

**Afrika Han Isletmeciligi Turizm San. ve Tic. A.S. v
Asur**

2019 NY Slip Op 32366(U)

August 7, 2019

Supreme Court, New York County

Docket Number: 153808/2019

Judge: W. Franc Perry

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. W. FRANC PERRY PART IAS MOTION 23EFM

Justice

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INDEX NO. 153808/2019

AFRIKA HAN ISLETMECILIGI TURIZM SAN. VE TIC. A.S.,

MOTION DATE 05/20/2019

Plaintiff,

MOTION SEQ. NO. 001

- v -

ISIK KECECI ASUR,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7 were read on this motion to/for DISM ACTION/INCONVENIENT FORUM

In motion sequence number 001, defendant Isik Kececi Asur ("Ms. Asur") moves, pursuant to CPLR 327(a), for an order dismissing the sole cause of action in the Complaint of plaintiff Afrika Han Isletmeciligi Turizm San. ve Tic. A.S. ("Afrika") for conversion on the grounds of forum non conveniens. The motion is submitted without opposition.

Afrika is a joint stock company incorporated in Istanbul, Turkey, that, inter alia, owns a substantial and valuable fine art collection stored pursuant to a storage contract ("Storage Contract") with a fine art storage company, Sanat Eserleri Kor. Pak. Depo. Serg ve Rek. A.S. ("Art Factory"), in Istanbul, Turkey. Ms. Asur is the wife of non-party Mustafa Asur ("Mr. Asur"), who is the sole owner of Afrika and the only person authorized under the Storage Contract to access and/or move the company's artwork. Ms. Asur and Mr. Asur are currently involved in a mediation in Turkey to come to an agreement regarding the end of their marriage and the division of their assets.

In April 2019, Mr. Asur allegedly learned that Ms. Asur was planning to take certain artwork from Afrika's collection to either sell them or borrow against them. Thereafter, Mr. Asur

contacted the Art Factory and discovered that Ms. Asur had, without his authority, changed Afrika's contact information in the Storage Contract, enabling her to remove artwork from the collection. Mr. Asur further discovered that Ms. Asur had already had several works of art moved by a transportation company. On information and belief, the artwork was transported from Istanbul to New York City.

On April 12, 2019, Afrika commenced the instant action against Ms. Asur. The Complaint contains a single cause of action for conversion. In particular, Afrika seeks an order (1) directing Ms. Asur to release and turn over the stolen artwork, (2) awarding Afrika compensatory damages, and (3) awarding Afrika punitive damages based on the calculated and malicious nature of the alleged thefts.

In lieu of answering the Complaint, on May 2, 2019, Ms. Asur moved, pursuant to CPLR 327(a), for an order dismissing the Complaint on the ground of forum non conveniens. The motion is submitted without opposition.

It is well settled that New York courts "need not entertain causes of action lacking a substantial nexus with New York" (*Martin v. Mieth*, 35 N.Y.2d 414, 418 [1974]). The doctrine of forum non conveniens, codified in CPLR 327(a), "permits a court to stay or dismiss such actions where it is determined that the action, although jurisdictionally sound, would be better adjudicated elsewhere" (*Islamic Republic of Iran v. Pahlavi*, 62 N.Y.2d 474, 478-479 [1984], *cert denied* 469 U.S. 1108 [1985]). The central focus of the forum non conveniens inquiry is to ensure that trial will be convenient, and will best serve the ends of justice (*see Piper Aircraft Co. v. Reyno*, 454 U.S. 235 [1981]). If the balance of conveniences indicates that trial in the plaintiff's chosen forum would be unnecessarily burdensome for the defendant or the court, then dismissal is proper (*see id.*).

New York courts consider the availability of an adequate alternative forum and certain other private and public interest factors when evaluating New York's nexus to a particular action, and deciding whether to dismiss an action on the grounds of forum non conveniens (*Islamic Republic of Iran v. Pahlavi*, 62 N.Y.2d 474, *supra*). The burden is on the defendant challenging the forum to demonstrate the relevant private or public interest factors which militate against accepting the litigation (*id*; *Highgate Pictures, Inc. v. De Paul*, 153 A.D.2d 126 [1st Dept 1990]). Although not every factor is necessarily articulated in every case, collectively, 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; the potential hardship to the defendant; location of documents; the location of a majority of the witnesses; and the burden on New York courts (*see Islamic Republic of Iran v. Pahlavi*, 62 N.Y.2d 474, *supra*; *World Point Trading PTE, Ltd. v. Credito Italiano*, 225 A.D.2d 153 [1st Dept 1996]; *Evdokias v. Oppenheimer*, 123 A.D.2d 598 [2d Dept 1986]).

(*Foster Wheeler Iberia S.A. v Mapfre Empresas S.A.S.*, 15 Misc 3d 1112(A) [Sup Ct 2007], judgment entered, [Sup Ct New York Cnty 2007]). “[A] decision to grant or deny a motion to dismiss on forum non conveniens grounds is addressed to a court's discretion” (*Mashreqbank PSC v Ahmed Hamad Al Gosaibi & Bros. Co.*, 23 NY3d 129, 137 [2014], citing *Islamic Republic of Iran v Pahlavi*, 62 NY2d 474, 484 [1984]; *see also In re New York City Asbestos Litig.*, 239 AD2d 303, 304 [1st Dept 1997]).

Here, the court finds that the present action must be dismissed on the ground of forum non conveniens, because the number and weight of the relevant factors in this action center in Turkey, and not in New York. This dispute is between a Turkish corporations based in Istanbul, Turkey, and a citizen and resident of Istanbul. All of the relevant facts and transactions occurred in Turkey and all witnesses and documents are located in Turkey. Indeed, both the Art Factory and Afrika, and Mr. and Ms. Asur, reside in Turkey and the subject artwork was housed in and transported from a facility in Turkey. In addition, Turkey is a viable alternative forum. Where, as here, the action is almost entirely concerned with the events, institution and law of a foreign nation, the action cannot be said to have a substantial nexus with New York and must be

dismissed (see *Tetra Finance (HK) Ltd. v. Patry*, 115 A.D.2d 408, 410 [1st Dept 1985], appeal withdrawn 67 N.Y.2d 758 [1986]; see also *Chawafaty v. Chase Manhattan Bank, N.A.*, 288 A.D.2d 58, 58 [1st Dept 2001], lv denied 98 N.Y.2d 607 [2002] [“(t)his action lacks a substantial connection to New York and would be burdensome to its courts”]).

The court finds that the allegation in the Complaint that, on information and belief, the subject artwork was transported to New York, without more, is not sufficient to warrant denial of Ms. Asur’s motion to dismiss. Accordingly, Ms. Asur’s motion for dismissal on the ground of forum non conveniens is granted, conditioned upon Ms. Asur’s consent to jurisdiction in the courts of Turkey (see *Foster Wheeler Iberia S.A. v Mapfre Empresas S.A.S.*, 15 Misc 3d 1112(A) [Sup Ct New York Cnty 2007] [granting motion to dismiss on forum non conveniens grounds, conditioned upon defendant’s consent to jurisdiction in the courts of either Spain or Chile]; see also *Trinity Investment Trust L.L.C. v. Morgan Guaranty Trust Co. of New York*, 275 A.D.2d 661 [1st Dept 2000] [affirming motion court’s grant of motion to dismiss on forum non conveniens grounds, conditioned upon defendants’ consent to jurisdiction in the courts of Japan]).

Thus, it is hereby

ORDERED that Defendant Ms. Asur’s motion to dismiss is granted and the Complaint is dismissed, without costs and disbursements, conditioned upon Defendant’s consent to jurisdiction in the courts of Turkey; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

8/7/2019
DATE


W. FRANC PERRY, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: