

Guezou v American Univ. of Beirut
2017 NY Slip Op 31688(U)
August 1, 2017
Supreme Court, New York County
Docket Number: 156820/2016
Judge: Barbara Jaffe
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 12

-----X
LAURENT GUEZOU,

Index No. 156820/2016

Plaintiff,

Motion seq. no. 002

-against-

DECISION AND ORDER

AMERICAN UNIVERSITY OF BEIRUT,

Defendant.
-----X

BARBARA JAFFE, JSC:

For plaintiff:

Michael Zogala, Esq.
Kahn, Gordon, Timko & Rodriques, P.C.
20 Vesey St. Suite 300
New York, NY 10007
212-233-2040

For defendant:

Daniel S. Ruzumna, Esq.
Donald L. Goodman, Esq.
Patterson, Belknap, Webb & Tyler, LLP
1133 Avenue of the Americas
New York, NY 10036
212-336-2000

By notice of motion brought pursuant to CPLR 327(a), defendant seeks an order dismissing this action on the grounds of *forum non conveniens*. Plaintiff opposes.

I. BACKGROUND

On October 4, 2015, plaintiff, a citizen and resident of France, was in Lebanon on a beach owned and maintained by defendant. He allegedly sat on a broken chair and fell backwards, injuring himself. After receiving some medical treatment in Lebanon, he returned to France, where he received the remainder of his treatment. (NYSCEF 22).

Defendant is a university incorporated under New York law. It has administrative offices in New York, although since its founding, its campus and facilities are in Lebanon. (NYSCEF 15).

On or about August 15, 2016, plaintiff commenced this action.

II. CONTENTIONS

Defendant argues that New York is an inconvenient forum as (1) the alleged incident occurred in Lebanon, (2) any potential evidence and witnesses to the incident are in Lebanon, (3) application of Lebanese law would unduly burden the court, and (4) the appearance of non-party witnesses cannot be compelled by a New York court, save those under defendant's control. As neither party has any substantial connection to New York, defendant maintains that its New York office does not constitute sufficient justification for conducting the litigation here. While plaintiff's choice of forum may warrant deference, here, defendant asserts, his absence from and lack of ties with New York, weighs against him in terms of venue, and that Lebanon is an available forum. Thus, on balance, defendant argues that this case should be dismissed pursuant to CPLR 327(a). (NYSCEF 15)

In opposition, plaintiff argues that it is his statutory right to choose the most appropriate venue, and that he has done so as defendant is a New York resident. Although he agrees that Lebanese law applies, he argues that the application of one foreign law is not a significant burden. He asserts that witnesses residing in Lebanon could appear by teleconference and, to the extent that physical appearance in court is required, Lebanese witnesses are more likely to attend court in New York than French doctors are to attend court in Lebanon. Moreover, he observes, defendant has control over its employees, whereas plaintiff has no control over his doctors. In any event, he maintains, Lebanon is not a suitable forum, as it is unstable, its government is corrupt, and it offers a trial by a panel of three judges, as opposed to a jury. (NYSCEF 22).

Should I grant defendant's motion, plaintiff asks that conditions be imposed: 1) that defendant agree to extend any statute of limitations applicable in any other forum, and 2) that an

order expressly provide that defendant's motion will be deemed denied if the condition is violated. (*Id.*).

In reply, defendant concedes that it is a New York resident but reiterates that New York is an inconvenient forum. Videoconferencing, it argues, is a poor substitute for live appearances and, should the action proceed in Lebanon, it would be less utilized. It also contends that plaintiff underestimates the burden of litigating under Lebanese law and incorrectly interprets the suitability of Lebanon as a judicial forum, as plaintiff's allegations concerning safety and corruption are vague, and have been rejected by other courts, even in similar political climates. (NYSCEF 44). Defendant agrees to toll the statute of limitations by the amount of time that this matter has been pending in New York, and will submit to Lebanon's jurisdiction. (*Id.*).

III. ANALYSIS

Pursuant to CPLR 327(a), the court may dismiss an action on a finding that it should, in the interest of substantial justice, be heard in another forum. (*Islamic Republic of Iran v Pahlavi*, 62 NY2d 474, 479 [1984]). Though no single factor is dispositive, those to be considered include, *inter alia*, the hardship faced by the defendants, the burden on New York courts, the availability of an alternate forum, the parties' residence, the location of a majority of the witnesses, and the situs of the events giving rise to the litigation. (*Id.*; *Kinder Morgan Energy Partners, L.P. v Ace Am. Ins. Co.*, 55 AD3d 482, 482 [1st Dept 2008], *lv denied* 12 NY3d 714). However, pursuant to the statute, "[t]he domicile or residence in this state of any party to the action shall not preclude the court from staying or dismissing the action."

The defendant bears the heavy burden of demonstrating that the forum is inconvenient, and unless the balance is strongly in favor of the defendant, "the plaintiff's choice of forum should rarely be disturbed." (*Islamic Republic of Iran*, 62 NY2d at 479; *Waterways Ltd. v*

Barclays Bank PLC, 174 AD2d 324, 327 [1st Dept 1991]). However, New York courts are under no “compulsion to add to their heavy burdens by accepting jurisdiction of a cause of action having no substantial nexus to New York.” (*Silver v Great Am. Ins. Co.*, 29 NY2d 356, 361 [1972]; *FIMBank PLC v Woori Fin. Holdings Co.*, 104 AD3d 602, 603 [1st Dept 2013]).

New York courts are not unduly burdened by accepting jurisdiction here, as the translation of testimony and documents does not warrant dismissal (*see Am. BankNote Corp. v Daniele*, 45 AD3d 338 [1st Dept 2007] [forum not made inconvenient by need to translate from Spanish to English]), or by the application of foreign law (*see Wilson v Dantas*, 128 AD3d 176, 187 [1st Dept 2017], *affd* 2017 NY Slip Op 04387 [burden diminished where case involved only Cayman Island’s law]). However, while videoconferencing is a viable alternative to live depositions (*see Yu Hui Chen v Chen Li Zhi*, 109 AD3d 815, 816 [2d Dept 2013] [videoconferencing reasonable alternative]), it would not “obviate the inconvenience and expense of requiring multiple witnesses to travel for trial” (*see Serov ex rel. Serova v Kerzner Int’l Resorts, Inc.*, 2016 NY Slip Op 51150 [Sup Ct, New York County 2016] [accident occurred in Bahamas]).

Moreover, there is an insubstantial nexus between this case and New York, especially as Lebanon is the situs of the accident and the location of potential witnesses other than plaintiff’s doctors and plaintiff, all of whom reside in France. (*See Ismail v Am. Univ. of Beirut*, 246 F Supp 2d 330, 333 [SD NY 2003] [dismissing action where all private and public factors favored dismissal, and only party with connection to New York was AUB]; *Gibbon v American Univ. of Beirut*, 1983 US Dist LEXIS 13401, [SD NY, Sept. 27, 1983, No. 83 Civ 1183 (GLG)] [Lebanon was adequate and most convenient location for medical malpractice action brought against AUB by British citizen residing in Lebanon]). And there is also no indication that adjudication in

Lebanon would not serve the interests of substantial justice. (*See Ismail v Am. Univ. of Beirut*, 246 F Supp 2d 330, 333 [SDNY 2003] [plaintiffs' arguments that Lebanon in political strife, that its judicial system was inadequate, and that its law did not provide for their causes of action were conclusory and unpersuasive]; *Gibbon*, 1983 US Dist LEXIS 13401 [strife and tragedy in Lebanon "hardly" shows that court "so impaired as to make a fair adjudication of a common civil matter improbable"]).

As the balance of these factors is "strongly in favor of the defendant," and in the interest of substantial justice, Lebanon is the better venue. *Fakhro v American University of Beirut* is distinguishable, as there, New York had a pecuniary interest in the matter addressed. (Sup Ct, New York County, May 10, 1996, Sklar, J., Index no. 121370/94).

IV. CONCLUSION

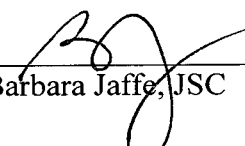
Accordingly, in the interest of substantial justice, it is hereby,

ORDERED, that defendant's motion is granted, and the case is dismissed on the grounds of *forum non-conveniens*; and it is further

ORDERED, that defendant's motion is granted on the conditions that (1) defendant submits to the jurisdiction of Lebanese courts, and (2) agrees to toll the applicable statute of limitations by the amount of time that this matter has been pending in New York; and it is further

ORDERED, that if either condition is not complied with, defendant's motion to dismiss will be deemed to have been denied.

ENTER:



Barbara Jaffe, JSC

DATED: August 1, 2017
New York, New York