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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

GEN CARROLLTON, LP, Plaintiff and Appellant, v. SEWOOM BUILDERS et al., Defendants and Respondents.	B281913 (Los Angeles County Super. Ct. No. BC641533)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael J. Raphael, Judge. Affirmed.

Law Office of Robert Myong and Robert S. Myong for Plaintiff and Appellant.

Crawford & Bangs, E. Scott Holbrook, Jr., for Defendants and Respondents.

Gen Carrollton, LP (plaintiff), a Delaware limited partnership, worked with several Texas-based individuals and entities to build a restaurant in Texas. The construction was delayed, relationships between plaintiff and its contractors deteriorated, and plaintiff filed a lawsuit in Los Angeles County. Two of the six defendants, Sewoom Builders (Sewoom) and its president, Michael Chang (Chang) (collectively, respondents), moved to dismiss on forum non conveniens grounds. The court granted the motion, finding both that Texas is a suitable alternative forum and that private and public interest factors favor litigating in Texas. We consider whether the trial court's ruling was correct and, in particular, whether plaintiff's status as a purported California "resident" warrants deference to its choice to file suit in California.

I. BACKGROUND

A. The Parties

According to its complaint, plaintiff is "a Delaware limited partnership with its principal place of business in Carrollton, Texas." However, in both its opposition to respondents' forum non conveniens motion and its opening brief on appeal, plaintiff describes itself as "a registered California limited partnership with its principal place of business in Cerritos, California." This description is based on a California Secretary of State business search query listing a Cerritos address for plaintiff's agent for service of process, its "entity address," and its "entity mailing address."[1] However, the same search result listing states

[1] In its appellate briefing, plaintiff describes itself as "a part of a California company that was founded in Tustin, California in

plaintiff's "entity type" is "foreign" and its "jurisdiction" is "Delaware."

In 2016, plaintiff hired Sewoom as general contractor to build a Korean barbeque restaurant in Carrollton, Texas. Chang resides in Texas, and Sewoom "is a Texas LLC doing business exclusively in Texas." The contract between plaintiff and Sewoom does not include a forum selection clause, but it does state all disputes "arising out of or relating to this contract" will be governed by Texas law and are subject to mandatory mediation and arbitration in Texas.[2] The remaining defendants are Hong's Fire Inspection (HFI), Joon Young Hong (Hong), White Stone Construction (White Stone), and Young Chang. None of these defendants had appeared when the court granted respondents' forum non conveniens motion.

B. The Lawsuit

Plaintiff sued respondents and the other defendants in 2016, alleging construction of the Texas restaurant was delayed as a result of HFI's failure to install an acceptable fire prevention system and Sewoom's work on a competing restaurant. Plaintiff alleges that Sewoom eventually abandoned plaintiff's project, that Sewoom, Chang, and Hong extorted payments from plaintiff by refusing (and telling others to refuse) to sign a release required by plaintiff's landlord, and that Chang and Hong spread

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2009 . . . . [that] operates over 20 restaurants in California alone . . . ." The briefs do not support the description with a citation to the record and we have discovered no record support for the description on our own.

[2] No defendant moved to compel arbitration of this action.

"false rumors" that plaintiff had not paid its contractors. Plaintiff also alleges Sewoom "changed [its] name" to White Stone to "get around" plaintiff's landlord's refusal to allow Sewoom to continue its work on the restaurant based on Sewoom's "past mistakes."[3] Plaintiff's complaint asserts causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing, negligence, intentional interference with contractual relations, defamation, and fraud.

C. The Forum Non Conveniens Motion

Respondents argued plaintiff's lawsuit should be dismissed on forum non conveniens grounds because Texas is a suitable forum, all of the defendants are in Texas, and all of the relevant events occurred in Texas. In its opposition, plaintiff argued that, as a California resident, a strong presumption favors its choice of forum, a substantial number of witnesses reside in California, and "California has an interest in protecting its residents from unscrupulous out-of-state businesses . . . ."[4]

After an unreported hearing, the trial court granted respondents' motion. According to the order memorializing the ruling, the court found "[t]here is no dispute that Texas is a suitable alternate forum or that plaintiff's claims would be timely

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[3] Elsewhere, plaintiff suggests this was more than a mere name change, alleging that White Stone is "owned and controlled by [Young Chang], Chang's brother."

[4] Plaintiff's opposition also discussed, at length, issues not raised in respondents' motion, including whether California courts have personal jurisdiction over the defendants and whether the arbitration agreement included a forum selection clause.

there." In addition, the court found private interest factors relevant to a forum non conveniens analysis favored litigating in Texas because the relevant work was performed (or not performed) there, plaintiff's employees visited Texas in connection with that work, plaintiff's causes of action do not arise from the single visit Chang made to California, and the construction agreement provides for application of Texas law and mediation and arbitration in Texas. The court further found public interest factors also favored litigating the dispute in Texas because resolution of the dispute would require application of Texas law, California has an interest in avoiding congesting its court with cases arising from events that occurred in Texas, the case does not involve products liability claims, and plaintiff would suffer no competitive disadvantage if required to litigate in Texas. The court concluded these factors combined to make California a "seriously inconvenient" forum and warranted dismissal of the action.

II. DISCUSSION

Plaintiff challenges all aspects of the trial court's ruling on appeal, arguing Texas is not suitable as an alternative forum, the court incorrectly balanced the applicable private and public interest factors, and dismissal was inappropriate regardless. On each point, we are not persuaded. Plaintiff does not identify, and we cannot find, any reason that Texas would not be a suitable alternative forum: Texas courts have personal jurisdiction over the defendants and plaintiff's causes of action were not time-barred. Plaintiff also fails to affirmatively show the trial court erred in balancing the private and public interest factors, mainly because plaintiff relies heavily on its claim that it is a California

resident, but that claim contradicts plaintiff's complaint and finds no support in the record before us. And finally, plaintiff's only non-conclusory argument that dismissal was inappropriate likewise rests on its faulty argument emphasizing its purported status as a California resident.

A. Legal Framework and Standard of Review

"A defendant, on or before the last day of his or her time to plead . . . , may serve and file a notice of motion . . . [¶] . . . [¶] [t]o stay or dismiss the action on the ground of inconvenient forum." (Code Civ. Proc., § 418.10, subd. (a)(2).) "In determining whether to grant a motion based on forum non conveniens, a court must first determine whether the alternate forum is a 'suitable' place for trial. If it is, 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 Inc.* (1991) 54 Cal.3d 744, 751.)

At the first step, "'[a] forum is suitable if there is jurisdiction and no statute of limitations bar to hearing the case on the merits. [Citation.] "[A] forum is suitable where an action 'can be brought,' although not necessarily won." [Citation.]' [Citations.]" (*Roulier v. Cannondale* (2002) 101 Cal.App.4th 1180, 1186.) At the next step, the relevant private interests 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.'" (*Id.* at p. 1189.) The relevant 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.]" (*Id.* at pp. 1189-1190.)

These two analytical steps are subject to differing standards of review on appeal. The first issue—suitability of an alternative forum—is "subject to either a de novo or substantial evidence review on appeal." (*National Football League v. Fireman's Fund Ins. Co.* (2013) 216 Cal.App.4th 902, 918 (*NFL*).) Because the issue commonly requires only a statutory analysis to confirm that the alternative forum may exercise jurisdiction over all parties and that causes of action would not be time-barred, review is generally de novo, as it is here. (See, e.g., *Investors Equity Life Holding Co. v. Schmidt* (2011) 195 Cal.App.4th 1519, 1528 ["the 'threshold determination whether the alternate forum is a suitable place for trial' involves 'a nondiscretionary determination' [citation] that is reviewed de novo [citation]"]; *Animal Film, LLC v. D.E.J. Productions, Inc.* (2011) 193 Cal.App.4th 466, 472 ["The existence of a suitable alternative forum is a legal question that we review independently"].) The second step in the analysis—the weighing of the private and public interests involved—is reviewed for abuse of discretion and "'substantial deference' is accorded to the trial court's ruling. [Citation.]" (*NFL*, *supra*, at p. 918.)

B. Suitability of Texas as an Alternative Forum

Plaintiff makes no affirmative argument that Texas would not be a suitable forum for this litigation. Instead, its argument regarding suitability is limited to asserting respondents failed "to

submit any evidence that Texas would be a suitable alternative forum." To the contrary, we see ample basis to conclude a Texas court would have personal jurisdiction over defendants and plaintiff's causes of action were not time-barred when the trial court ruled on the forum non conveniens motion.

First, Texas courts have personal jurisdiction over Texas residents. (See *DowElanco v. Benitez* (Tex.Ct.App. 1999) 4 S.W.3d 866, 872.) Chang's declaration states that he, Sewoom, and the remaining defendants are all residents of Texas and conduct business in Texas.

Second, none of plaintiff's causes of action were time-barred in Texas when the court granted respondents' motion. (See *America Online, Inc. v. Superior Court* (2001) 90 Cal.App.4th 1, 12, fn. 5 [alternative forum suitable if "statute of limitations has not expired as of the time the motion is considered"].) Just over one year elapsed between plaintiff's hiring of Sewoom as general contractor (February 2016) and the trial court's entry of the judgment of dismissal (March 2017).[5] The only cause of action alleged in plaintiff's complaint that is subject to a limitations period of less than two years in Texas is defamation. (See Tex. Civ. Prac. & Rem. Code, § 16.002, subd. (a) [one-year limitations period for libel and slander]; Tex. Civ. Prac. & Rem. Code, §16.004 [four-year limitations period for fraud]; *Cosgrove v. Cade* (Tex. 2015) 468 S.W.3d 32, 35 [four-year limitations period for breach of contract; two-year limitations period for tortious interference with contractual relationship]; *Provident Life and*

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[5] This is a conservative approach to calculating when plaintiff's causes of action accrued because Sewoom was not required to complete construction until July 2016.

Accident Ins. Co. v. Knott (Tex. 2003) 128 S.W.3d 211, 220-221 [two-year limitations period for breach of the duty of good faith and fair dealing]; *Dunmore v. Chicago Title Ins. Co.* (Tex.Ct.App. 2013) 400 S.W.3d 635, 640 [two-year limitations period for negligence].) Although the complaint does not specify when, exactly, Chang and Hong allegedly "began spreading false rumors that Plaintiff had not paid [Sewoom] and [HFI]," plaintiff did not even hire HFI until April 2016, which is less than one year prior to the judgment of dismissal.

C. Private Interest Factors[6]

Plaintiff contends the private interest factors favor litigating in California primarily because it is a California resident and its choice to litigate in California is therefore entitled to significant deference. As a general principle of law,

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[6] We have neither a reporter's transcript of the hearing on respondents' motion nor a settled or agreed statement of the proceedings to inform our review of the court's weighing of the relevant private and public interest factors. Because plaintiff, as the appellant, has the burden to present an adequate record to affirmatively demonstrate error (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564), we would perhaps be justified in affirming solely on record adequacy grounds. (*Southern California Gas Co. v. Flannery* (2016) 5 Cal.App.5th 476, 483 ["In many cases involving the substantial evidence or abuse of discretion standard of review . . . , a reporter's transcript or an agreed or settled statement of the proceedings will be indispensable"].) The trial court's written ruling is fairly detailed, however, so we briefly discuss the reasons why plaintiff has not shown an abuse of discretion on the facts as presented. (*Rhule v. WaveFront Technology, Inc.* (2017) 8 Cal.App.5th 1223, 1229, fn. 5.)

that is true: "[A] California plaintiff's choice of California as a forum is accorded great weight . . . ." (*David v. Medtronic, Inc.* (2015) 237 Cal.App.4th 734, 741, fn. 7.) The problem, however, is that the record does not establish plaintiff is a California resident in any relevant sense.

In *Investors Equity Life Holding Company v. Schmidt* (2015) 233 Cal.App.4th 1363 (*Investors Equity II*), the court explained that "resident" and "non-resident" are not relevant categories for determining the degree of deference to which an entity plaintiff's choice of forum is entitled. Rather, "the cases requiring significant deference to the forum choice of a 'resident' who files suit in California involve[ ] *human* plaintiffs." (*Id.* at p. 1379; see also *NFL*, *supra*, 216 Cal.App.4th at p. 921 ["a business domiciled in multiple states is not entitled to the same preference as a plaintiff that resides only in California"].) The principles underlying such deference for a natural person's choice of forum—that the chosen forum will be convenient for the plaintiff and that the state has a strong interest in assuring its people an adequate forum—do not apply "in quite the same way to corporations or other business entities, which do not simply 'reside' in one state or another in quite the same way that people do. A corporation may be large or small, simple or complex, and it may choose to be formed under (and subject to) the laws of one state, while conducting its business elsewhere. A large business could have a very significant presence in multiple states, which might suggest that *each of those states* could provide a presumptively convenient forum for litigation involving the corporate plaintiff, and each might claim varying degrees of interest in assuring that corporation has an adequate forum for redress of its grievances." (*Investors Equity II*, *supra*, at p. 1379.)

Insofar as California law distinguishes between resident and non-resident businesses, it does so by distinguishing "between 'domestic corporations,' which are defined as those formed under California law [citation] and 'foreign corporations' . . . , which are not [citation]. Presumably, California would have a greater interest providing a forum for litigation involving its domestic corporations than it would for litigation involving foreign ones. And while foreign corporations can conduct business within California after obtaining a certificate of qualification from the Secretary of State to do so . . . , such qualification does not suffice to transform the foreign corporation into a de facto domestic one, nor would it even obligate a foreign corporation to govern itself in accordance with California law." (*Investors Equity II*, *supra*, 233 Cal.App.4th at p. 1380.) Here, the only evidence in the record that provides even tangential support for plaintiff's claim that it is a California business is the Secretary of State business search results page reflecting that plaintiff is a *foreign* limited partnership.[7] This status is insufficient to invoke the rule requiring significant deference to a plaintiff's choice to litigate in California.

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[7] *Investors Equity II* contemplates that foreign corporations that transact more than half of their business in California and satisfy other conditions would qualify as "pseudoforeign" corporations and might be entitled to the same deference as domestic corporations. (*Investors Equity II*, *supra*, 233 Cal.App.4th at p. 1380.) Plaintiff's claim in its reply brief that it qualifies as a pseudoforeign limited partnership is not supported by evidence in the record and, in any event, appears to conflate plaintiff with the entity that would seem to be its parent.

Plaintiff also argues private interest factors favor litigating in California because plaintiff may call a number of witnesses who reside in this state. Relying on a declaration it submitted during the trial court proceedings, plaintiff emphasizes six of its employees "traveled to Texas on a regular basis to monitor and supervise Sewoom's progress" and "approximately ten (10) California based contractors traveled to Texas to work on the construction while Sewoom was the general contractor."

Like the trial court, we find plaintiff's witness convenience arguments unconvincing. Plaintiff's employees' "regular" travel to Texas indicates Texas would be a convenient forum in which to litigate. As to the identified contractors, nothing in plaintiff's declaration provides a basis to conclude all ten who traveled from California to Texas would have relevant, non-cumulative testimony to offer at a trial. Plaintiff's remaining argument regarding the relative convenience of California and Texas—that respondents were able to find a California attorney to file their motion—carries little, if any, weight. The argument is particularly weak given that a majority of the defendants never appeared in this action.

Plaintiff does not address two other private interest factors the trial court discussed—factors that lend further support to the trial court's ruling. First, the construction agreement provides for application of Texas law and requires mediation and arbitration in Texas. Second, the work on the restaurant was performed in Texas, and at least some likely third-party witnesses—e.g., plaintiff's landlord and the fire inspector—have no apparent ties to California.

Considering the various factors, the trial court correctly concluded the relevant private interests in this case militated in favor of litigating in Texas.

D. Public Interest Factors

The trial court found that public interest factors favor litigating in Texas because California has an interest in not congesting its courts with a dispute arising from events in Texas, no products liability issues are raised, Texas law governs at least some of plaintiff's causes of action by virtue of the construction agreement, and litigating in Texas would not put plaintiff at a competitive disadvantage. Plaintiff's only challenge to these findings on appeal is an argument that California has a "strong interest in protecting its residents from unscrupulous out-of-state businesses that solicit work, fail to perform, and defraud California residents." For the reasons discussed *ante*, plaintiff's characterization of itself as a California resident for purposes of forum non conveniens analysis has no basis in the record.

E. Whether Dismissal Was Appropriate

"In California, the action of a non-California resident may be dismissed on forum non conveniens grounds, but, barring extraordinary circumstances, the action of a California resident may only be stayed. [Citation.]" (*Van Keulen v. Cathay Pacific Airways, Ltd.* (2008) 162 Cal.App.4th 122, 126.) Plaintiff contends dismissal was inappropriate in this case because it is a California resident and the circumstances of this case are not extraordinary. For reasons we have already given, plaintiff is not properly considered a California resident, and the rule favoring a stay rather than dismissal therefore does not apply. (*Fox*

Factory, Inc. v. Superior Court (2017) 11 Cal.App.5th 197, 205-207.) Regardless, the balance of public and private interest factors tips decidedly in favor of litigation in Texas and demonstrates California would be a seriously inconvenient forum. (See *NFL*, *supra*, 216 Cal.App.4th at p. 939.)

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

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BAKER, Acting P.J.

We concur:

MOOR, J.

KIN, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.