Third District Court of Appeal

State of Florida

Opinion filed August 5, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-0308
Lower Tribunal No. 18-11520

SGIC Strategic Global Investment Capital, Inc., et al.,
Appellants,

vs.

Burger King Worldwide, Inc., et al.,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, William Thomas, Judge.

Zarco Einhorn Salkowski& Brito, P.A., and Robert Zarco, and Robert M. Einhorn, and Mikhael Bortz, for appellants.

Genovese Joblove & Battista, P.A., and Michael D. Joblove, and Nina Greene, for appellees.

Before FERNANDEZ, LINDSEY, and MILLER, JJ.

LINDSEY, J.

SGIC Strategic Global Investment Capital, Inc. ("SGIC"), GRIL German Restaurant Investment and Lending, Inc. ("GRIL"), and Christian Groenke ("Groenke") (collectively, "Appellants") appeal an order dismissing their complaint based on the doctrine of forum non conveniens, a mandatory forum selection clause requiring the action to be litigated in Germany, and decisions from another case involving these same Appellants that was similarly dismissed by federal courts in Texas. Because we find no abuse of discretion, we affirm.

I. BACKGROUND

This case arises from a series of disputes concerning interests in Burger King restaurants in Germany. Beginning in 1997, Groenke, a resident of Texas, became involved in owning and operating Burger King franchises in Germany through HEGO SystemGastronomie GmbH & Co. KG ("HEGO").[1] HEGO is a party to franchise agreements with Burger King Europe GmbH ("BK Europe"), a Swiss entity and the franchisor of Burger King restaurants in Europe. The relevant portions of these franchise agreements provide as follows: [2]

> **15. Transfer of assets and rights; [BK Europe's] option to purchase**

[1] American Restaurant Holding, GmbH & Co. KG ("ARH") is HEGO's sole shareholder. ARH is solely owned by Appellant GRIL, which, in turn, is solely owned by Appellant SGIC. Groenke is SGIC's sole shareholder.

[2] All the franchise agreements are in German. A certified translation was provided for the relevant provisions.

> (1) Without the consent of [BK Europe], Franchisee is not permitted to dispose of rights and entitlements to the Franchise Restaurant under this Agreement or to dispose of the items required for restaurant operations, in particular to sell, transfer, lease, mortgage, license or sublicense these.
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> **17. Miscellaneous: General Provisions**
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> (2) Jurisdiction/Applicable Law
> The exclusive venue for any disputes arising out of this Agreement, its application or its termination shall be Munich. This Agreement shall become effective upon acceptance and signature by [BK Europe]. This Agreement and its interpretation are governed by the laws of the Federal Republic of Germany.
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> **18. Other Obligations**
> (1) Subject to the following paragraph 2, all obligations and assurances of Franchisee in the above Franchise Agreement, in particular those in Nos. 4(2), 11, 12, and 15(7), apply to HEGO System-Gastronomie Beteiligungs GmbH and Mr. Christian Groenke and Mr. Thomas Wolff, respectively.

In October 2013, Groenke decided to exit the German Burger King market. BK Europe opposed the transaction, which resulted in a 2014 lawsuit between Appellants and BK Europe in the U.S. District Court for the Northern District of Texas. The Texas District Court dismissed the lawsuit based on the forum selection clause in the franchise agreements mandating that any such litigation be conducted in Munich, Germany. SGIC Strategic Glob. Inv. Capital, Inc. v. Burger King Europe

GmBH, No. 3:14-CV-3300-B, 2015 WL 12731761 (N.D. Tex. Aug. 26, 2015) (the "Texas Case"). The U.S. Court of Appeals for the Fifth Circuit affirmed the dismissal in a written opinion. SGIC Strategic Inv., Inc. v. Burger King Europe GmBH, 839 F.3d 422 (5th Cir. 2016).

In April 2018, Appellants filed the instant complaint against Miami-based Burger King Corporation ("BK Corp."); Burger King Worldwide, Inc. ("BK Worldwide"); and Jose Cil, the former president of BK Europe.[3] Many of the allegations in the complaint are virtually identical to the allegations in the Texas Case. However, in the complaint filed below, Appellants did not identify BK Europe by name but instead as "an entity affiliated with" BK Corp. and BK Worldwide.

Appellees moved to dismiss the complaint on the ground that Appellants failed to join an indispensable party, BK Europe, the franchisor, who held the right to approve any sale. Appellees also argued that the federal courts in the Texas Case already had determined the forum selection clause mandated the dispute be resolved in Munich, Germany and that Appellants attempt to re-litigate the issue in Miami was barred by collateral estoppel. Appellees further asserted that dismissal was warranted based on the doctrine of forum non conveniens, given that the dispute

[3] BK Corp. is the franchisor of Burger King restaurants primarily in the United States. BK Worldwide is the parent corporation of BK Corp.

involved German restaurants, the majority of the evidence was in Germany, German law would apply, and an adequate forum in Germany exists.

Agreeing with Appellees' arguments, the lower court granted the motion and dismissed the complaint. Appellants filed a motion for reconsideration arguing that the lower court erred in determining that there was an existing German lawsuit among the parties in which Appellants could bring their present claims. The lower court denied the motion for reconsideration holding that even if the court did not consider the fact that there was a lawsuit in Germany concerning Appellants' sale of their interests, the court would still conclude that the forum selection clause is mandatory and enforceable with regard to Appellants and that an analysis of all relevant factors still favored granting Appellees' motion to dismiss. This timely appeal followed.

II. JURISDICTION

We have jurisdiction pursuant to Florida Rule of Appellate Procedure 9.130(a)(3)(C)(ix).

III. STANDARDS OF REVIEW

Orders granting or denying a motion to dismiss based on the doctrine of forum non conveniens are reviewed for an abuse of discretion. See Fla. R. Civ. P. 1.061(a); Abeid-Saba v. Carnival Corp., 184 So. 3d 593, 599 (Fla. 3d DCA 2016). Similarly, we review for an abuse of discretion the decision to enforce a valid forum-selection

clause through the doctrine of forum non conveniens. GDG Acquisitions, LLC v. Gov't of Belize, 749 F.3d 1024, 1028 (11th Cir. 2014).

IV. ANALYSIS

Florida's four-step forum non conveniens test is set forth in Florida Rule of Civil Procedure 1.061:

> **(a) Grounds for Dismissal.** An action may be dismissed on the ground that a satisfactory remedy may be more conveniently sought in a jurisdiction other than Florida when:
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> (1) the trial court finds that an adequate alternate forum exists which possesses jurisdiction over the whole case, including all of the parties;
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> (2) the trial court finds that all relevant factors of private interest favor the alternate forum, weighing in the balance a strong presumption against disturbing plaintiffs' initial forum choice;
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> (3) if the balance of private interests is at or near equipoise, the court further finds that factors of public interest tip the balance in favor of trial in the alternate forum; and
>
> (4) the trial judge ensures that plaintiffs can reinstate their suit in the alternate forum without undue inconvenience or prejudice.
>
> The decision to grant or deny the motion for dismissal rests in the sound discretion of the trial court, subject to review for abuse of discretion.

See also Kinney Sys., Inc. v. Cont'l Ins. Co., 674 So. 2d 86, 90 (Fla. 1996) (adopting the federal forum non conveniens doctrine), holding modified by Cortez v. Palace Resorts, Inc., 123 So. 3d 1085 (Fla. 2013).

In a detailed, twelve-page order, the trial court considered each of the four factors and concluded that "[a]n analysis of all of the relevant factors militate in favor of granting the Defendants' Motion to Dismiss." With respect to the first factor, adequacy of the alternative forum, the trial court found that "it is undisputed that Plaintiffs have an available and adequate forum for their claims in Germany. This is evidenced by the pending lawsuit in Germany that was initiated by the related franchisee entity, HEGO, against the real party of interest, [BK Europe]." See Kinney 674 So. 2d at 93 n.7 ("[T]here will be instances where a forum non conveniens dismissal would be appropriate notwithstanding one of the parties' Florida residency. For example, the trial court may have discretion to dismiss under the doctrine where a plaintiff has named a 'straw man' Florida defendant who is merely the employee of the actual target of the dispute, an out-of-state corporation. In that situation, residency is that of the real party in interest, not the straw man.").

As to the second factor, the trial court considered the fact that none of the Plaintiffs are residents of Florida. See Rolls-Royce, Inc. v. Garcia, 77 So. 3d 855, 860 (Fla. 3d DCA 2012) ("[T]he presumption normally accorded a plaintiff's choice of forum is given less deference when, as here, the plaintiff is an out-of-state resident

with very little, if any, contact with Florida." (citations and internal quotation marks omitted)). Moreover, the trial court found that "The transactions allegedly giving rise to Plaintiffs' claims occurred in Germany and Europe; the majority of the witnesses are in Europe; and the Restaurants and documents are in Germany -- many of which are in German and require translation to English."

In considering the public interest factor, the trial court considered the judicial resources required to litigate a case arising out of a dispute in Germany. The court also considered the public interest in enforcing the mandatory forum selection clause in the franchise agreements. See Royal Caribbean Cruises, Ltd. v. Clarke, 148 So. 3d 155, 157 (Fla. 3d DCA 2014) ("[F]orum selection clauses are 'prima facie valid' and enforceable." (citing Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585, 589 (1991)). Finally, as to the fourth factor, the trial court concluded that it was "undisputed that there is no danger to Plaintiffs' ability to reinstate this suit in Germany without undue inconvenience or prejudice."

Based on the record before us, and the trial court's detailed order of dismissal, we are unable to conclude that the trial court abused its discretion in dismissing for forum non conveniens. We therefore affirm the dismissal below.

Affirmed.