

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

DAWN P. HOLTMAN,

Plaintiff,

v.

SEAWORLD PARKS &
ENTERTAINMENT LLC,

Defendant.

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C.A. No.: N19C-07-013 SKR

ORDER

This 13th day of December, 2019, upon consideration of Defendant SeaWorld Parks & Entertainment LLC's ("Defendant") Motion to Dismiss for *forum non conveniens*,¹ Plaintiff Dawn Holtman's ("Plaintiff") Response,² and Defendant's Reply thereto,³ it appears to the Court that:

1. Plaintiff has sued Defendant in this Court on a theory of common law negligence. This Court has personal jurisdiction over Defendant because Defendant is incorporated in Delaware.

2. Plaintiff alleges that she suffered physical injuries due to a slip-and-fall accident that occurred at Defendant's waterpark in Florida. Plaintiff was accompanied by her husband and son at the time of the accident.

¹ Transaction ID 64325085.

² Transaction ID 64414649.

³ Transaction ID 64449846.

3. Initially, Florida emergency medical teams treated Plaintiff. When Plaintiff returned to Maryland, she received on-going treatment from several Maryland healthcare providers.

4. In the instant Motion, Defendant argues that this action should be dismissed on the doctrine of *forum non conveniens* because “none of the relevant events took place in Delaware, Delaware law would not apply, and it would be extremely burdensome for moving Defendant to litigate the case in Delaware.”

5. However, a plaintiff’s right to choose a proper forum will be denied only in the rare case where the defendant establishes “overwhelming hardship and inconvenience”, through the factors established by *General Foods Corp. v. Cryo-Maid, Inc.*⁴ and its progeny.⁵

6. Even where all of the *Cryo–Maid* factors favor the defendant, the trial court may still deny a motion to dismiss based on *forum non conveniens* if the weight of those factors does not rise to the appropriately high burden of an overwhelming hardship.⁶

⁴ 198 A.2d 681 (Del. 1964).

⁵ *Martinez v. E.I. DuPont de Nemours and Co., Inc.*, 86 A.3d 1102, 1104 (Del. 2014) (citing *Chrysler First Bus. Credit Corp. v. 1500 Locust Ltd. P'ship*, 669 A.2d 104, 105 (Del.1995)).

⁶ *Id.*

7. The Court recognizes that the “overwhelming hardship” standard does not preclude all challenges to a plaintiff’s choice of forum, and circumstances may exist that meet its high burden.⁷

8. A motion based on the grounds of *forum non conveniens* is decided within the sound discretion of the trial court⁸ upon consideration of the following factors:

- (1) the relative ease of access to proof;
- (2) the availability of compulsory process for witnesses;
- (3) the possibility of the view of the premises, if appropriate;
- (4) whether the controversy is dependent upon the application of Delaware law which the courts of this State more properly should decide than those of another jurisdiction;
- (5) the pendency or nonpendency of a similar action or actions in another jurisdiction; and
- (6) all other practical problems that would make the trial of the case easy, expeditious and inexpensive.⁹

9. Upon application of the factors to this case, the Court finds that proceeding with this trial in Delaware does not create an overwhelming hardship for the Defendant. The Court will highlight the key considerations below.

10. Relative ease of access to proof - Although it is not ideal for the Defendant to transport Florida residents to Delaware to testify as witnesses, this is a commonplace burden in out-of-state litigation, and not all relevant witnesses reside in Florida. Plaintiff, her husband and son, and the medical professionals which have provided on-going treatment all reside in Maryland. Defendant’s principal place of

⁷ *Id.* at 1105 (citing *Ison v. E.I. DuPont de Nemours & Co.*, 729 A.2d 832, 834 (Del. 1999)).

⁸ *Martinez v. E.I. DuPont de Nemours and Co., Inc.*, 86 A.3d 1102, 1104 (Del. 2014)

⁹ *Id.*

business is in Florida, it is domiciled in Florida, and therefore has the advantage of gathering witness testimony within its home state.

11. With respect to the “ease of access to proof factor”, the need to engage in out-of-state discovery is given less weight towards a finding of overwhelming hardship when the moving party is a “larger, more sophisticated entity.”¹⁰ Defendant, SeaWorld Parks and Entertainment LLC, is the type of large and sophisticated entity that would be able to absorb the burden of engaging in out-of-state discovery to defend a slip-and-fall case.¹¹

12. Availability of compulsory process for witnesses - Delaware¹² and Florida¹³ have adopted the Uniform Interstate Depositions and Discovery Act, which will allow Defendant to compel witness depositions in Florida via this Delaware action.

13. Possibility to view the premises, if appropriate - Photos, videos and expert testimony almost always take the place of a visit by the trier of fact to the physical location where the accident occurred. Defendant does not argue that an in-person view of the location is necessary, and the Court finds no reason to believe otherwise.

¹⁰ *Lincoln Benefit Life Company v. Wilmington Trust, N.A.*, 2018 WL 1638871, *8 (Del. Super. Apr. 5, 2018).

¹¹ SeaWorld Parks and Entertainment, LLC’s only member is SeaWorld Parks and Entertainment Inc., a corporation with shareholders, a board of directors, and executive officers.

¹² 10 *Del.C.* § 4311, Delaware Uniform Interstate Depositions and Discovery Act.

¹³ West’s F.S.A. § 92.251 Uniform Interstate Depositions and Discovery Act.

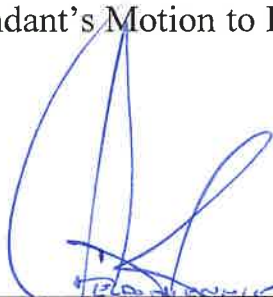
14. Whether the controversy is dependent upon the application of Delaware law - If this case necessitates the application of Florida negligence law, this Court is fully capable of doing so.¹⁴ The Delaware Supreme Court has denied a motion to dismiss for *forum non conveniens* even when the issues required a Delaware court to apply “novel and important issues of Florida corporate law”.¹⁵

15. Pendency or nonpendency of a similar action or actions in another jurisdiction – Both parties have stipulated that there are no other pending actions in another jurisdiction related to this case.

16. All other practical problems - Defendant raises no compelling issues of inefficiency with regard to trial of this case in Delaware.

17. For the foregoing reasons, the Court finds that Plaintiff’s choice of forum will not be overridden. Requiring Defendant to defend this action in Delaware does not impose an overwhelming hardship. Therefore, Defendant’s Motion to Dismiss for *Forum Non Conveniens* is hereby **DENIED**.

IT IS SO ORDERED.



Sheldon K. Rennie, Judge

Cc: Armand J Della Porta, Esquire, Marshall Dennehey Warner Coleman & Goggin, Wilmington, DE
James S Green, Esquire, Seitz Van Ogtrop & Green P.A., Wilmington, DE

¹⁴ *Taylor v. LSI Logic Corp.*, 689 A.2d 1196, 1200 (Del. 1997) (holding that “it is not unusual for courts to wrestle with open questions of the law of sister states or foreign countries.”)

¹⁵ *Berger v. Intelident Solutions, Inc.*, 906 A.2d 134 (Del. 2006).