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Plaintiff, in propria persona

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
CIVIL DIVISION UNLIMITED JURISDICTION

JEFFREY R. **GOLIN,** ELSIE Y. GOLIN, NANCY K. GOLIN, *Plaintiffs* *v.* CLIFFORD B. **ALLENBY,** ***et al*** *Defendants*	**No.: 1-07-CV-082823** **PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO RECONSIDER AMENDED MOTION FOR CHANGE OF VENUE (CCP §1008(a))** Judge: Hon. Thomas P. Breen[1] Department: 5 Date: September 17, 2007 Time: 9:00 a.m.

SUMMARY

A.Grounds for Reconsideration

Plaintiff requests reconsideration of its August 24 Order denying change of venue to Alameda of San Francisco Counties as provided by California Code of Civil Procedure §1008(a), based on "…new or different facts, circumstances, or law…".

Namely, as averred in Plaintiffs Jeffrey Golin's accompanying declaration, 1) the fact that the Court operating under the extraordinary procedure caused by the bench recusal limiting sole case management to an out-of-county judge in this County imposes severe inconveniences on the parties, 2) that there is a direct and material conflict of interest between key court staff and one or more of the defendants that influences the ability of plaintiffs to receive fair pre-trial proceedings, involving the rights of incapacitated plaintiff-conservatee Nancy Golin, 3) the announced basis on which the Court has denied the amended motion for change of venue by CCP 397(d) does not apply to the present case, and 4) the totality of circumstances weighs strongly in favor of *additional* application of the equitable doctrine

[1] Retired judge of the superior court sitting under assignment by the Chairman of the Judicial Council.

of *forum non-conveniens* to the present venue that strongly outweighs defendants' right to a home venue.

B.Discovery of Substantial Inconveniences Resulting from Bench Recusal

On August 8, 2008, this Court issued a surprise bench recusal on its own motion of all judges in this County due to the appointment of one of the defendants, Jacqui Duong of County Counsel's Office, to judgeship in this Court. Judge Thomas P. Breen, an out of county retired judge, was appointed to sit on this case in Santa Clara County as provided by CCP §170.8, who currently presides.

Instead of granting the already-pending change of venue that had previously been moved by plaintiffs on grounds of impossibility of fair trial (CCP 397(b) due to profound judicial influence of defendants, and as then amended on grounds of no judge qualified (CCP §397(d)) (Exhibit A), Judge Breen denied the motion, on August 24, 2007. Judge Breen ruled from the bench that CCP §397(d) was superseded by the provisions of CCP §170.8, citing *Ex Parte Burch*, (1914) 168 Cal. 18, 141 P. 813 for the proposition that change of venue was not required by CCP §397(d) when an out of county judge was appointed to sit in the local venue. However, a fair reading of this case shows that this case and its progeny (e.g., *Yolo Water & Power Co. v. Superior Court in and for Lake County*, (1915) 153 P. 394, Cal.App. 3 Dist.) are outmoded and not applicable here because of far more severe practical problems here that did not exist at that time, imposing practical inconveniences that effectively deny due process on parties without any countervailing state benefits.

In *Burch*, there were no disadvantages to the parties of an out-of-county judge sitting in the case because the judge was able to perform all functions of the court in that simpler time. Here, in Santa Clara County, appointments of *guardians ad litem*, required to appoint a legal representative for incapacitated plaintiff Nancy Golin, are handled through the probate department, now Judge Grille, by local rule. Now that all the local judges are recused, no probate judge is qualified to appoint a guardian ad litem, and the case rests critically on this neglected action. Moreover, the probate department administration and Staff through Sharon O'Neill, head of probate investigations unit that would recommend an alternative GAL has been discovered to be tainted with influence by defendants Buckmaster, Street,

Duong and the Regional Center and its defendants, through personal and professional associations as a result of partnership in local programs to purportedly "protect" the elderly such as the FAST program. In addition, plaintiffs' complaints concerning continuing and unrelenting tainting of hearing transcripts due to influence is being systematically avoided.

This discovery supports plaintiffs' underlying observations and contentions for change of venue that a fair trial, or any trial, is highly unlikely in this venue. Discovery motions are normally handled by another department, Department 7 presided by Judge Manoukian. Ex parte motions require that Judge Breen be available on demand when someone needs a 24 hour hearing on an emergency basis, and he is *not at all* available in that way as he has informed the court. Since there is no other judge qualified to hear an ex parte motion in his absence that imposes an undue burden on all parties without a countervailing benefit. A complete solution to these problems would require a whole new structure of the court which was not present in 1914. This would make it virtually impossible to apply to the probate court for appointment of guardian ad litem for a plaintiffs' nominee, potentially resulting in the specter of a defendant once again corruptly representing Nancy Golin in her own lawsuit, one of the underlying causes of this complaint. The idea that *no* judge of the court can now be found who may act fairly and unimpartially should weigh favorably for plaintiffs argument that no fair trial is possible in this venue, yet is being disregarded.

Judge Breen mistakenly assumes that CCP §397(b) applies only to the question of fair jury trial or jury bias. This is not supported by all authorities as we will argue.

Moreover, *Burch* does not stand for the proposition that no-qualified-judge *mandates* the application of CCP §170.8 in preference to CCP §397(d) when moving parties have already moved the court to change venue, but provides *discretionary* authority when no additional circumstances are necessarily considered and the alleged bias involves only one or two judges. Here there are many more circumstances and judges to weigh.

C.Contradictory Statutory Authority

No case could be found annotating CCP §170.8 and its relation to CCP §170.8, making this question potentially one of first impression. Both statutes are grounded on the same conditions, that no judge is qualified to act in the original venue, yet they mandate different outcomes. They would appear to be in conflict, requiring careful analysis of statutory con-

struction typically required in mixed venue authorities. The Legislature must be presumed to have had a separate and different purpose in enacting CCP §397(d), avoiding surplusage. The question thereby presented is, under what circumstances should CCP §397(d) apply and should it be superseded by CCP §170.8, even when there is evidence of local influence or even outright local corruption seeking to cover up and protect these defendants from scandal?

LEGAL ARGUMENT

EQUITABLE DOCTRINE OF *FORUM NON-CONVENIENS* APPLIES HERE

One of the determinative cases is *Stangvik v. Shiley Inc*., (1991), 54 Cal.3d 744, 819 P.2d 14,

> "*Forum non conveniens"* is equitable doctrine invoking discretionary power of court to decline to exercise jurisdiction it has over transitory cause of action when it believes that action may be more appropriately and justly tried elsewhere.
>
> In determining whether to grant motion to dismiss or stay based on forum non conveniens, court must first determine whether alternate forum is suitable place for trial; if so, next step is to consider private interests of litigant and interests of public in retaining action for trial in state

It cannot be fairly said that defendants' right to a trial in their local venue is unfairly prejudiced by a transfer of venue to one of the nearby Bay Area metropolitan counties, yet it assures the plaintiff of his right to a fair and impartial proceeding.

> Court should not decide that there are circumstances in which doctrine of forum non conveniens will always apply or never apply; otherwise, flexibility of doctrine would be threatened, and its application would be based on identification of a single factor rather than balancing of several. (*Stangvic*, Id.)

See also *Bland v. Norfolk and Western Ry. Co.*. 116 Ill.2d 217, 506 N.E.2d 1291, Ill., 1987.

Forum non conveniens is an equitable doctrine. It presupposes the existence of more than one forum with jurisdiction over the parties and the subject matter. (*Wieser v. Missouri Pacific R.R. Co.* (1983), 98 Ill.2d 359, 364, 74 Ill.Dec. 596, 456 N.E.2d 98; *People ex rel. Compagnie Nationale Air France v. Giliberto* (1978), 74 Ill.2d 90, 112, 23 Ill.Dec. 106,

383 N.E.2d 977.) Under the doctrine, a court may decline to exercise jurisdiction of a case whenever it appears that there is another forum with jurisdiction of the parties in which trial can be more conveniently had. *Adkins v. Chicago, Rock Island & Pacific R.R. Co.* (1973), 54 Ill.2d 511, 514, 301 N.E.2d 729; *Moore v. Chicago & North Western Transportation Co.* (1983), 99 Ill.2d 73, 76, 75 Ill.Dec. 423, 457 N.E.2d 417.

In deciding whether the doctrine applies, a court must balance private interest factors affecting the convenience ***of*** the litigants and public interest factors affecting the administration of the courts. See *Gulf Oil Corp. v. Gilbert* (1947), 330 U.S. 501, 508-09, 67 S.Ct. 839, 843, 91 L.Ed. 1055, 1062-63.

CONCLUSION

For the aforementioned reasons the Court should reconsider its order denying plaintiffs' motion to change venue, and grant the motion based on new and different circumstances.

Submitted this 4th Day of September, 2007

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Jeffrey R. Golin

U.S. v. National City Lines

7 F.R.D. 456
D.C.Cal., 1947
September 29, 1947 (Approx. 12 pages)

The Doctrine of Forum Non Conveniens.

[1] [2] The doctrine of forum non conveniens is not of statutory origin. In Anglo-American law, it has been used as a means of declining jurisdiction whenever 'considerations of convenience, efficiency, and justice'[FN4] point to another tribunal than that chosen by

a litigant as the appropriate tribunal. And courts of equity will 'go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.'[FN5]

FN4 Rogers v. Guaranty Trust Co., 1933, 288 U.S. 123, 131, 53 S.Ct. 295, 298, 77 L.Ed. 652, 89 A.L.R. 720.

FN5 Virginian Ry. v. System Federation, 1937, 300 U.S. 515, 552, 57 S.Ct. 592, 601, 81 L.Ed. 789.

This doctrine which permits a court having jurisdiction to refuse to exercise it has been applied either under its Latin name, forum non conveniens, or under its truncated English name, inappropriate forum, in many cases arising in Admiralty[FN6] and in Equity.[FN7]

FN6 Langnes v. Green, 1931, 282 U.S. 531, 51 S.Ct. 243, 75 L.Ed. 520; Canada Malting Co. v. Paterson Co., 1932, 285 U.S. 413, 52 S.Ct. 413, 76 L.Ed. 837.

FN7 Kansas City Southern R. Co. v. United States, 1931, 282 U.S. 760, 763, 51 S.Ct. 304, 75 L.Ed. 684; Rogers v. Guaranty Trust Co., 1932, 288 U.S. 123, 53 S.Ct. 295, 77 L.Ed. 652, 89 A.L.R. 720; Virginian Ry. v. System Federation, 1937, 300 U.S. 515, 57 S.Ct. 592, 81 L.Ed. 789; Commonwealth of Massachusetts v. State of Missouri, 1939, 308 U.S. 1, 19, 60 S.Ct. 39, 84 L.Ed. 3.

The problem before us must be solved in the light of the principles which have governed its application.

In each instance, the Court which declined to exercise jurisdiction had jurisdiction, and the plaintiff had a choice of venue. Thus, when, under a statute, jurisdiction in a proceeding to limit liability could be brought in either the state court or the federal court, the federal court, in its discretion, could enjoin the prosecution of the action in the state court. [FN8] And when a stockholders' suit relating to the affairs of a corporation could properly be brought in either the state or the federal courts, it was held the federal district court could, in its discretion, dismiss the suit.[FN9]

FN8 Langnes v. Green, 1931, 282 U.S. 531, 51 S.Ct. 243, 75 L.Ed. 520.

FN9 Rogers v. Guaranty Trust Co., 1932, 288 U.S. 123, 53 S.Ct. 295, 77 L.Ed. 652, 89 A.L.R. 720.

The more recent cases of the Supreme Court applying this doctrine must be interpreted in the light of these principles.[FN10] Indeed, the nub of the controversy between the parties here is as to the meaning of these cases, and especially the Gulf and Koster cases.[FN11]

FN10 Williams v. Green Bay & W. R. Ry. Co., 1946, 326 U.S. 549, 66 S.Ct. 284, 90 L.Ed. 311; Gulf Oil Corporation v. Gilbert, 1947, 330 U.S. 501, 67 S.Ct. 839; Koster v. Lumbermen's Mutual Co., 1947, 330 U.S. 518, 519, 67 S.Ct. 828.

FN11 See cases in Notes 7 and 8.

It is the Government's contention that these cases lay down a distinction between general venue and special venue statutes and that the doctrine of forum non conveniens does not apply to cases in which the Congress, *by a special venue statute*, has given to the plaintiff the choice of forums.

None of these cases define the difference between the two types of venue statutes.

[3] It is evident, however, that a general venue statute would be exemplified by the provisions of the Judicial Code to the effect that actions shall generally be brought against a person only in the district of which he is a resident, or, in diversity cases, in the district of the residence of either the plaintiff or the defendant.[FN12] The mere existence of a choice of forums does not, as the cases already cited[FN13] indicate, make a statute one of a *461 special venue. Special venue statutes are statutes in which the Congress has legislated with reference to a particular kind of actions and has decreed that they might be brought in several forums, in some of which they could not be brought but for such legislation. Illustrative are: actions relating to copyrights,[FN14] patent infringements,[FN15] actions for the recovery of taxes under the Internal Revenue Acts,[FN16] and stockholder's derivative suits.[FN17] Of the same type is the special venue provision of the Federal Employers' Liability Act.[FN18] This Act gives to an injured employee a choice of three places where he might bring his action: (1) the district of the defendant's residence; (2) the district where the cause of action arose, and (3) the district in which the defendant is doing business at the time when the action is begun.

FN12 28 U.S.C.A. § 112.

FN13 See cases in Notes 7 and 8. And see, Neirbro Co. v. Bethlehem Shipbuilding Corporation, 1939, 308 U.S. 165, 60 S.Ct. 153, 84 L.Ed. 167, 128 A.L.R. 1437.

FN14 17 U.S.C.A. § 35.

FN15 28 U.S.C.A. § 109. The language of Mr. Justice Brandeis in Lumiere v. Mae Edna Wilder, Inc., 1923, 261 U.S. 174, 177, 43 S.Ct. 312, 67 L.Ed. 596, lends support to the view here expressed as to what a special venue statute is. Speaking of the special venue provision in copyright cases, he says:

'Ordinarily a civil suit to enforce a personal liability under a federal statute can be brought only in the district of which the defendant is an inhabitant. Judicial Code, § 51 [28 U.S.C.A. § 112].

In a few classes of cases, a carefully limited right to sue elsewhere has been given. In patent cases it is the district of which the defendant is an inhabitant or in which acts of infringement have been committed and the defendant has a regular and established place of business. Judicial Code, § 48 [28 U.S.C.A. § 109]; W. S. Tyler Co. v. Ludlow-Saylor Wire Co., 236 U.S. 723, 35 S.Ct. 458, 59 L.Ed. 808. In cases under the anti-trust laws, it is where the defendant 'resides or is found or has an agent' (Act Oct. 15, 1914, c. 323, § 4, 38 Stat. 730, 731 [15 U.S.C.A. § 15]), and, in the case of corporations, the 'district whereof it is an inhabitant' or 'any district wherein it may be found or transacts business."

FN16 28 U.S.C.A. § 105. The United States Court of Appeals for the District of Columbia has held that the doctrine of forum non conveniens is applicable to an action of this character. See Urquart v. American-La France Foamite Corporation, 1944, 79 U.S.App.D.C. 219, 144 F.2d 542, 544.

FN17 28 U.S.C.A. § 112.

FN18 45 U.S.C.A. § 56.

In re Hadley B.

148 Cal.App.4th 1041, 56 Cal.Rptr.3d 234

Cal.App. 4 Dist.,2007.

February 26, 2007

The parents confuse the doctrine of forum non conveniens with a change of venue. Forum non conveniens allows a California court to stay or dismiss an action if it finds the action should be adjudicated in another state. The doctrine allows a court that has jurisdiction over the action "to decline to exercise the jurisdiction ... when it believes that the action may be more appropriately and justly tried elsewhere." (*Stangvik v. Shiley, Inc.* (1991) 54 Cal.3d 744, 751, 1 Cal.Rptr.2d 556, 819 P.2d 14.) The cases cited by the parents involve the doctrine of forum non conveniens, which is codified in Code of Civil Procedure section 410.30. Venue rules, on the other hand, specify which county within California is the proper place for trial. (Code Civ. Proc., § 392 et seq.) The trial court in the county where the action is filed may change venue to another county "[w]hen the convenience of witnesses and the ends of justice would be promoted by the change"; it cannot dismiss the case. (Code Civ. Proc., § 397, subd. (c).)

Archibald v. Cinerama Hotels

15 Cal.3d 853, 544 P.2d 947

Cal. 1976.

January 21, 1976

The exceptional case which justifies dismissal of a suit under the doctrine of forum non conveniens is one in which California cannot provide an adequate forum or has no interest in doing so; examples include cases in which no party is a California resident or in which the nominal California resident sues on behalf of foreign beneficiaries or creditors. West's Ann.-

Code Civ.Proc. § 410.30.