

STATE OF MICHIGAN
COURT OF APPEALS

ESPANSO COMPONENTS PARA VEICULOS
LTDA, ESSENTIAL, INC., SERED
INDUSTRIAL, S/A, and CLEV
AKTIENGESELLSCHAFT,

Plaintiffs-Appellants,

v

WOODBIDGE SALES & ENGINEERING,
INC., and WOODBRIDGE FOAM
CORPORATION,

Defendants-Appellees.

UNPUBLISHED
December 13, 2002

No. 234712
Oakland Circuit Court
LC No. 01-028766-NZ

Before: O’Connell, P.J., and White and B.B. MacKenzie*, JJ.

PER CURIAM.

Plaintiffs appeal as of right an order of dismissal on the basis of *forum non conveniens*. We affirm.

Plaintiffs argue that the circuit court abused its discretion when it determined that Brazil is an adequate forum and that plaintiffs’ claim would better be brought in a Brazilian forum. This Court reviews the trial court’s decision to grant a motion to dismiss for *forum non conveniens* for an abuse of discretion. *Miller v Allied Signal, Inc*, 235 Mich App 710, 713; 599 NW2d 110 (1999); *Hacienda Mexican Restaurants of Kalamazoo Corp v Hacienda Franchise Group, Inc*, 195 Mich App 35, 38; 489 NW2d 108 (1992). An abuse of discretion is found only in cases in which the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227-228; 600 NW2d 638 (1999).

“The principle of *forum non conveniens* establishes the right of a court to resist imposition on its jurisdiction although such jurisdiction could properly be invoked.” *Cray v General Motors Corp*, 389 Mich 382, 395; 207 NW2d 393, 395 (1973). The doctrine of *forum non conveniens* “presupposes that there are at least two possible choices of forum.” *Id*. If there is not a more appropriate forum, the court’s inquiry ends, and the court may not decline

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

jurisdiction. *Id.* If there is a more appropriate forum, the decision to decline jurisdiction is discretionary. *Id.* at 396.

Plaintiffs first argue that Brazil is an inadequate forum because it does not specifically recognize claims for tortious interference with a contract and business relationship. However, the affidavit plaintiffs produced stated that Brazilian law is broad enough to encompass claims for all possible losses and damages caused by illegal acts. The affidavit quoted Article 159 of the Brazilian Civil Code: “[a]nyone who, by actions or voluntary omission, negligence or imprudence, violates a right or causes damages [sic] to someone else, will be obliged to compensate [the injured party] for the damage.” *Codigo Civil Art. 159*. The affidavit also stated immediately thereafter:

This article [159] includes a general rule sufficiently broad to encompass *all* the possible losses and damages caused by illegal acts, therefore, includes acts similar [sic] to those involved in this litigation.

However, unlike American law, Brazilian law does not include a systematic [sic] set of theoretical principles and judiciary precedents specifically intended to refer to the “promissory estoppel” and “tortius [sic] interference”.

In view of this difference, American law is more advantageous than Brazilian law, for compensation of damages from promissory estoppel and tortius [sic] interference. This advantage results from the fact that, in present litigation, there is no dispute about a *generic* responsibility [sic] for loss or damage [sic], but rather, on a specific allegations [sic] of “promissory estoppel” and “tortius [sic] interference”.

It could be said that the gravamen of the action lies on issues that would not be recognized by Brazilian law as independent causes of action.

Generally, plaintiffs cannot defeat a motion to dismiss on the ground of *forum non conveniens* merely by showing that the substantive law that would be applied in the forum is less favorable to the plaintiffs than the present forum. *Piper Aircraft Co v Reyno*, 454 US 235, 247; 102 S Ct 252; 70 L Ed 2d 419 (1981). Though plaintiffs have shown that Brazilian courts may provide a less favorable forum to adjudicate their claims, the circuit court did not abuse its discretion when it determined that Brazil would be an adequate forum.

Plaintiffs next argue that defendants failed to carry the burden of persuasion regarding the inconvenience of proceeding in Michigan. The Supreme Court set forth the doctrine of *forum non conveniens* in *Cray, supra*, enumerating the factors to be weighed when a party raises the issue. A trial court must consider the plaintiff’s choice of forum and “weigh the relative advantages and disadvantages of each jurisdiction and the ease of and obstacles to a fair trial in this state, considering relevant factors, in deciding whether to dismiss the action.” *Cray, supra* 389 Mich 395. The *Cray* factors are divided into three groups: (1) private interest of the litigant; (2) matters of public interest including a consideration of which state law will govern the case; and (3) reasonable promptness on the part of the defendants in raising the issue of *forum non conveniens* dismissal. *Id.* at 395-396.

In the instant case, the circuit court analyzed each factor set forth in *Cray*. It determined that because plaintiffs, along with other potential non-party witnesses, were resident citizens of Brazil, the availability of witnesses, administrative difficulties, and the costs associated with obtaining their attendance favored litigating this matter in Brazil. Although defendant Woodward Sales & Engineering is admittedly a Michigan corporation with its principal place of business in Oakland County, we conclude that the circuit court did not abuse its discretion in holding that such presence did not outweigh the advantages of litigating this matter in Brazil.

There is no dispute that defendants promptly raised the *forum non conveniens* plea. *Manfredi v Johnson Controls, Inc.*, 194 Mich App 519, 526; 487 NW2d 475 (1992). Because the *Cray* factors weigh in favor of a Brazilian forum, we do not find an abuse of discretion in the circuit court's decision to dismiss this case for *forum non conveniens*.

Plaintiffs' final contention is that the circuit court erred in failing to permit further discovery on the issue of *forum non conveniens*. A trial court's decision to grant or deny discovery is reviewed for an abuse of discretion. *Koster v June's Trucking, Inc.*, 244 Mich App 162, 166; 625 NW2d 82 (2000). In this case, the circuit court had sufficient information to balance the parties' interests. The court was well informed of the underlying facts of this case, as it had presided over plaintiffs' earlier suit for breach of the contract with which plaintiffs in the instant suit claim defendants tortiously interfered. An analysis under *Cray* is directed toward advantages and disadvantages of jurisdiction and the ease of and obstacles to a fair trial in this state, considering relevant factors, in deciding whether to dismiss the action. *Cray, supra*, 389 Mich 395. Plaintiffs did not show how further discovery could address this inquiry. Therefore, the circuit court did not abuse its discretion when denying plaintiffs' request for discovery on the issue of *forum non conveniens*.

Affirmed.

/s/ Peter D. O'Connell
/s/ Helene N. White
/s/ Barbara B. MacKenzie