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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

INTERNATIONAL SECURITY &
DEFENSE MANAGEMENT, LLC,

Plaintiff and Appellant,

v.

FLUOR INTERCONTINENTAL, INC.,

Defendant and Respondent.

B243384

(Los Angeles County
Super. Ct. No. BC477145)

APPEAL from an order of the Superior Court of Los Angeles, Michael L. Stern, Judge. Affirmed.

Beitchman & Zekian, David P. Beitchman and Andre Boniadi for Plaintiff and Appellant.

Reed Smith, Margaret M. Grignon, Kurt C. Peterson, Stuart A. Shanus, Francisca M. Mok and Kasey J. Curtis for Defendant and Respondent.

Appellant International Security & Defense Management, LLC (ISDM), a Nevada limited liability company, with its principal place of business in California, brought suit against Fluor Intercontinental, Inc. (FII), a California corporation, with its principal place of business in South Carolina. The litigation arose out of two contractual agreements between the parties put out for bid by FII's South Carolina offices and negotiated on FII's behalf primarily by persons working and residing in South Carolina. The trial court granted FII's motion to dismiss for forum non conveniens. ISDM appeals, contending the court abused its discretion. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The background facts are not in dispute. FII is part of the Fluor Government Group (FGG), an unincorporated umbrella group that handles Fluor Corporation's business dealings with the United States Government.¹ FII contracted to provide support services, including security services, to supplement the U.S. Army's operations in Afghanistan.² ISDM is owned and operated by Jeff Earl, its president and chief operating officer, who is a resident of California, and his brother James Earl, its chief executive officer and chief financial officer, a resident of Florida. ISDM is in the business of providing trained security personnel to companies, governmental agencies, and individuals worldwide. In 2009, ISDM entered into a contract with FII under which ISDM provided qualified security personnel who

¹ Its parent, Fluor Corporation, is a holding company with no independent business operations. References to "Fluor" herein are to the entire group of companies that come under the umbrella.

² The U.S. Government program under which these support services are provided is known as the "Logistics Civil Augmentation Program" or "LOGCAP." Accordingly, FII's contracts with the U.S. Government are often referred to as LOGCAP contracts and the work performed under them as LOGCAP work.

were deployed to Afghanistan to help fill FII's LOGCAP contractual requirement. In 2010, the parties entered into a second similar agreement.³

A. ISDM's Complaint

After the second Task Order expired, ISDM brought suit against FII for breach of contract, breach of implied covenant of good faith and fair dealing, fraud in the inducement, promissory fraud, tortious interference with contract, intentional interference with prospective economic advantage, unjust enrichment, trade libel and unfair business practices (Bus. & Prof. Code, § 17200).⁴ According to the allegations of the complaint, in April 2010, while the 2009 Task Order was in effect, FII personnel asked ISDM to submit a bid to supply additional security personnel, representing that if ISDM submitted a bid with significantly lower rates, it would be provided the opportunity to supply more personnel for a longer period.⁵ ISDM submitted a bid significantly lower than its original bid, and secured the 2010 Task Order at lower rates than the 2009 Task Order. In addition, ISDM expanded its business operations to accommodate the expected increase in business by hiring additional support and administrative staff, leasing more office space, and contracting with additional security personnel. However, FII did not

³ The parties refer to these agreements as "Task Order[s]." Each Task Order had a term of approximately one year. Under the 2009 Task Order, ISDM was to supply up to 20 security managers and coordinators; under the 2010 Task Order, ISDM was to supply up to 80 security managers and coordinators.

⁴ The original complaint named only FII. ISDM subsequently filed a first amended complaint which added the parent company, Fluor Corporation. The FAC also added Fluor Enterprises, Inc., which was identified as a California corporation. According to FII's brief, neither Fluor Corporation nor Fluor Enterprises has been served. They are not parties to this appeal.

⁵ The complaint attributed these representations to Fluor employees Tom Flores, Dan Collins, and/or Jonathan Cooper.

subsequently increase the number of security personnel it obtained from ISDM. In addition, when the 2010 Task Order expired, FII entered into direct employment agreements with a number of the individuals ISDM had supplied under the Task Orders to perform similar security functions, and did not continue to do business with ISDM.

B. FII's Forum Non Conveniens Motion

FII moved to dismiss or stay on the ground of forum non conveniens. It submitted declarations from the following Fluor employees in support of the motion: Thomas Flores, the executive director of corporate security for Fluor Corporation; Clare Wells, a former contracts specialist or procurement specialist for FII and contracts administrator for FGG, and current contract administrator for Fluor Canada's Metals & Mining Group in Vancouver, Canada; and Jonathon Cooper, director of corporate security for FGG.⁶

The declarants stated that FII's principal place of business is Greenville, South Carolina and that it has no business offices in California. When the bids by prospective subcontractors to supply security personnel needed to meet FII's obligations under the LOGCAP contracts originally came in, the corporate security group, headed by Flores, was tasked with determining if the potential bidder was qualified to serve as a LOGCAP subcontractor. Flores was the most senior person managing the security portion of FII's LOGCAP work. FII determined that ISDM was a qualified bidder, primarily through the efforts of Cooper. Cooper also was involved in developing the request for proposals distributed to the interested

⁶ Flores works and resides in Houston, Texas. Wells currently works and resides in Vancouver, but worked and lived in South Carolina when the Task Orders were in effect. Cooper works and resides in South Carolina.

bidders and assessing the bidders' proposals, to determine whether the bid was technically acceptable. During the bidding process for the 2009 Task Order, Flores, Cooper and Cooper's supervisor, Dan Collins, met with James and Jeff Earl at FGG's offices in Greenville to assist ISDM in becoming a qualified bidder.⁷

Another part of the organization, FGG's acquisitions group, had the responsibility of determining which of the qualified bidders would be awarded the contract. The Fluor employees who evaluated the bids and participated in the decision to award the 2009 contract to ISDM were Arthur Koeller, Lynley Langlois and Ric Martin.⁸ With respect to the decision to award the 2010 contract, the Fluor employees involved were Mark Huff, Greg Bauman, Richard Sober and Wells.⁹

In 2009, after it was awarded the first contract, ISDM set up an office in Greenville. The office was staffed with three employees, Melson Kahue, Robin Helms and Tina McGinnis. The Earls rented an apartment in Greenville because they were regularly in town.¹⁰ Cooper, Wells, Collins and Huff met with ISDM personnel in Greenville to discuss current operations and scope of work details. Cooper contacted the Greenville office if he had questions related to invoices ISDM sent to FII. Flores occasionally met with ISDM representatives in Greenville to discuss LOGCAP work.

⁷ Collins was identified as living and working in South Carolina.

⁸ Koeller and Langlois were identified as living and working in South Carolina; Martin, who is no longer employed by Fluor, still resides in South Carolina.

⁹ Huff, Bauman, and Sober were identified as living and working in South Carolina.

¹⁰ The parties dispute how often the Earls visited South Carolina when the Task Orders were in effect. FII presented evidence estimating it was one week per month; James Earl stated it was not more than two to three days per month.

Wells had primary responsibility for administration of the contracts with ISDM, including sending and receiving correspondence and reports and maintaining the files. The physical files related to the ISDM contracts are in Greenville.

George Rabb, the country manager for LOGCAP in Afghanistan, was the primary decision maker involved when FII stopped using subcontractors and began to perform security functions in Afghanistan directly.¹¹ Cooper, Collins, Bauman and Kassandra Combs were involved in the discussions.¹² Wells, along with Steven Perria and Ian Dolan, were included on some of the written communication discussing the decision.¹³ James Badillo and Bryan Wilson were involved in transitioning ISDM contractors to employment with Fluor.¹⁴ Cooper stated that Fluor hired 16 former ISDM security consultants to work in Afghanistan, none of whom resided in California or South Carolina.

The declarants stated that Fluor's U.S. base of operations for its security personnel deployed in Afghanistan was in South Carolina, that litigating in California would place a substantial burden on Fluor both with respect to its employees residing in South Carolina and those deployed to Afghanistan, and that producing overseas employees in South Carolina would be less difficult than making them available in California. The declarants explained that the schedules of employees deployed in Afghanistan typically consisted of cycles of three

¹¹ Rabb was identified as working in Afghanistan and residing in Illinois.

¹² Combs was identified as working in Afghanistan and residing in South Carolina.

¹³ Dolan was identified as living and working in South Carolina. Perria was identified as working in Afghanistan. His state of residence was not specified.

¹⁴ Wilson and Badillo were identified as working in Afghanistan. Their states of residence were not specified. ISDM presented evidence that Wilson's state of residence was Louisiana.

months in Afghanistan, followed by approximately ten days of paid leave, when they spent time with their families. To produce these employees as witnesses in California, would require Fluor to either bring them back from Afghanistan prematurely or cut short their time with their families.

In support of the motion, FII argued that based on the evidence presented, the bulk of the witnesses and evidence were located in South Carolina and that South Carolina had a substantially greater interest in the dispute than California. FII further contended that ISDM was not a California resident and that as a non-resident, its choice of forum was not entitled to deference, citing *Investors Equity Life Holding Co. v. Schmidt* (2011) 195 Cal.App.4th 1519, 1534 [corporation organized under the laws of another state is not a California resident for forum non conveniens purposes].

D. ISDM's Opposition

In its opposition, ISDM presented evidence that its principal place of business was San Diego, California. According to James Earl, ISDM established the satellite office in Greenville “[s]olely for purposes of accepting ISDM’s security personnel and preparing them for deployment to Afghanistan” The location for the satellite office was chosen based on its proximity to a Fluor deployment facility. The security personnel hired and deployed, referred to as consultants in the employment agreements, came from all over the country, and the employment contracts were negotiated and finalized by ISDM before their arrival in South Carolina.¹⁵ After being hired by ISDM, the consultants were in

¹⁵ ISDM identified 47 current or former security personnel hired by ISDM to fulfill its obligations under the Task Orders, none of whom resided in South Carolina and two of whom resided in California. ISDM’s agreements with the security personnel it hired stated that the agreements were executed in Greenville, that any formal notices required (Fn. continued on next page.)

Greenville only six to ten days prior to their deployment. The Greenville satellite office was shut down in November 2011, and ISDM's sole office at the time it initiated the litigation was in San Diego. Even when the Greenville office was open, administrative tasks such as invoicing, banking, bookkeeping, accounting and payroll, were handled out of San Diego, and ISDM's permanent records, including documents pertaining to the FII contracts, were stored there. Currently, all of ISDM's documents are in San Diego. Even when the satellite office was open, ISDM hired California attorneys to address labor and contract issues.

James Earl stated that he or his brother visited South Carolina two or three days a month to accept and prepare security personnel but did not regularly meet with Fluor representatives there. His brother Jeff met with Collins once in San Diego. He estimated that 90 percent of all communications between ISDM and Fluor was by telephone.

ISDM identified as a potential witness Clifford Grant, who resided in California, and identified four other potential witnesses not named in FII's moving papers -- William Knowles, Willie Blazer, Jeff Henke, and Charles Baldwin -- all of whom lived in the western United States (Colorado, Montana, Washington, Oregon).¹⁶

ISDM also presented documentary evidence that in 2011, FII had listed its principal place of business on the California Secretary of State's Web site as Irving, Texas. Irving, Texas was also listed as Fluor Corporation's and Fluor Enterprises' principal places of business. In addition, ISDM established that Fluor

under the agreements were to be mailed to ISDM's Greenville office, and that the agreements were to be "governed and construed in accordance with the laws of the State of South Carolina"

¹⁶ All these potential witnesses were identified as security managers for Fluor.

Enterprises has offices in three California cities: Aliso Viejo, Dublin, and Long Beach.

E. FII's Reply

In its reply, FII submitted evidence that Fluor Enterprises is the primary operating entity for Fluor's non-government work. Flores stated in a supplemental declaration that neither FII nor FGG has offices in California, and that Fluor Enterprises had no connection to LOGCAP work or the ISDM Task Orders. Collins stated in a declaration that his visit with Jeff Earl in San Diego was primarily social.

F. Court's Order

The court granted the motion and dismissed ISDM's complaint without prejudice. At the hearing, the court explained: "First of all it appears that South Carolina would be the best place in terms of witnesses. I understand that there are witnesses in different places than South Carolina, but that seems to be the more convenient focal point. [¶] Second, it would appear that South Carolina law would apply. [¶] And third, South Carolina has a much stronger interest in this case in terms of litigation on the matters that are alleged than California. The only thing that's convenient about California . . . is Fluor is here, but it's also there. It has presence." Judgment was entered and this appeal followed.

DISCUSSION

A. Applicable Principles and Standard of Review

"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

(*Stangvik*).¹⁷ “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.” (*Ibid.*)

“A forum is suitable if there is jurisdiction and no statute of limitations bar to the action. It is sufficient that the action can be brought, although not necessarily won, in the suitable alternative forum.” (*Morris v. AGFA Corp.* (2006) 144 Cal.App.4th 1452, 1464; accord, *Chong v. Superior Court* (1997) 58 Cal.App.4th 1032, 1037.) “As a general rule, comparative law questions are irrelevant to a forum non conveniens analysis, except when the alternate forum ‘provides no remedy at all.’” (*Roman v. Liberty University, Inc.* (2008) 162 Cal.App.4th 670, 683, quoting *Stangvik, supra*, 54 Cal.3d at p. 764.) “[T]he fact that California law would likely provide plaintiffs with certain advantages of procedural or substantive law cannot be considered as a factor in plaintiffs’ favor in the forum non conveniens balance.” (*Stangvik, supra*, at p. 754.) Where the suitability of an alternate forum is disputed, the trial court’s ruling 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.)

Where the suitability of the alternative forum is not an issue, the court proceeds to the next step -- weighing the private interests of the parties and the public interest in keeping the case in California. (*National Football League v.*

¹⁷ The doctrine is codified in section 410.30 of the Code of Civil Procedure, which provides: “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.”

Fireman's Fund Ins. Co., *supra*, 216 Cal.App.4th at p. 918.) “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*, *supra*, 54 Cal.3d at p. 751.) “The public interest factors include avoidance of overburdening California courts, protecting potential jurors who should not be called on to decide cases in which the local community has little concern, and weighing the competing ties of California and the alternate jurisdiction to the litigation.” (*Animal Film, LLC v. D.E.J. Productions, Inc.* (2011) 193 Cal.App.4th 466, 473.)

California’s interest in deterring future wrongful conduct “will usually favor retention of the action if the defendant is a resident of the forum.” (*Stangvik*, *supra*, 54 Cal.3d at p. 753, fn. 4.) “If a corporation is the defendant, the state of its incorporation and the place where its principal place of business is located is presumptively a convenient forum.” (*Id.* at p. 755.) However, the 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.)

The trial court’s weighing and balancing of private and public factors, is reviewed pursuant to an abuse of discretion standard. (*Guimei v. General Electric Co.* (2009) 172 Cal.App.4th 689, 696.) “We ‘will only interfere with a trial court’s exercise of discretion where [we find] that under all the evidence, viewed most favorably in support of the trial court’s action, no judge could have reasonably reached the challenged result. [Citation.] ‘[A]s long as there exists ‘a reasonable or even fairly debatable justification, under the law, for the action taken, such action will not be . . . set aside’” [Citation.]” (*Ibid.*, quoting *Conservatorship of Scharles* (1991) 233 Cal.App.3d 1334, 1340.)

ISDM does not dispute that South Carolina is an adequate alternative forum. Therefore, we need consider only whether the trial court abused its discretion in weighing and balancing the private and public factors. We conclude it did not.¹⁸

B. *Private Interest Factors*

The most significant private interest factor influencing the court's decision here was the location of the witnesses. FII identified seven Fluor employees and one former employee who were involved in the negotiations of the Task Orders who still live and work in South Carolina -- Jonathon Cooper, Dan Collins, Arthur Koeller, Lynley Langlois, Ric Martin, Mark Huff, Greg Bauman and Richard Sober. FII identified six other Fluor employees who were involved in the decision to hire ISDM security personnel directly and who helped transition ISDM

¹⁸ The Supreme Court has indicated that in weighing the public interest and private interest factors, the trial court should not “undu[ly] emphasi[ze]” any single factor with the exception of the plaintiff’s status as a resident of the jurisdiction in which the suit is filed. (*Stangvik, supra*, 54 Cal.3d at pp. 753, fn. 4, & 754.) “A state has a strong interest in assuring its own residents an adequate forum for the redress of grievances” (*Id.* at pp. 754-755.) Thus, there is a “strong presumption” in favor of the suitability of a California court whenever a state resident -- including a resident corporation -- brings suit in a California forum, which can be overcome only by a showing that the forum chosen is “seriously inconvenient.” (*National Football League v. Fireman’s Fund Ins. Co.*, *supra*, 216 Cal.App.4th at p. 932.) The parties dispute whether ISDM, a Nevada corporation whose principal place of business is California, is entitled to that status. FII relies on *Investors Equity Life Holding Co. v. Schmidt*, in which the court held that a corporation whose principal place of business was in California was not a resident of California for forum non conveniens purposes because it was not also incorporated here. That court relied on Corporations Code section 167, which defines “domestic corporation” as a corporation formed under California law. (*Investors Equity Life Holding Co. v. Schmidt, supra*, 195 Cal.App.4th at p. 1535.) In its reply brief, ISDM cites authority for the proposition that in determining venue, “the residence of [a] corporation is the county where it has its principal place of business.” (*Hale v. Bohannon* (1952) 38 Cal.2d 458, 473.) We need not resolve ISDM’s residency status, as we would affirm the trial court even under the standard applicable to a resident plaintiff.

consultants to employment with Fluor. Two of them reside in South Carolina -- Kassandra Combs and Ian Dolan. None of the other four -- George Rabb, Steven Perria, James Badillo and Bryan Wilson -- resides in California. Similarly, although none of the 16 former ISDM security consultants hired by Fluor resides in South Carolina, neither do any of them reside in California.

ISDM does not dispute that the individuals identified by FII are potential witnesses having information relevant to the litigation. Rather, it contends that South Carolina residents do not make up the majority of potential witnesses because all 47 of ISDM's former security consultants, two of whom reside in California, should be considered potential witnesses. However, it does not explain why it believes all 47 have information relevant to the litigation. Nor does it clarify why the six specific Fluor employees residing outside South Carolina whom it identified in its opposition as holding "key security positions on the Task Order . . . contract during the time period in question," were likely to be called as witnesses. ISDM points out that of the three people most involved in negotiating and administering the contracts -- Flores, Wells and Cooper -- only one -- Cooper - still resides in South Carolina. However, none of the three resides in California, and it would not be significantly more convenient for Flores and Wells to travel to this state. As a majority of the potential witnesses whose connection to the litigation has been spelled out live and work in South Carolina, and California is the residence of none of them, the private interest factor weighs heavily in favor of the trial court's determination.

C. Public Interest Factors

A proper weighing of the public interest factors, in particular, the competing ties of California and South Carolina to the litigation, also supports the ruling. The bidding process for subcontractors seeking LOGCAP work was initiated from

Fluor's South Carolina offices. As Wells was working there at the time, all of the Fluor personnel with whom the Earls engaged in discussions and negotiations except Flores were located there. Although California is reputedly ISDM's principal place of business, its performance under the Task Orders had little connection with this state. ISDM opened a satellite office in Greenville and hired local residents to staff it. The Earls travelled there with sufficient regularity in connection with implementing the Task Orders to warrant renting an apartment. Of the 47 security consultants ISDM hired to meet its contractual obligations, only two were from this state. The consultants were all transported for their brief training from their home states to Greenville and then deployed from there to Afghanistan. The employment contracts the consultants signed were deemed "made and executed" in South Carolina, formal notices to ISDM were to be mailed to ISDM's office in Greenville, and the agreements generally were to be governed and construed in accordance with the laws of South Carolina.

California has an interest in ensuring that entities incorporated here such as FII do not engage in tortious conduct or otherwise harm this state's residents or the residents of any other jurisdiction. However, given the close ties of FII and the transactions that underlie the litigation with South Carolina, that state's interest in holding FII to answer for its alleged transgressions is the greater.¹⁹ On the record presented, the trial court's conclusion that South Carolina represented a more

¹⁹ ISDM contends, based on documentation from the Secretary of State's office, that FII as of 2011 had its principal place of business in Irving, Texas, not Greenville, South Carolina. As it is indisputably outside California, the particular location of FII's principal place of business does not change the analysis.

convenient focal point based on the location of the witnesses and South Carolina's stronger interest in the litigation was a reasonable one.²⁰

DISPOSITION

The judgment is affirmed. Respondent is awarded its costs.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.

²⁰ The trial court also relied on the likelihood that the legal issues would be governed by South Carolina law. At this point in the litigation there appears to be insufficient information about important factors, such as the precise nature of the wrongful conduct, who engaged in it and where it occurred, to conclusively determine the choice of law issue.