC., and TI GROUP, PLC,

Defendants-Appellees.

UNPUBLISHED
April 27, 2001

No. 230166
Wayne Circuit Court
LC No. 00-008286-CZ

Before: Gage, P.J., and Cavanagh and Wilder, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendants' motion to dismiss based on forum non conveniens. We affirm.

Plaintiffs argue that the trial court abused its discretion when it determined that plaintiffs' claim would be better brought in an English forum. It is well-settled that a trial court has the discretion "to resist imposition upon its jurisdiction although such jurisdiction could properly be invoked." *Cray v General Motors Corp*, 389 Mich 382, 395; 207 NW2d 393 (1973); *Hacienda Mexican Restaurants of Kalamazoo Corp v Hacienda Franchise Group, Inc*, 195 Mich App 35, 38; 489 NW2d 108 (1992). An abuse of discretion is generally found only in extreme cases where the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227-228; 600 NW2d 638 (1999).

Our Supreme Court set forth the doctrine of forum non conveniens in *Cray*, *supra*, enumerating the factors to be weighed when a party raises the issue. Further, the Supreme Court held that a trial court must consider the plaintiff's choice of forum and "weigh carefully the relative advantages and disadvantages of jurisdiction and the ease of and obstacles to a fair trial in this state." *Id.*; see also *Holme v Jason's Lounge*, 168 Mich App 132, 135; 423 NW2d 585 (1988) ("Ordinarily, a plaintiff's selection of a forum is accorded deference.").

In the instant case, the trial court engaged in a careful analysis of each factor set forth in *Cray*, *supra*. It determined that because defendants Moore, Duxbury, Smith, and TI Group, PLC, along with other potential witnesses, were resident citizens of the United Kingdom, the availability of witnesses and the costs associated with obtaining their attendance favored litigating this matter in England. We agree. Although we note that defendant Davis is alleged to be a Wayne County resident and president of three of the TI Group defendants with principal places of business in Macomb County, we conclude that the trial court did not abuse its discretion in holding that such presence did not outweigh the advantages of litigating this matter in England.

The trial court also concluded that England was the situs of the incidents underlying the lawsuit and the majority of proof was located in England. Furthermore, defendants would likely be called upon to re-litigate the same issues in England. Although it appears that some of the tangible proof may be accessed with relative ease in Wayne County and, accordingly, the trial court may have overstated some of the advantages of litigating this case in England, we conclude that the trial court did not abuse its discretion in holding that these factors weigh in favor of the alternate forum.

The trial court also noted that there was a question as to whether a judgment obtained against defendants would be enforceable in England. After a review of English law, we conclude that it would not. The United Kingdom will not enforce an American judgment obtained against a British corporation that does not maintain an office in the United States. *Attorneys Trust v Videotape Computer Products, Inc*, 93 F3d 593 (CA 9, 1996); *Grassi v Ciba-Geigy, Ltd*, 894 F2d 181 (CA 5, 1990). According to English law, a monetary American judgment is only enforceable against a British citizen where: (1) the judgment debtor was present in the United States at the time of the judgment, (2) the judgment debtor submitted to American jurisdiction by appearing voluntarily, (3) the judgment debtor was the claimant in the foreign jurisdiction, or (4) the judgment debtor agreed to submit to American jurisdiction before the commencement of the proceedings. See *Murthy v Sivasjothi*, [1999] 1 All ER 721; [1999] 1 WLR 467; 1998 WL 1044246 CA 2-3; Dicey & Morris, Conflict of Laws (13th ed). The British citizens named in this case have done nothing that would subject them to a judgment of this jurisdiction. Thus, any judgment plaintiffs obtain against defendants Moore, Duxbury, Smith, and TI Group, PLC will be unenforceable in England. Furthermore, plaintiffs concede that an equitable judgment is unenforceable in the United Kingdom. Plaintiffs' contention that "the enforceability of any such decree is Plaintiffs' problem," cannot be true, as the enforceability of the judgment is a factor to be considered when weighing a forum non conveniens claim. See *Hacienda Mexican Restaurants of Kalamazoo Corp*, *supra* at 39, 41.

We also agree with the trial court's conclusion that this case should be decided pursuant to English law. Contrary to plaintiffs' claim on appeal that Fabex, Inc. and Form Rite Corp., both of whom allegedly have their principal places of business in Michigan, are the primary injured parties, the complaint contains no allegations of injury to Fabex or Form Rite. A Michigan court should apply Michigan law unless a rational reason to apply other law exists. *Sutherland v Kennington Truck Services, Ltd*, 454 Mich 274, 286; 562 NW2d 466 (1997). In the instant case, all major actors, except Davis, are English citizens, the alleged wrongs were primarily committed against English corporations, and a relevant confidentiality agreement was made between two English corporations. In particular, Duxbury and Smith would be bound by the fiduciary duties imposed upon agents of English corporations and Davis is accused of violating an agreement made under English law. Based on the complaint, the American companies would only be liable for Davis' actions. To the extent that Davis and "TI Automotive" are accused of tortious interference with business relations, it would appear that England has a greater interest in having its law applied than does Michigan. The tort of interference with a business relationship protects a company from improper acts that interfere with its contracts or business relationships, including those with its employees. See Pappas & Steiger, Michigan Business Torts, §§ 2.1-2.2, pp 10-12. Accordingly, while Michigan would have no interest in ensuring that the business interests of the European divisions of Siebe are protected, England would have a strong interest in protecting its own corporations.

There is no dispute that the final factor, defendants' reasonable promptness in raising the forum non conveniens plea, weighs in defendants favor. *Manfredi v Johnson Controls, Inc*, 194 Mich App 519, 526; 487 NW2d 475 (1992). Because most of the *Cray* factors weigh in favor of an English forum, we do not find an abuse of discretion in the trial court's decision to dismiss this case for forum non conveniens.

Affirmed.

/s/ Hilda R. Gage
/s/ Mark J. Cavanagh
/s/ Kurtis T. Wilder