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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

APL CO. PTE. LTD.,

Plaintiff-Appellant,

v.

SECURE FREIGHT SYSTEMS (USA),
INC.,

Defendant-Appellee,

and

LOVELL RECYCLING, LTD.;
ANDPLASTIC TRADE CO., LTD.,

Defendants.

No. 21-55932

D.C. No. 2:20-cv-06473-AB-MRW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Andre Birotte, Jr., District Judge, Presiding

Submitted November 14, 2022**
Pasadena, California

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: WARDLAW and W. FLETCHER, Circuit Judges, and KORMAN,^{***}
District Judge.

APL Co. appeals from the district court's grant of Secure Freight Systems Inc.'s ("SFS") motion to dismiss for *forum non conveniens*. SFS contracted with APL to have APL carry five loaded shipping containers to Jakarta, Indonesia. The containers themselves belonged to SFS's co-defendants, Lovell Recycling, LTD ("Lovell"), and Andplastic Trade Co. ("Andplastic"). APL timely delivered the containers to Jakarta, where local authorities seized the containers and their contents for violating local import regulations. APL brought suit in the Central District of California against SFS, Lovell, and Andplastic alleging that the defendants improperly packed the containers and thereby failed to comply with local law.

SFS moved to dismiss for improper venue and *forum non conveniens*. The district court granted the motion based on *forum non conveniens*, finding that Singapore, where APL is incorporated and headquartered, was the more appropriate forum. It dismissed the action, without prejudice.

We have jurisdiction under 28 U.S.C. § 1291. The district court's ruling on a *forum non conveniens* motion deserves substantial deference—we may only

^{***} The Honorable Edward R. Korman, United States District Judge for the Eastern District of New York, sitting by designation.

reverse it for a clear abuse of discretion. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 257 (1981). We affirm.

APL argues to us that the district court abused its discretion by failing to analyze whether Singapore was an adequate alternative forum. However, APL conceded in its brief in the district court that Singapore was an adequate alternative forum. This argument is therefore waived. *See Momox-Caselis v. Donohue*, 987 F.3d 835, 842 (9th Cir. 2021) (finding that concession of an argument before the district court waives it on appeal).

APL next argues that the district court abused its discretion in balancing the *forum non conveniens* factors. “Ordinarily, a plaintiff’s choice of forum will not be disturbed unless the ‘private interest’ and the ‘public interest’ factors strongly favor trial in a foreign country.” *Lueck v. Sundstrand Corp.*, 236 F.3d 1137, 1145 (9th Cir. 2001) (quoting *Gulf Oil v. Gilbert*, 330 U.S. 501, 509 (1947)). The private interest factors are:

(1) [T]he residence of the parties and the witnesses; (2) the forum's convenience to the litigants; (3) access to physical evidence and other sources of proof; (4) whether unwilling witnesses can be compelled to testify; (5) the cost of bringing witnesses to trial; (6) the enforceability of the judgment; and (7) all other practical problems that make trial of a case easy, expeditious and inexpensive.

Boston Telecomms. Grp., Inc. v. Wood, 588 F.3d 1201, 1206–07 (9th Cir. 2009).

The public interest factors are:

(1) [T]he local interest in the lawsuit[;] (2) the court's familiarity with the governing law[;] (3) the burden on local courts and juries[;] (4) congestion in the court[;] and (5) the costs of resolving a dispute unrelated to a particular forum.

Id. at 1211 (quoting *Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d 1163, 1181 (9th Cir. 2006)).

In this case, almost all of the factors either favor dismissal or are neutral. Most important, no physical evidence or witnesses are located in the Central District of California. Nor are any parties currently located in the district. SFS was previously headquartered in the Central District of California, but it has since moved its offices to Vancouver, British Columbia. The court and jury would be required to apply Singaporean law. The cost of litigating in the Central District of California would be great, given that no party resides in the district and all evidence and witnesses would need to be transported there. The only present connection to the chosen forum is that the contract was originally entered in the Central District of California. Finally, the interest of the Central District of California in hearing this case is slight compared to “the time and resources the district court . . . would expend if it were to retain jurisdiction.” *Lueck*, 236 F.3d at

1147. We therefore hold that the district court did not abuse its discretion in dismissing the case for *forum non conveniens*.

AFFIRMED.