SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 32

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GARY SCHOLL,

Plaintiff,

**DECISION & ORDER**
**Index No. 156748/2016**

-against-

Mot. Seq. 003

ACCESS INDUSTRIES, INC., KERZNER INTERNATIONAL NEW YORK, INC., CHRISTOPHER COX

Defendants.

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HON. ARLENE P. BLUTH, J.:

The motion by defendant Christopher Cox to dismiss on the ground of forum non conveniens is granted.

**Background**

This action arises out of a fight that allegedly occurred at the One & Only Ocean Club Resort in Paradise Island, Bahamas on October 30, 2015. Plaintiff claims that Cox, while intoxicated, assaulted plaintiff after Cox mistakenly entered plaintiff's hotel room.

Cox claims that maintaining this matter in New York is inappropriate because many potential witnesses are residents of the Bahamas and not subject to a subpoena issued by a New York court. Cox insists this includes hotel employees, police in the Bahamas, and medical providers who treated plaintiff in the Bahamas.

Cox further argues that there are no non-party witnesses located in New York and that this case's sole connection to New York is the residence of defendant Cox. Cox observes that

plaintiff is a Canadian citizen. Cox also argues that this action should be dismissed because plaintiff failed to join a necessary party – the resort– because the terms and conditions associated with staying at the resort requires any dispute arising out of a guest's stay at the resort to be handled in the Bahamas.

In opposition, plaintiff claims that any agreements have no bearing on the case between Cox and plaintiff because Cox has no privity to such an agreement. Plaintiff claims that the two most important witnesses are plaintiff, who lives in Toronto, and Cox, who lives in New York. Plaintiff insists that it would be easier for plaintiff's current medical providers, most of whom live in Canada, to travel to New York than to the Bahamas. Plaintiff also argues that it is a mere car ride from Toronto to New York.

In reply, Cox asserts that plaintiff has demonstrated no meaningful connection to New York. Cox also argues that if Cox is required to bring cross-claims against the resort, it would likely have to be brought in the Bahamas pursuant to the terms and conditions in the guest agreement. Cox also offers to toll the statute of limitations (which Cox believes is not an issue since the Bahamas has a longer statute limitations for this cause of action) for a reasonable period of time in the event plaintiff re-files this matter in the Bahamas.

**Discussion**

"The common-law doctrine of forum non conveniens, also articulated in CPLR 327, permits a court to stay or dismiss such action where it is determined that the action, although jurisdictionally sound, would be better adjudicated elsewhere. The burden rests upon the defendant challenging the forum to demonstrate relevant private or public interest factors which militate against accepting the litigation and the court, after considering and balancing the various

competing factors, must determine in the exercise of its sound discretion whether to retain jurisdiction or not" (*Islamic Republic of Iran v Pahlavi*, 62 NY2d 474, 478-79, 478 NYS2d 597 [1984] [citations omitted]).

"Some of the factors that a Court should consider in determining whether jurisdiction should be retained in New York, include the difficulties for defendant in litigating the claim in this State, the burden on New York courts in entertaining the suit and the availability of another more convenient forum in which plaintiff may obtain redress" (*Waterways Ltd. v Barclays Bank PLC*, 174 AD2d 324, 327, 571 NYS2d 208 [1st Dept 1991] [internal quotations and citations omitted]). "It is well established law that unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed" (*id.* [internal quotations and citations omitted]).

"No one factor is controlling. The great advantage of the rule of forum non conveniens is its flexibility based upon the facts and circumstances of each case" (*Islamic Republic of Iran*, 62 NY2d 474 at 479).

After evaluating the various factors, the Court finds that the Bahamas is clearly the more convenient forum for plaintiff to seek redress. The alleged assault took place in plaintiff's guestroom in a resort in the Bahamas and most of the potential witnesses to the event and its immediate aftermath are located in the Bahamas. This would include resort personnel, the Bahamas police, and any medical providers who treated plaintiff while he was in the Bahamas. The Bahamas is also where most of the evidence, including documents (such as incident reports) and surveillance videos, are likely to be located. When balancing these factors against the fact that there is no substantial nexus to New York, the Bahamas is the best forum for this litigation.

The fact that defendant Cox resides in New York does not outweigh the fact that nothing else relating to this litigation has any connection to New York. And contrary to plaintiff's assertion, New York is not a mere car ride away from Toronto.

Cox argued that plaintiff would not be barred from bringing this matter in the Bahamas because the statute of limitations for assault is longer there and that Cox would not raise the statute of limitations if plaintiff filed an action in the Bahamas in a reasonable amount of time.

Accordingly, it is hereby

ORDERED that Cox's motion to dismiss on the basis of forum non conveniens pursuant to CPLR 327 is granted.

**Dated: January 27, 2017**
**New York, New York**

ARLENE P. BLUTH
J.S.C.

**ARLENE P. BLUTH, JSC**