

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ICIPA S.R.L.

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CIVIL ACTION

v.

LEARJET, INC.

NO. 97-2725

M E M O R A N D U M

Padova, J.

August 6, 1997

ICIPA S.R.L. ("Plaintiff"), brings this action against Learjet, Inc. ("Defendant"), seeking to recover money damages stemming from the 1994 crash, in Europe, of an aircraft manufactured by Defendant. Before the Court is Defendant's Motion to dismiss on the basis of forum non conveniens in favor of an Italian forum. For the reasons that follow, the Court will (1) deny that Motion to Dismiss and (2) transfer this action to Kansas.

I. Facts

On April 4, 1994, shortly after take-off from an airport in Seville, Spain, Plaintiff's Learjet (serial number 55-007), carrying eight passengers and two crew members, was forced to make an emergency landing, allegedly due to multiple systems failure. Upon landing, the aircraft's brakes, landing gear, and flaps malfunctioned. Spanish emergency and fire-fighting teams evacuated the passengers and crew and extinguished the fire. No one was injured in the accident.

The wreckage of the aircraft remains in Spain. At the time of

the accident, the plane was registered in Italy and owned and operated by Plaintiff, an Italian company.

On April 3, 1997, Plaintiff filed a Complaint in the Court of Common Pleas of Philadelphia County, alleging causes of action for negligence, breach of warranty and product liability. On April 20, 1997, Defendant filed its Notice of Removal to this Court pursuant to 28 U.S.C.A. § 1446 (West 1994 & Supp. 1997). On July 9, 1997, the Court denied Plaintiff's Motion to Remand.

II. Discussion

A. Forum Non Conveniens

A district court may, in the exercise of its sound discretion, dismiss a case when an alternative forum has jurisdiction to hear the case, and when trial in the chosen forum would establish . . . oppressiveness and vexation to a defendant . . . out of all proportion to plaintiff's convenience, or when the chosen forum [is] inappropriate because of considerations affecting the court's own administrative and legal problems. In deciding whether to dismiss a case for forum non conveniens, the ultimate inquiry is where trial will best serve the convenience of the parties and the ends of justice.

A district court entertaining a forum non conveniens motion must first decide whether an adequate alternative forum exists to hear the case. Furthermore, the court should also consider that a foreign plaintiff's choice of an American forum is entitled to less deference than an American citizen's choice of his home forum. If there is an adequate alternative forum, the district court must consider and balance several private and public interest factors that are relevant to the forum non conveniens determination. There is no rigid rule which governs the court's determination and each case turns on its facts. However, the plaintiff's choice of forum should rarely be disturbed, unless the balance of factors is strongly in favor of the defendant.

* * *

It is settled that the defendant bears the burden of persuasion as to all elements of the forum non conveniens analysis.

Lacey v. Cessna Aircraft Co., 862 F.2d 38, 42-44 (3d Cir. 1988) (citations and internal quotation marks omitted) ("Lacey I").

1. Adequate Alternative Forum

With respect to the availability of an adequate alternative forum, Defendant argues that the "Italian courts would have jurisdiction over this matter, and Italian law provides a cause of action under which the plaintiff may seek relief." (Def.'s Mot. Dismiss ¶ 15) ("Def.'s Mot.>").

There is no evidence, however, that an Italian court would have jurisdiction over Defendant but for a statement by DeAnna Williams, Defendant's Legal and Records Administrator, that Defendant is prepared to "submit to the jurisdiction and authority of the Italian court and accept service of process" for purposes of resolving this matter. (Def.'s Mem. Supp. Mot. Dismiss Ex. D ¶ 5) ("Def.'s Mem.>"). Even Defendant's expert, Gian Marco Spani, a member of the Italian bar, concedes that "[t]he Courts of Italy, particularly the Civil Tribunal of Milan, would have jurisdiction over . . . Learjet, Inc. . . . [only] if Learjet were to consent to the jurisdiction of the Italian court." (Def.'s Mem. Ex. G ¶ 5) (emphasis added). Thus, it appears that an adequate alternative forum exists solely by virtue of stipulation, rather than as a consequence of the inherent power of the foreign forum. Therefore, though I find the existence of an adequate alternative forum under

Lacey I, I conclude that since its existence is due exclusively to waiver, the adequacy thereof weighs only mildly in favor of dismissal.

2. Foreign Plaintiff

Plaintiff is a company organized and existing under the laws of Italy, with its principal place of business in Milan. (See Compl. ¶ 1). In support of its argument that this forum is convenient, Plaintiff notes that "witnesses who will testify regarding the design, manufacture and testing of the product are residents of the United States, and are subject to compulsory process in the United States." (Pl.'s Letter Br. Opp'n Mot. Dismiss at 2) ("Pl.'s Br."). Plaintiff further notes that should this case be dismissed in favor of an Italian forum, "[t]he parties and the [Italian] Court still face the difficulty of transporting documents overseas and translating highly technical documents." (Pl.'s Br. at 3).

It is true that "[w]hen the home forum has been chosen, it is reasonable to assume that this choice is convenient, [but] [w]hen the plaintiff is foreign . . . this assumption is much less reasonable." Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255-56, 102 S. Ct. 252, 266 (1981). In this case, however, given the nature of the action which Plaintiff brings, the fact is that many of the witnesses will be Defendant's employees who are not subject to the compulsory process of an Italian court. This obstacle is partially surmounted by Defendant's waiver of personal

jurisdiction. However, at best, Defendant can only waive jurisdiction as to witnesses in its employ. As this case is in its pre-discovery phase, it is too soon to know with any degree of certainty who the trial witnesses may ultimately be.

As for the difficulties in obtaining documents, it is true that Defendant has pledged "to make available in an action brought in an Italian court such documentary evidence of the design and manufacture of the Learjet 55-007 as is deemed relevant and discoverable." (Def.'s Mem. Ex. D ¶ 6). However, I fail to see how this offer helps Defendant in its bid to prove that the instant forum is non conveniens. If anything, the fact that dismissal would necessitate the transatlantic movement of documents undercuts the very notion that maintenance of this action in the United States is inconvenient. All told, Defendant has not demonstrated that Plaintiff's choice of a United States -- as compared to an Italian -- forum is unreasonable.

3. Private Interest Factors

The district court considers the following private interest factors:

the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive.

Lacey I, 862 F.2d at 46 (citation omitted).

Vexing this suit is the question of potential third-parties

and/or witnesses whose presence may be critical to the defense. In this regard, the crash report ("Report") compiled by the Comision de Investigacion de Accidentes de Aviacion Civil, apparently an arm of the Spanish civil aviation authorities, confirms that the pilot and co-pilot are both Italian citizens. (Def.'s Mem. Ex. E at 3).

In the context of an air accident, one can hardly imagine witnesses more material than the flight crew. Notwithstanding the fact that the pilots are Italian citizens, Defendant offers no proof that they reside in Italy or that they would not otherwise be subject to the jurisdiction of a United States forum. After all, these potential witnesses are pilots who may well frequent the United States in the context of their professional pursuits. Similarly, Defendant makes no offer of proof that "Eurojet Italia . . . the Italian entity that replaced all of Learjet 55-007's main gear brake assemblies one month prior to the accident," is not subject to jurisdiction in the United States. (Def.'s Mem. at 19).¹

Had the accident taken place in Italy, Defendant's position would be stronger. The fact that it took place in Seville, Spain, however, means of necessity that certain documentary and testimonial evidence will require international transportation and translation regardless of whether the action proceeds in the United

¹ This lack of proof as to the availability of certain potential third-party witnesses is also fatal to Defendant's Federal Rule of Civil Procedure 19 defense.

States or in Italy.² I conclude, therefore, that Defendant has not carried its burden of persuasion with respect to the private interest factors.

4. Public Interest Factors

The district court considers the following public interest factors:

the administrative difficulties flowing from court congestion; the local interest in having localized controversies decided at home; the interest in having the trial of a diversity case in a forum that is at home with the law that must govern the action; the avoidance of unnecessary problems in conflict of laws, or the application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty.

In evaluating the public interest factors the district court must consider the locus of the alleged culpable conduct . . . and the connection of that conduct to plaintiff's chosen forum.

Lacey I, 862 F.2d at 48 (citations and internal quotation marks omitted).

The matter sub judice is not a "localized controversy." Nor, however, is this controversy strictly "localized" to Italy. On the contrary, as Defendant notes, this is "an action involving an accident occurring in Spain with an aircraft operated and maintained in Italy and manufactured in Kansas" (Def.'s Mem. at 16). Based on the facts as alleged in the Complaint, I can conceive of no circumstance under which this Court would apply

² In this regard, the fact that the Report is already translated into English will facilitate its use in the United States.

substantive Pennsylvania law.³ "Many forum non conveniens decisions have held that the need to apply foreign law favors dismissal." Reyno, 454 U.S. at 260 n.29, 102 S. Ct. at 268 n.29. See also Lacey I, 862 F.2d at 48 (stating in the forum non conveniens context that "the need to apply foreign law points toward dismissal") (citation omitted). At this pre-discovery stage of the proceedings and in the absence of briefing containing a detailed conflicts analysis concerning Italian, Kansas or Spanish law, it would be premature to conclude whether or which foreign law would apply.

The connection between the alleged culpable conduct and this forum may be tenuous. On the other hand, the material ties to Italy are hardly air-tight. Plaintiff has placed the aircraft's design and manufacture at issue, allegations which have far more relevance to the place of design and manufacture, i.e., the United States, than to Italy, the mere situs of registry and ownership.

In sum, I do not believe that Defendant has carried its heavy burden -- as it must -- of demonstrating that a United States forum

³ This conclusion rests on a cursory choice of law analysis, which in federal diversity actions

combines the approaches of both Restatement II [Conflict of Laws] (contacts establishing significant relationships) and "interest analysis" (qualitative appraisal of the relevant States' policies with respect to the controversy). It takes into account both the grouping of contacts with the various concerned jurisdictions and the interests and policies that may be validly asserted by each jurisdiction.

Blakesley v. Wolford, 789 F.2d 236, 239 (3d Cir. 1986) (citation omitted).

is inconvenient as compared to an Italian one. What is abundantly clear, however, is that the Eastern District of Pennsylvania is not, by any stretch of the imagination, the proper location for this action.

As an alternative to dismissal, Plaintiff urges that venue should be transferred to Kansas pursuant to 28 U.S.C.A. § 1404(b) (West 1993 & Supp. 1997). Transfer of venue would, if nothing else, foster access to the documentation and personnel-witnesses essential to Plaintiff's case. Furthermore, by virtue of Kansas being the home of Defendant, transfer of venue would provide a critical nexus between at least one of the parties and the forum in which this dispute is adjudicated, circumstances which, at present, are entirely lacking.

An appropriate Order follows. IN THE UNITED STATES DISTRICT COURT
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O R D E R

AND NOW, this 6th day of August, 1997, upon consideration of Defendant's Motion to Dismiss for Forum Non Conveniens (Doc. No. 3), Plaintiff's Letter Brief in Response thereto (Doc. No. 9), and Defendant's Reply (Doc. No. 8), **IT IS HEREBY ORDERED THAT:**

1. Defendant's Motion **IS DENIED**.
2. Venue **IS TRANSFERRED** to the United States District Court for the District of Kansas pursuant to 28 U.S.C.A. § 1404 (West 1993 & Supp. 1997).

BY THE COURT:

John R. Padova, J.