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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MARTINA SANTOS VAZQUEZ et al.,

Plaintiffs and Appellants,

v.

FORD MOTOR COMPANY et al.,

Defendants and Respondents.

G044616

(Super. Ct. No. 30-2010-00348651)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Franz E. Miller, Judge. Affirmed.

Merritt & Associates, John M. Merritt, Mark A. Cox; The Harmon Firm, James H. Harmon and Matthew C. Mullhofer for Plaintiffs and Appellants.

Snell & Wilmer, Robert J. Gibson, Todd E. Lundell and Janine Schwerter for Defendant and Respondent Ford Motor Company.

Yoka & Smith, Walter M. Yoka, David T. McCann, Aaron G. Capps and Christopher P. Leyel for Defendant and Respondent Cooper Tire & Rubber Company.

Lewis Brisbois Bisgaard & Smith, Roy G. Weatherup, Steven R. Lewis and Caroline E. Chan for Defendant and Respondent The Pep Boys Manny, Moe & Jack of California.

Squire, Sanders & Dempsey, Adam R. Fox, Jeffrey S. Renzi and Marisol M. Corral for Defendant and Respondent TRW Vehicle Safety Systems, Inc.

* * *

Plaintiffs Martina Santos Vazquez (Martina), Jocelyn Munguia Santos (Jocelyn), Eric Manuel Munguia Santos (Eric), Jenifer Munguia Santos (Jenifer), and Juana Guzman Robles (Juana) filed a wrongful death action against defendants Ford Motor Company (Ford), Cooper Tire & Rubber Company (Cooper), The Pep Boys Manny, Moe & Jack of California (The Pep Boys), and TRW Vehicle Safety Systems, Inc. (TRW). The court granted Ford's motion to dismiss or stay the action on the basis of forum non conveniens and stayed the action. Plaintiffs appeal, arguing the court abused its discretion in improperly evaluating the factors used to decide such a motion. We affirm.

FACTS AND PROCEDURAL HISTORY

In April 2008 Manuel Munguia, a resident alien living in Arizona, was killed as a result of a rollover accident in Mexico while driving his Ford Ranger, which plaintiffs claim was defectively designed and manufactured. The complaint also alleges the tires were manufactured by Cooper and sold by The Pep Boys and that TRW manufactured the seatbelts. According to the complaint the Munguia survivors include Martina, his wife, Jocelyn and Jenifer, his daughters, and Eric, his son. Juana is alleged to be Munguia's personal representative. Jocelyn is a citizen of Arizona and, at the time

of the accident, the other plaintiffs were Mexican citizens who resided in Arizona. The complaint also pleads Ford, Cooper, and TRW are incorporated in Delaware with Ford's principal places of business in Michigan and Cooper's in Ohio; The Pep Boys is a California corporation. Plaintiffs sued for wrongful death based on strict liability, negligence, and breach of the implied warranty of merchantability and fitness for a particular purpose.

Ford filed a motion to dismiss based on forum non conveniens in which the remaining defendants joined. After opposition and argument, the court stayed the action giving plaintiffs 90 days from the date of the hearing to file an action in Arizona, on conditions all defendants agree to Arizona jurisdiction in the case and to waive the statute of limitations. The court based its ruling on findings that the accident occurred in Mexico, plaintiffs' claims could appropriately be adjudicated in Arizona, and there was no evidence the parties would be able to compel witnesses to come to California from Mexico and Arizona. It also found that as to public factors, California "has little concern" about the case, it would be "cumbersome" to try the case here, and "there is minimal competitive disadvantage to California when compared to Arizona."

Additional facts are set out in the discussion.

DISCUSSION

"Forum non conveniens is an equitable doctrine invoking the discretionary power of a court to decline to exercise the jurisdiction it has over a transitory cause of action when it believes that the action may be more appropriately and justly tried elsewhere. [Citation.]" (*Stangvik v. Shiley, Inc.* (1991) 54 Cal.3d 744, 751.) In ruling on a motion the court engages in a two-step process. First, it decides "whether the alternate forum is a 'suitable' place for trial." (*Ibid.*) If it makes that finding it next "consider[s]"

the private interests of the litigants and the interests of the public in retaining the action for trial in California.” (*Ibid.*)

Plaintiffs only perfunctorily challenge the trial court’s determination that Arizona is a suitable forum, pointing out that Arizona is neither the state of incorporation nor principal place of business of any of the defendants. But this is not the test of suitability. Rather, the question is “whether an action may be commenced in the alternative jurisdiction and a valid judgment obtained there against the defendant[s]. [Citation.]” (*Stangvik v. Shiley, Inc., supra*, 54 Cal.3d at p. 752, fn. 3.) “[S]o long as there is jurisdiction and no statute of limitations bar, a forum is suitable where an action ‘can be brought,’ although not necessarily won. There is no balancing of interests in this decision, nor any discretion to be exercised.” (*Shiley, Inc. v. Superior Court* (1992) 4 Cal.App.4th 126, 132.)

Plaintiffs have not cited any evidence to dispute either factor. Defendants are all subject to Arizona jurisdiction and have waived the statute of limitations for a reasonable time. There is nothing to show plaintiffs cannot obtain a judgment nor have they argued this. Because the first prong of the test is satisfied, we consider the public and private interests in maintaining the action in California. We review the court’s determination for abuse of discretion, giving substantial deference to its decision. (*Stangvik v. Shiley, Inc., supra*, 54 Cal.3d at p. 751.)

“The private interest factors are those that make trial and the enforceability of the ensuing judgment expeditious and relatively inexpensive, such as the ease of access to sources of proof, the cost of obtaining attendance of witnesses, and the availability of compulsory process for attendance of unwilling witnesses.” (*Stangvik v. Shiley, Inc., supra*, 54 Cal.3d at p. 751.) “The public interest factors include avoidance of overburdening local courts with congested calendars, protecting the interests of potential jurors so that they are not called upon to decide cases in which the local community has

little concern, and weighing the competing interests of California and the alternate jurisdiction in the litigation. [Citations.]” (*Ibid.*)

Plaintiffs rely heavily on their contention that none of them live in Arizona and no defendants are incorporated or maintain their principal place of business there. But, according to the complaint, all of the plaintiffs were Arizona residents at the time of the accident. Martina’s declaration filed in opposition to plaintiffs’ motion states that she and her three children moved from Arizona to Mexico before the date the complaint was filed. Juana, the decedent’s personal representative, declared she “ha[s] resided in California from the time the lawsuit was filed”

The allegations in the complaint are binding, judicial admissions (*Valerio v. Andrew Youngquist Construction* (2002) 103 Cal.App.4th 1264, 1271) that cannot be contradicted with subsequent declarations (*Foxborough v. Van Atta* (1994) 26 Cal.App.4th 217, 222, fn. 3). Moreover, moving away from Arizona after the accident is irrelevant. What matters is residence at the time the cause of action arose. Otherwise potential plaintiffs could move to a state they believed more favorable to their claims. It may be inferred from Juana’s declaration that that is exactly what she did.

Contrary to plaintiffs’ claim, Juana’s California residency is not entitled to particularly great weight. Although *Chong v. Superior Court* (1997) 58 Cal.App.4th 1032, 1038 does note that the selection of a forum by a plaintiff who is a resident of that state is “afforded substantial weight,” it continues that “[a] nonresident plaintiff’s choice of forum is . . . entitled to less deference. [Citation.]” Under the circumstances of this case the trial court could conclude Juana was a nonresident. In addition, she is not the injured party but only a representative, who suffered no direct injuries.

Plaintiffs also contend California is presumptively convenient because The Pep Boys is incorporated and located in this state. (*Stangvik v. Shiley, Inc., supra*, 54 Cal.3d at p. 755.) But the “presumption is not conclusive. . . . A resident defendant may overcome the presumption of convenience by evidence that the alternate jurisdiction is a

more convenient place for trial of the action.” (*Id.* at p. 756, fns. omitted.) As shown by The Pep Boys’ declaration filed in support of its joinder in Ford’s motion to dismiss, its principal place of business is in Pennsylvania and it has locations in 35 states, including 22 of its 570 stores in Arizona. So California is no more convenient than Arizona. And plaintiffs did not plead any of the alleged wrongful conduct occurred in California.

Further, “[w]hile the state of incorporation or principal place of business of a corporate defendant is an element or ‘factor to be considered in the balance of convenience’ [citation], it must be weighed with all other factors, ‘without giving undue emphasis to any one element.’ [Citation.]” (*Shiley, Inc. v. Superior Court, supra*, 4 Cal.App.4th at p. 135.) And case law supports grant of a stay even where a defendant is a California corporation. (E.g., *Morris v. AGFA Corp.* (2006) 144 Cal.App.4th 1452, 1465 [stay affirmed although two defendants incorporated in California]; *Campbell v. Parker-Hannifin Corp.* (1999) 69 Cal.App.4th 1534, 1542-1544 [other factors weighed in favor of stay although two defendants incorporated in California].) Likewise, that none of the defendants is incorporated or maintains its principal place of business in Arizona is also not dispositive.

In addition, there is other evidence and inferences that can be drawn from it to show it would be less expensive to try the case in Arizona. The decedent was an Arizona resident at the time of the accident. Presumably his medical records are there. In addition, he was employed there. Witnesses and documents in connection with his employment will be necessary to litigate plaintiffs’ alleged loss of financial support.

Although apparently not in the record, plaintiffs acknowledge the prior owner of the car and those who maintained it also are in Arizona, along with related documents. There is no reason to believe any of those witnesses would be available in California and even if they were, there would be additional cost. (*Price v. Atchison, T. & S.F. Ry. Co.* (1954) 42 Cal.2d 577, 580 [costs of compelling attendance of witnesses from New Mexico more expensive and trial testimony by deposition less effective].) Virtually

no witnesses reside in California except for the recently relocated Juana, the personal representative.

The trial court weighed these facts in making its ruling, deciding “the evidence that would be sought vis-à-vis the vehicle and tire purchase and/or maintenance, [and] any sorts of medical or psychological evidence regarding the parties before the accident . . . would be significantly better in Arizona.”

Further, plaintiffs’ claim it is more likely that the law of Mexico or California will apply and not Arizona’s is not persuasive. They fail to explain why California law will prevail and there is no reason to believe it would. And we are not persuaded by the argument the accident did not occur in Arizona; it did not occur in California either.

Plaintiffs assert the fact that Ford and Cooper are parties to cases that have been coordinated in Orange County, Judicial Coordination Proceeding No. 4292, claiming extensive discovery has been conducted that they would have access to. They contend this case could be added to the proceeding, saving them substantial time and expense in their own discovery.

Plaintiffs’ assumption they would automatically be added to the proceeding, should this action remain in California, is not supported by any evidence. Just because they have sued Cooper and Ford in a case involving alleged defects in their products does not necessarily qualify it for addition. Their motion to join in that proceeding was stayed as premature until there was a ruling on defendants’ motion to dismiss or stay. Plaintiffs also point to nothing in the record to support their claims about discovery.

The trial court was not persuaded by this argument, reasoning that if the mere fact there was a joint proceeding was enough to support selection of California as the forum, “then everybody comes from everywhere and files here just to get a claw hold

on the State of California. Then the system becomes overwhelmed with cases that would otherwise never be here.” This is a proper consideration in weighing public factors.

Further, as detailed above, there is no evidence the case is of concern to the jury pool in Orange County. The accident did not occur here nor did the alleged wrongful acts. Decedent did not live here, nor do the surviving family members. We need not engage in extensive discussion about the burden of adding cases to the congested trial court calendar, especially in this current financial climate.

Plaintiffs argue that for defendants to meet their burden they must show not that Arizona is the most convenient forum but that California is a “seriously inconvenient forum.” (*Ford Motor Co. v. Insurance Co. of North America* (1995) 35 Cal.App.4th 604, 611, italics omitted.) But *Ford Motor* involved a dismissal of an action, not a stay as is the case here, and thus it does not apply. (*Century Indemnity Co. v. Bank of America* (1997) 58 Cal.App.4th 408, 412.) A court “has considerably wider discretion to grant stays precisely because under a stay California retains jurisdiction. [Citation.] Even an action brought by a California resident is subject to a stay. [Citation.]” (*Id.* at pp. 411-412.) “In considering whether to stay an action, in contrast to dismissing it, the plaintiff’s residence is but one of many factors which the court may consider.” (*Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 860.) The court properly exercised its discretion after weighing the various factors to grant the motion and stay the action.

DISPOSITION

The order is affirmed. Respondents are entitled to costs on appeal.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

ARONSON, J.

FYBEL, J.