


**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

DEPARTMENT 20

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FILED

JUN 11 2020

Clerk of the Court
Superior Court of CA County of Santa Clara
BY  **DEPUTY**
N. Matautia (Only)

Van Mantgem v. Spinal Kinetics, Inc.
DATE: 11 June 2020

TIME: 9:00 am

CASE NO. 19CV350146
LINE NUMBER:

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2nd Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 10 June 2020. Please specify the issue to be contested when calling the Court and Counsel.

Defendant contested the posted tentative ruling. The matter was argued and submitted.

**ORDER DENYING MOTION OF DEFENDANT TO DISMISS OR STAY THE ACTION
ON GROUNDS OF FORUM NON CONVENIENS**

I. Statement of Facts.

Plaintiff Sarah Van Mantgem traveled to Germany to undergo artificial disc replacement surgery wherein three Spinal Kinetics M6-C artificial cervical discs were implanted into her spine. The subject discs were developed, designed, and manufactured in Sunnyvale, CA. The defendant's principal place of business is in Santa Clara, California. Plaintiffs allege the discs collapsed in California, subsequently causing their injuries. Plaintiff Sarah Van Mantgem underwent a subsequent surgery in California to remove the discs.

The artificial discs here were approved for use at one level only. Plaintiff traveled to Germany for a 3-level fusion with the discs manufactured by defendant. The German doctor apparently explained the risks of the surgery to plaintiff.

At the hearing on the matter, counsel for plaintiff stated that this is purely a products liability case.

Plaintiffs filed this complaint on 17 June 2019.¹ In the complaint, plaintiffs seeks compensatory and punitive damages according to proof for wage loss, hospital and medical expenses, general damage, loss of earning capacity, and loss of consortium.

Defendant now requests that the court dismiss the case based on forum non conveniens on the grounds that Germany is an adequate forum and the balance of the private and public factors favor the proceeding in a German court.

II. Analysis.

¹ This Department intends to comply with the time requirements of the Trial Court Delay Reduction Act (Government Code, §§ 68600–68620). The California Rules of Court state that the goal of each trial court should be to manage limited and unlimited civil cases from filing so that 100 percent are disposed of within 24 months. (*Ca. St. Civil Rules of Court*, Rule 3.714(b)(1)(C) and (b)(2)(C)).

"When a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just." (**Code of Civil Procedure**, § 410.30(a).)

"Few areas of the law have experienced such a dramatic recent evolution as the doctrine of forum non conveniens. Responding as it has to changed circumstances with the flexibility that has long typified the common law, the doctrine today must adapt to a world whose nations--and litigants--are growing more closely linked by the bonds of commerce and culture." (**Alcoa S.S. Co., Inc. v. M/V Nordic Regent**, 654 F.2d 147,155 (2d Cir. 1978).)

A California resident's of California is entitled to great weight." (**Stangvik v. Shiley** (1991) 54 Cal.3d 744, 754 (an in-state "plaintiff's choice of a forum should rarely be disturbed unless the balance is strongly in favor of the defendant"); **National Football League v. Fireman's Fund Ins. Co.** (2013) 216 Cal.App.4th 902, 917; **Gulf Oil Corp. v. Gilbert** (1947) 330 U.S. 501, 508 ("unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed.").)

A trial court considering a forum non conveniens issue engages in a two-step process: the first of which is to determine whether a suitable alternative forum exists. If so, the next step is to consider the private interests of the litigants and the interests of the public in retaining the action for trial in California. (**Stangvik v. Shiley** (1991) 54 Cal.3d 744, 751.)

A. Germany as a Valid Forum

A trial court considering a forum non conveniens issue engages in a two-step process: the first of which is to determine whether a suitable alternative forum exists. If so, the next step is to consider the private interests of the litigants and the interests of the public in retaining the action for trial in California. (**Stangvik v. Shiley** (1991) 54 Cal.3d 744, 751) A forum is suitable for forum non conveniens purposes "if there is jurisdiction and no statute of limitations bar to hearing the case on the merits." (**Chong v. Superior Court** (1997) 58 Cal.App.4th 1032, 1036)

Plaintiffs' claims for personal injury could be pursued in Germany. Plaintiffs would not be barred by their applicable statutes of limitations. Additionally, defendant agrees to stipulate to jurisdiction in Germany. As such, Germany would be a valid alternative forum for this litigation.

B. Balance of Private Factors.

a. Private Factors

There is ordinarily a strong presumption in favor of the plaintiff's choice of forum, which may be overcome only when the private and public interest factors clearly point towards trial in the alternative forum. (**Carriano v. Occidental Petroleum Corp.** (2011) 643 F.3d 1216, 1227 quoting **Piper Aircraft Co. v. Reyno** (1981) 454 U.S. 235) "The factors relating to the private interests of the litigants include: (1) the residence of the parties and the witnesses; (2) the forum's convenience to the litigants; (3) access to physical evidence and other sources of proof; (4) whether unwilling witnesses can be compelled to testify; (5) the cost of bringing witnesses to trial; (6) the enforceability of the judgment; and (7) all other practical problems that make trial of a case easy, expeditious and inexpensive." (**Carriano** (2011) 643 F.3d 1216, 1229.)

b. The Residence of the Parties/Witnesses

Plaintiffs have chosen California to be the forum to resolve their dispute. The defendant's principal place of business is in California. Although some of the witnesses live in Germany, more witnesses related to this suit reside in California. Additionally, these witnesses residing in California will likely provide more information to the causes of action in the complaint. This factor weighs against dismissal.

c. The Forum's Convenience to the Litigants

A showing of inconvenience by a defendant will usually be outweighed by a showing of convenience by a party who has sued in his home state. (*Loya v. Starwood Hotels & Resorts Worldwide, Inc.*, (2009) 583 F.3d 656, 664)

The world is battling a pandemic causing international travel to be challenging or impossible. Additionally, plaintiff suffers from a disability making travel during a pandemic more difficult to Germany. This factor weighs against dismissal.

d. Access to Physical Evidence and Other Sources of Proof

Plaintiff underwent a subsequent surgery in California, during which the surgeon discovered that her artificial discs had collapsed. Plaintiffs have dealt with 38 medical providers in the state of California. Additionally, the subject discs were developed, designed, and manufactured in Sunnyvale, CA. The evidence pertaining to the plaintiffs damages exist within California. This factor weighs against dismissal.

e. Whether Unwilling Witnesses Can be Compelled to Testify

Plaintiffs can obtain U.S.-based evidence for use in a German trial by invoking a federal statute, 28 U.S.C. section 1782: "The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding if a foreign or international tribunal..." (**28 U.S.C. § 1782**) This factor weighs in favor of dismissal.

f. The Cost of Bringing Witnesses to Trial

All of plaintiffs treating physicians and all persons with information about her medical history and damages are located in the United States. The defendants would like to use information from the implantation surgeon and healthcare providers in Germany. However, it would be more costly to bring all of plaintiff's witnesses in the United States to Germany rather than to bring the defendant's witnesses to the United States. This factor weighs against dismissal.

g. The Enforceability of the judgment

"California generally enforces foreign judgments, as long as they are issued by impartial tribunals that have afforded the litigants due process. See *California Civil Procedure* § 1716(a)-(d).²" (*Carriano* (2011) 643 F.3d at

² "(a) Except as otherwise provided in subdivisions (b), (c), (d), and (f), a court of this state shall recognize a foreign-country judgment to which this chapter applies.

(b) A court of this state shall not recognize a foreign-country judgment if any of the following apply:

(1) The judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law.

(2) The foreign court did not have personal jurisdiction over the defendant.

(3) The foreign court did not have jurisdiction over the subject matter.

(c)(1) A court of this state shall not recognize a foreign-country judgment if any of the following apply:

(A) The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend.

(B) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case.

(C) The judgment or the cause of action or claim for relief on which the judgment is based is repugnant to the public policy of this state or of the United States.

(D) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court.

1232³.) Given that there is no agreement by Defendant that a German judgment could be enforced against it in the United States, this factor weighs dismissal.

h. All Other Practical Problems That Make Trial of a Case Easy, Expeditious, and Inexpensive

Germany does not allow pre-trial document requests to third parties. (Defendants Memorandum 15:15-25) The scope of pre-trial discovery in Germany is limited. This case involves 41 medical providers⁴ which will require extensive discovery. At the hearing on this matter, plaintiff's counsel conceded that not of the treating doctors would be called as witnesses. This factor weighs against dismissal.

C. Balance of Public Factors

The public factors for a dismissal or stay for forum non conveniens also weigh in favor of the motion's denial. "The public interest factors include [(1)] avoidance of overburdening local courts with congested calendars, [(2)] 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 [(3)] weighing the competing interests of California and the alternate jurisdiction in the litigation. (*Stangvik v. Shiley* (1991) 54 Cal.3d 744, 751)

a. Avoidance of Overburdening Local Courts with Congested Calendars

Neither party specifically addresses the issue of potentially overburdening local courts. As such, it will be considered neutral for the purpose of weighing for or against dismissal.

b. Protecting the Interests of Potential Jurors to Not Be Called upon to Decide Cases in Which the Local Community Has Little Concern

California and the local community have a strong interest in deciding this case given several key factors. To begin, the plaintiffs in this action are both California residents. The defendant's principal place of business is in

(E) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

(F) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.

(G) The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

(2) Notwithstanding an applicable ground for nonrecognition under paragraph (1), the court may nonetheless recognize a foreign-country judgment if the party seeking recognition of the judgment demonstrates good reason to recognize the judgment that outweighs the ground for nonrecognition.

(d) A court of this state is not required to recognize a foreign-country judgment if the judgment conflicts with another final and conclusive judgment.

(e) If the party seeking recognition of a foreign-country judgment has met its burden of establishing recognition of the foreign-country judgment pursuant to subdivision (c) of Section 1715, a party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subdivision (b), (c), or (d) exists.

(f) A court of this state shall not recognize a foreign-country judgment for defamation if that judgment is not recognizable under Section 4102 of Title 28 of the United States Code."

³ "As Occidental correctly points out, California generally enforces foreign judgments, as long as they are issued by impartial tribunals that have afforded the litigants due process." (*Carijano v. Occidental Petroleum Corp.* (9th Cir. 2011) 643 F.3d 1216, 1231-1232.)

⁴ At the hearing on this motion, the number of doctors mentioned was 35. This discrepancy does not count for much in this Court's ultimate decision.

California. The product was designed, manufactured, and entered the stream of commerce from California. Plaintiffs' injuries occurred in California and Plaintiff Sarah Van Mantgem underwent a subsequent surgery in California, during which the surgeon discovered that her artificial discs had collapsed. Plaintiffs have dealt with 38 medical providers in the state of California. These facts weigh against dismissal.

c. Weighing the Competing Interests of California and the Alternate Jurisdiction

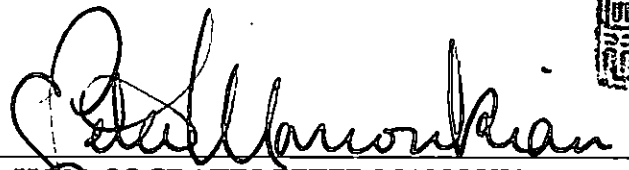
Neither party applies a full three-part government interest test to determine the choice of law that would be applied in this case. When applying this test, the court examines if the substantive laws of each jurisdiction differ, whether each jurisdiction has a legitimate interest in having its laws applied, and if so, the court identifies and applies the law of the state whose interest would be more impaired. (*Abogados v. AT&T, Inc.* (2000) 223 F.3d 932, 934) Assuming the first two factors apply, given the above analysis, California still holds a stronger interest in applying its law, and would be more impaired if German law was applied. This weighs against dismissal.

III. Conclusion and Order.

The motion of defendant to dismiss or stay on the grounds of Forum Non Conveniens is DENIED.

This Court takes no position as to the applicable choice of law for the trial of this matter.

11 June 2020
DATED:



HON. SOCRATES PETER MANOUKIAN
Judge of the Superior Court
County of Santa Clara





**SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SANTA CLARA
 DOWNTOWN COURTHOUSE
 191 NORTH FIRST STREET
 SAN JOSE, CALIFORNIA 95113
 CIVIL DIVISION**

FILED

JUN 11 2020

Clerk of the Court
 Superior Court of CA County of Santa Clara
 BY  **DEPUTY**
N. Matautia

RE: **Sarah Van Mantgem et al vs Spinal Kinetics, Inc.**
 Case Number: **19CV350146**

PROOF OF SERVICE

ORDER DENYING MOTION OF DEFENDANT TO DISMISS OR STAY THE ACTION ON GROUNDS OF FORUM NON CONVENIENS was delivered to the parties listed below the above entitled case as set forth in the sworn declaration below.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408) 882-2700, or use the Court's TDD line (408) 882-2690 or the Voice/TDD California Relay Service (800) 735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown below, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on June 11, 2020. CLERK OF THE COURT, by Naomi Matautia, Deputy.

cc: Donald Edward Krentsa / Lauren Meisel 350 Sansome St Ste 600 San Francisco CA 94104
 Michael Joseph Hurvitz Bowman and Brooke LLP 750 B Street Ste 1740 San Diego CA 92101