

Chang Jin Park v Heather Hyun-Ah Cho

2016 NY Slip Op 30255(U)

January 12, 2016

Supreme Court, Queens County

Docket Number: 707726/2015

Judge: Robert J. McDonald

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

----- x

CHANG JIN PARK, Index No.: 707726/2015
Plaintiff, Motion Date: 10/16/15
- against - Motion No.: 76
HEATHER HYUN-AH CHO, Motion Seq.: 1
Defendant.

----- x

The following papers numbered 1 to 9 read on this motion by defendant, Heather Hyun-Ah Cho, for an order dismissing the complaint with prejudice pursuant to the doctrine of forum non conveniens as set forth in CPLR § 327:

Notice of Motion-Affirmation-Exhibits-Memo. of Law.....1 - 5
Opposition.....6 - 7
Reply.....8 - 9
Papers Numbered

This is an action to recover damages for personal injuries and emotional distress sustained by plaintiff, Chang Jim Park. On December 5, 2014, plaintiff was a flight attendant on Korean Air Flight KE0086 scheduled to fly from John F. Kennedy Airport in Queens, New York to Seoul, South Korea. Plaintiff claims that while the plane was still on the ground at JFK, defendant, Heather Hyun-Ah Cho, who was the vice president of cabin services for Korean Air, became angry with flight attendant Do He Kim. Plaintiff claims that he went over to defendant to see if he could be of assistance at which time defendant proceeded to assault and beat him, causing his skin to break, causing him to bleed, and causing him to suffer contusions and subdermal trauma. Plaintiff further alleges that defendant shouted obscenities at him as she was beating him. The complaint further alleges that defendant demanded that the pilot return the plane to the gate. The pilot complied. When the plane arrived at the gate, defendant demanded that plaintiff be ejected from the plane, which he was.

FILED
JAN 19 2016
COUNTY CLERK
QUEENS COUNTY

A criminal proceeding was brought against defendant in Seoul, Korea. Defendant was found guilty of, inter alia, assaulting a crew member and was sentenced to a year in prison.

Plaintiff claims that as a result of this incident he received medical treatment and was out of work. He was diagnosed with panic disorder and an anxiety disorder. On March 19, 2015, he filed an Application for Medical Care Benefits and Temporary Disability Compensation Benefits with the Workers' Compensation and Welfare Service. Pain and suffering damages, however, are not available to workers under the Korean Workers' Compensation System.

Plaintiff, a citizen and resident of Seoul, Korea, commenced this action by filing a summons and complaint in Queens County Supreme Court on July 22, 2015. Defendant, who is also a citizen of Korea, now moves to dismiss plaintiff's complaint under the forum non conveniens doctrine.

CPLR 327(a) provides that the court may dismiss an action "[w]hen the court finds that in the interest of substantial justice the action should be heard in another forum." "The burden rests upon the defendant challenging the forum to demonstrate relevant private or public interest factors which militate against accepting the litigation" (Islamic Republic of Iran v Pahlavi, 62 NY2d 474, 479 [1984]).

The courts consider and balance the following factors in determining an application for dismissal based on forum non conveniens: existence of an adequate alternative forum; situs of the underlying transaction; residency of the parties; potential hardship to the defendant; location of documents; location of a majority of the witnesses; existence of a forum selection clause; need to apply the law of a foreign jurisdiction; and burden on New York courts (see Islamic Republic of Iran v Pahlavi, 62 NY2d 474, 479 [1984]; Martin v Meith, 35 NY2d 414 [1974]; Peters v Peters, 101 AD3d 403 [1st Dept. 2012]).

Where there is no substantial connection to New York, dismissal based upon forum non conveniens is warranted (see Irrigation & Indus. Dev. Corp. v Indag, S.A., 37 NY2d 522 [1975]). "The mere occurrence of an accident within our borders . . . does not constitute a substantial nexus so as to mandate the retention of jurisdiction" (Martin v Meith, 35 NY2d 414 [1974]).

Here, both of the parties reside in Seoul, Korea; virtually all of the non-party witnesses are Korean citizens and residents; the relevant documents are located in Korea and are written in Korean; plaintiff was treated for his injuries in Korea; plaintiff's physicians and all records pertaining to his injuries are located in Korea; the Korean authorities have already acted in this matter by investigating and holding criminal proceedings in Korea; and plaintiff has applied for workers' compensation in Korea. In considering that neither party to the lawsuit is a New York resident and that no relevant conduct occurred in New York apart from the incident occurring on the ground at JFK rather than in the airspace, this Court finds that there is no substantial nexus so as to mandate the retention of jurisdiction (see e.g. Martin v Meith, 35 NY2d 414 [1974][dismissing the action on forum non conveniens grounds where the only connection between New York and the incident was that the incident occurred in New York]; Adamowicz v Besnainou, 58 AD3d 546 [1st Dept. 2009] [dismissing the action on forum non conveniens grounds where plaintiff failed to identify a single witness other than himself who might be present in the country]; Nicholson v Pfizer, 278 AD2d 143 [1st Dept. 2000] [dismissing the action on forum non conveniens grounds where plaintiff's physicians were not located in New York]).

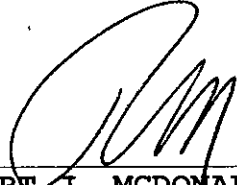
Additionally, Korea provides an adequate alternate forum. As both parties are Korean nationals who are domiciled in Korea, the Korean courts maintain jurisdiction over them regardless of where the alleged tortious acts may have occurred, and plaintiff's claims for assault, battery, and the intentional infliction of emotional distress are cognizable under Korean law. Moreover, plaintiff has already availed himself of the Korean courts by initiating a workers' compensation claim in Korea. This Court also finds plaintiff's contention that he would not receive a fair trial in Korea to be baseless as Korean prosecutors already convicted defendant in a criminal proceeding arising out of the same facts alleged herein.

Lastly, a parallel action filed in Supreme Court, Queens County, Do Hee Kim v Heather Hyun-Ah Cho, et al., Index No. 702206/2015, has already been dismissed on forum non conveniens grounds. As the two matters raise overlapping factual and legal issues, resolving them both in Korea will avoid the duplication of proof and possibly inconsistent findings.

Accordingly, based upon the foregoing, it is hereby

ORDERED, that defendant's motion is granted and the complaint is dismissed based on the doctrine of forum non conveniens.

Dated: January 12, 2016
Long Island City, N.Y.



ROBERT J. MCDONALD
J.S.C.

FILED
JAN 19 2016
COUNTY CLERK
QUEENS COUNTY