

**SUPERIOR COURT
OF THE STATE OF DELAWARE**

FRED S. SILVERMAN
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 N. KING STREET, SUITE 10400
WILMINGTON, DELAWARE 19801
(302) 255-0669

Submitted: July 25, 2003
Decided: December 2, 2003

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Re: *Gaines v. Delledonne, C.A. No. 02C-11-089-FSS*
*Upon Plaintiff's Letter Request for Reargument – **GRANTED**, with conditions*

Dear Counsel:

This decides Plaintiff's letter request for reargument of the court's June 23, 2003 bench ruling and its June 30, 2003 order denying Defendant's Motion to Dismiss on *forum non conveniens* grounds. Plaintiff, a Maryland resident, was injured in a collision with Defendant, a Delaware resident, in Connecticut. When Plaintiff filed suit, the only courts available were in Connecticut where the accident happened, and Delaware where Defendant resides. The parties agree that Connecticut is an equally inconvenient forum for them both, and Maryland is more

convenient for Plaintiff. But, Plaintiff could not bring suit in Maryland, which is her home state, where she was treated and where her driver lives, because Maryland's courts had no personal jurisdiction over Defendant. Since filing her Motion to Dismiss, however, Defendant has repeatedly announced her willingness to subject herself to Maryland's jurisdiction. Nevertheless, for unknown reasons Plaintiff still insists on litigating in Delaware.

In its bench and written rulings, the court recognizes the deference Delaware courts show plaintiffs who choose Delaware.¹ Even when it clearly is not the most convenient forum, if Delaware has jurisdiction a plaintiff's choice of forum must be respected. Delaware law provides, however, that where a plaintiff's choice creates an overwhelming hardship for the defendant, a stay or dismissal may be appropriate.²

In this case, Delaware is more than inconvenient for Defendant. Plaintiff was not driving the car with which Defendant collided. Plaintiff was a passenger. She and her driver have a personal tie. Meanwhile, Delaware has no personal jurisdiction over Plaintiff's driver and if this case is litigated in Delaware, Defendant will not have the opportunity at trial to seek indemnification from Plaintiff's driver. If Plaintiff prevails in Delaware, Defendant will have to pursue indemnification through separate litigation in Maryland. Perhaps that is Plaintiff's tactic. (It is

¹ *General Foods Corp. v. Cryo-Maid, Inc.*, 198 A.2d 681 (Del. 1964).

² *Kolber v. Holyoke Shares, Inc.*, 213 A.2d 444, 446 (Del. 1965) (dismissal appropriate where combination and weight of *forum non conveniens* factors balance overwhelmingly in defendant's favor). See *General Foods Corp.*, 198 A.2d at 684 (*forum non conveniens* factors include availability of compulsory process for witnesses and all other practical problems that make the trial easy, expeditious and inexpensive).

difficult to see how litigating in stages will help a settlement.)

After Plaintiff filed two sets of written submissions and participated in two oral arguments, and after the court ruled against her, Plaintiff asks for reargument based largely on an old, reported decision, *State Marine Lines v. Domingo*,³ and a more recent decision, *Schafer v. Walmart Stores, Inc.*⁴ Plaintiff's submission is out of order.⁵ Plaintiff has no excuse for waiting until the court ruled before presenting its final authorities.

Moreover, *Domingo* is distinguishable on its facts. There, plaintiff was injured at sea, in the Philippines. Defendant tried to convince the court to send plaintiff back to the Philippines. Not surprisingly, the Superior Court refused to do that. Even so, the Superior Court stayed litigation in Delaware in favor of an earlier filed suit in New York.⁶ While *Domingo* includes language superficially supporting Plaintiff's position, it affirms the Superior Court's exercising discretion there, much as the court has exercised its discretion here, so far. *Schafer* also is not new authority, nor is it controlling.

The court and Plaintiff are in a standoff. The court is unwilling to dismiss the case, outright, and Plaintiff refuses to litigate in Maryland. The only thing the current stay has accomplished is to precipitate wasteful motion practice. Meanwhile, Plaintiff may have been injured by Defendant and her case has not advanced for nearly a year. The court will blink first and allow this case to go

³ 269 A.2d 223 (Del. 1970).

⁴ 2001 W.L. 1456697 (Del. Super. Ct.).

⁵ See *McElroy v. Shell Petroleum, Inc.*, 618 A.2d 91 (Del. 1992).

⁶ *Domingo v. State Marine Lines*, 253 A.2d 78 (Del. Super. Ct. 1969).

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forward in Delaware. In the final analysis, the court cannot find that Plaintiff's preference for Defendant's home state presents an overwhelming hardship for Defendant. This is not "one of the rare cases where the drastic relief of dismissal is warranted"⁷ The burden of proof and the burden of going forward in Delaware fall on Plaintiff. Thus, the hardship is Plaintiff's, at least for now. She will have to muster her case in Connecticut and Maryland. She will have to do it quickly. And woe betide Plaintiff if she complains about problems with witnesses or documents in Maryland.

Plaintiff's Motion for Reargument is **GRANTED** on the express condition that Plaintiff begins to litigate this case in earnest, immediately. The Interim stay is lifted. Defendant's Motion to Dismiss is **DENIED**. Two weeks from this date, Plaintiff **SHALL** submit a progress report stating precisely what steps Plaintiff has taken to advance this case in response to this letter/order. The court expects to see progress in the next two weeks. Plaintiff also shall inform the court about how her case will be ready for trial before the end of September 2004, which is now the court's target.

IT IS SO ORDERED.

Very truly yours,

FSS/lah
oc: Prothonotary (Civil Division)

⁷ *Mar-Land Industrial Contractors, Inc. V. Caribbean Petroleum Refining, L.P.*, 777 A.2d 774, 778 (Del. 2001) (quoting *Ison v. E.I. duPont De Nemours & Co., Inc.*, 729 A.2d 832, 842 (Del. 1999)).

tickle file for: 12/17/03 Plaintiff's progress report due