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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GENZON INVESTMENT GROUP, CO.,
LTD.,

Plaintiff,

v.

BIN HUANG, et al.,

Defendants.

Case No. 21-cv-01635-PJH

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

Re: Dkt. No. 13

Before the court is defendants' motion to dismiss. The matter is fully briefed and suitable for decision without oral argument. Accordingly, the hearing set for July 22, 2021, is VACATED. Having read the parties' papers and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby rules as follows.

I. Background

Plaintiff Genzon Investment Group Co., Ltd., is a corporate entity created and based in Peoples' Republic of China. Shuyang Genzon Novel Materials Co., Ltd., ("Shuyang Genzon") is a Chinese corporate entity created by plaintiff for purposes of the agreements at issue, and it is not a party to this lawsuit.

Defendant Bin Huang is a natural person residing in Fremont, CA. Huang and his wife, Xin Xing Wang, together own defendant Molecon, Inc., a corporation registered in California and headquartered in Fremont. Molecon Suzhou Novel Materials Co., Ltd., ("Molecon Suzhou") is a Chinese corporation owned by Huang that is involved with the

1 agreements at issue, but it is not a party to this lawsuit.

2 Plaintiff aimed to utilize Huang's purported expertise to produce biodegradable
3 greenhouse film, but the material produced did not meet desired standards. The material
4 fell apart, tore open, or collected excessive condensation. Plaintiff reports facing many
5 lawsuits because of these defective products.

6 Collaboration Agreement

7 On October 25, 2017, plaintiff, defendant Huang, defendant Molecon, Inc., and
8 Molecon Suzhou collectively signed a Collaboration Agreement. Exhibit 1 (Dkt. 1-1). In
9 the Collaboration Agreement, Huang guaranteed that Shuyang Genzon would produce at
10 least one specified biodegradable product within three years of signing. If Shuyang
11 Genzon was unable to accomplish this within the time period, Huang was responsible for
12 providing a solution or alternative solution, and he would have to refund all the funds
13 received. Plaintiff signed multiple equity transfer agreements with the defendants
14 following the signing of Collaboration Agreement.

15 Relying on the Collaboration Agreement, plaintiff set up a new polyester
16 production line of 5,000 tons, reconstructed a film drawing production line, and purchased
17 31 sets of production equipment. To fulfill its obligations under the Collaboration
18 Agreement, plaintiff invested more than 170 million yuan (currently about US\$ 26.25
19 million) in the research and development of degradable material technology and
20 products.

21 December 2017 Equity Transfer Agreement

22 In December 2017, the parties agreed that Shuyang Genzon would purchase 100
23 percent equity of Molecon Suzhou from Molecon, Inc. Exhibit 2 (Dkt. 1-2). The purchase
24 price for this equity was \$3.5 million. Plaintiff fulfilled its end of the bargain, with proofs of
25 payment attached to the complaint as exhibits 4 and 5.

26 2018 Equity Transfer Agreement

27 At some point in 2018 (the translated contract does not show a signature date
28 more specific than 2018), the parties agreed to an additional equity transfer. Exhibit 6

1 (Dkt. 1-6). This time, defendant HUWAA, LLC, purchased 20 percent of Molecon Suzhou
2 from plaintiff for the sum of \$100,000. Plaintiff transferred the 20 percent interest to
3 HUWAA, LLC, but never received the \$100,000.

4 August 2018 Equity Transfer Agreement

5 On August 31, 2018, the parties entered into an agreement whereby plaintiff would
6 secure full control of defendant Molecon, Inc. Exhibit 7 (Dkt. 1-7). Neither party
7 performed under this agreement because Huang did not produce the promised materials.

8 **II. Discussion**

9 Plaintiff's complaint, filed in this court on March 8, lists several breach of contract-
10 related claims based on defendants' alleged failure to perform under the various
11 agreements. Defendants ask the court to dismiss the entire action on forum non
12 conveniens grounds.

13 **A. Legal Standard**

14 In general, "[a] district court has discretion to decline to exercise jurisdiction in a
15 case where litigation in a foreign forum would be more convenient for the parties." Lueck
16 v. Sundstrand Corp., 236 F.3d 1137, 1142 (9th Cir. 2001) (citing Gulf Oil Corp. v. Gilbert,
17 330 U.S. 501, 504 (1947)). Once a district court determines that the appropriate forum is
18 located in a foreign country, the court may dismiss the case. Cheng v. Boeing Co., 708
19 F.2d 1406, 1409 (9th Cir. 1983).

20 Before dismissing an action based on forum non conveniens, district courts
21 analyze whether an adequate alternative forum exists, and whether the balance of private
22 and public interest factors favors dismissal. Lueck, 236 F.3d at 1142; see also Gutierrez
23 v. Advanced Medical Optics, Inc., 640 F.3d 1025, 1029 (9th Cir. 2011).

24 **B. Analysis**

25 **1. Adequate Alternate Forum**

26 "The Supreme Court has held that an alternative forum ordinarily exists when the
27 defendant is amenable to service of process in the foreign forum." Lueck v. Sundstrand
28 Corp., 236 F.3d 1137, 1143 (9th Cir. 2001) (citing Piper Aircraft Co. v. Reyno, 454 U.S.

1 235, 254 n.22 (1981)). “The foreign forum must provide the plaintiff with some remedy
2 for his wrong in order for the alternative forum to be adequate.” Lueck, 236 F.3d at 1143.

3 Here, defendant Huang lays plain in his declaration that he is willing to “waive any
4 applicable statute of limitations; submit to the jurisdiction of a Chinese court; and pay any
5 final, post-appeal judgment awarded by the Chinese court.” Huang Decl. (Dkt. 13-1) ¶ 5.
6 Plaintiff offers no showing that it would be unable to obtain some remedy in Chinese
7 courts. Plaintiff candidly admits that the impetus for filing in this district is the ease of
8 potential enforcement of a judgment; however, this does not equate to plaintiff facing the
9 prospect of no remedy in the alternative forum, China. Therefore, the court concludes
10 that there exists an adequate alternative forum for this dispute, one which the parties
11 designated within the terms of their four agreements.

12 2. Private Interest Factors – Forum Selection Clause

13 The forum non conveniens doctrine provides an “appropriate enforcement
14 mechanism[]” for forum-selection clauses. T & M Solar & Air Conditioning, Inc. v.
15 Lennox Int’l Inc., 83 F. Supp. 3d 855, 868 (N.D. Cal. 2015) (citations omitted); see also
16 Atl. Marine Const. Co. v. U.S. Dist. Ct. for W. Dist. of Texas, 571 U.S. 49, 61 (2013). A
17 forum-selection clause “represents the parties’ agreement as to the most proper forum,”
18 and “a valid forum-selection clause should be given controlling weight in all but the most
19 exceptional cases.” Id. at 63 (internal quotation marks and citations omitted) (alterations
20 omitted). “Courts must enforce a forum-selection clause unless the contractually
21 selected forum affords the plaintiffs no remedies whatsoever[;] [i]t is the *availability* of a
22 remedy that matters, not predictions of the likelihood of a win on the merits.” Yei A. Sun
23 v. Advanced China Healthcare, Inc., 901 F.3d 1081, 1091-92 (9th Cir. 2018) (internal
24 quotations and citations omitted) (original emphasis). Where a forum-selection clause
25 governs the parties’ dispute, the parties’ private interests “weigh entirely in favor of the
26 preselected forum[.]” Atlantic Marine, 571 U.S. at 64, and the court considers only
27 various “public-interest considerations,” id.

28 Here, the parties do not dispute that forum selection clauses exist in each of the

1 agreements, and the parties do not dispute that the clauses select forums in China for
2 resolution of disputes. By the terms of plaintiff's own translation of the agreements, the
3 forums selected by the parties are in China. Dkt. 1-1 at pp. 7, 13-14 (designating forum
4 of Shenzhen City, China); Dkt. 1-2 at pp. 5, 7 (designating forum of Shuyang, China);
5 Dkt. 1-7 at pp. 6, 10 (designating forum of Shenzhen City, China).

6 One of the translated agreements designates California as the choice of forum.
7 Dkt. 1-6 at pp. 5, 7-8. Article VIII of the 2018 Agreement states that the parties, if
8 unsuccessful in mediation, may submit a dispute to the court where "Party B" is located,
9 and Party B in that agreement is defendant HUWAA, LLC, located in Fremont, CA. Id. at
10 pp. 5, 7-8. Defendants' translator says this is an error, that the agreement actually
11 designates that the dispute should be submitted to the court where "Party A" is located,
12 which would be the court where Genzon Investment Group is located, Shenzhen, China.
13 Dkt. 13 at 13. Plaintiff does not protest this correction in its opposition brief, nor does it
14 otherwise attempt to assert that any of the agreements select California as the forum for
15 disputes. The court finds defendants' certification of translation correction sufficient. All
16 the agreements' forum-selection clauses designate courts in China for resolution of
17 disputes.

18 Plaintiff nowhere states that it would be barred from remedy in China. The forum
19 selection clauses therefore control. And because the forum-selection clauses govern, the
20 court need not consider any other private interest factors. See Atlantic Marine, 571 U.S.
21 at 64.

22 3. Public Interest Factors

23 The "public-interest factors" include: "(1) the local interest in the lawsuit, (2) the
24 court's familiarity with the governing law, (3) the burden on local courts and juries, (4)
25 congestion in the court, and (5) the costs of resolving a dispute unrelated to a particular
26 forum." Bos. Telecommunications Grp., Inc. v. Wood, 588 F.3d 1201, 1211 (9th Cir.
27 2009) (internal quotation marks and citations omitted). The party challenging a forum-
28 selection clause "bear[s] the burden of showing that public-interest factors

1 overwhelmingly disfavor a transfer.” Atlantic Marine, 571 U.S. at 67.

2 Here, plaintiff has not carried the burden to show the public-interest factors
3 disfavor transfer. First, California can hardly be said to have an interest in this Chinese-
4 based dispute, and plaintiff’s interest in recovering California-based assets of defendant
5 does little to pique this public’s interest. This factor weighs in favor of dismissal. Second,
6 this court has little familiarity with Chinese contract law, regardless of plaintiff’s
7 suggestion of its similarity to the law in this forum. This lack of familiarity, on top of the
8 necessary translation between two substantially different legal traditions (common law
9 versus civil law) and the necessary translation between languages, weighs in favor of
10 dismissal. Third, though plaintiff anticipates that this court will bear some burden for
11 resolving judgment of the case even if it is litigated in China, the potential confirmation of
12 a foreign judgment award is a far less onerous burden than the litigation of an entire case
13 using foreign law. This factor weighs in favor of dismissal. Fourth, neither party
14 discusses the congestion of this court. Fifth and lastly, though the parties dispute the
15 potential costs of litigating in this forum versus China, neither provides a solid picture of
16 the necessary costs. It seems that only defendant Huang would need to travel to China
17 for litigation, while some untold number of witnesses and officers would need to travel
18 here for litigation. Further, the cost of translating documents from Chinese into English
19 would be much higher if the case were tried in this forum. The cost factor weighs in favor
20 of dismissal. Therefore, nearly all the public interest factors weigh in favor of dismissal.

21 **III. Conclusion**

22 An adequate alternative forum exists for this dispute, where defendant Huang
23 certified his willingness to submit to the jurisdiction of courts in China. The four
24 agreements at issue all include forum selection clauses selecting Chinese forums.
25 Nearly all the public interest factors weigh in favor of dismissal. For all these reasons,
26 defendants’ motion to dismiss for forum non conveniens is GRANTED.

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IT IS SO ORDERED.

Dated: July 20, 2021

/s/ Phyllis J. Hamilton
PHYLLIS J. HAMILTON
United States District Judge

United States District Court
Northern District of California