SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAKOTA D. RAMSEUR **PART** 34M

Justice

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ALISON QUINN, TOM QUINN

Plaintiff,

- v -

THE HOSPITAL FOR SPECIAL SURGERY PHO, INC.,

Defendant.

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INDEX NO. 154500/2022

MOTION DATE 09/28/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

were read on this motion to/for DISMISSAL.

In this negligence action, plaintiffs, Alison Quinn (Quinn), and her husband, Tom Quinn, (collectively plaintiffs), allege they suffered physical, emotional, and monetary damages following Quinn's fall from a magnetic resonance imaging (MRI) machine on February 28, 2022, at a medical facility located at 140 East Ridgewood Avenue, in Paramus, New Jersey, which is owned, operated, controlled, and maintained by defendant, The Hospital for Special Surgery PHO, Inc. (defendant or HSS), as the result of defendant's failure to adequately staff the imaging area and appropriately train its staff to provide assistance to patients receiving imaging services. Defendant now moves to dismiss the complaint pursuant to CPLR 327(a). The motion is opposed. For the following reasons, the motion is granted.

FACTUAL BACKGROUND

Plaintiffs are residents of Oradell, New Jersey (NYSCEF doc. no. 11, ¶ 6). In January 2022, Quinn sought treatment for lower back pain from Dr. David Wang, a sports medicine specialist with an office at defendant's medical facility located in Paramus, NJ (HSS Paramus) (*id.*).

Although Dr. Wang is licensed to practice medicine in both New York and New Jersey, he resides in New Jersey and only maintains a medical office in that state (NYSCEF doc. no. 16, ¶¶ 1, 3, 5). Dr. Wang prescribed physical therapy, which Quinn received at HSS Paramus (NYSCEF doc. no. 11, ¶ 7). During a follow-up visit on February 14, 2022, Dr. Wang ordered an MRI of Quinn's lumbar spine, which she received on February 28, 2022, also at HSS Paramus (*id.* at ¶¶ 7-8). At the conclusion of the imaging, Quinn fell off the MRI table and injured her left arm (*id.* at ¶ 8). On the same day, Dr. Wang saw Quinn, who reported experiencing pain in her arm as a result of the fall, and he ordered an x-ray, which was performed the same day at HSS Paramus (*id.*).

Dr. Wang and Quinn, both of whom were in New Jersey at the time, had a follow-up virtual appointment on March 4, 2022, which resulted in Dr. Wang referring Quinn to a physiatrist for her back and ordering an MRI of Quinn's left forearm (*id.* at ¶ 9). The left forearm MRI was performed the same day at HSS Paramus (*id.*). During a visit on March 7, 2022, at Dr. Wang's office in HSS Paramus, Quinn was diagnosed with a nondisplaced radial head fracture and a contusion of the left wrist (*id.* at ¶ 10). Quinn continued to see Dr. Wang and receive physical therapy for her left arm at HSS Paramus on several occasions through May 2022 (*id.* at ¶¶ 11-12, 14, 16). On May 23, 2022, Dr. Wang referred Quinn to a hand surgeon, Dr. Daniel Osei, because she still had complaints about her left wrist (*Id.* at ¶ 16). Quinn saw Dr. Osei on May 27, 2022, at his office at HSS Paramus (NYSCEF doc. no. 17, ¶ 4). Dr. Osei resides in New Jersey and is licensed to practice medicine in both New York and New Jersey (*id.* at ¶ 1).

Beginning in April 2022, Quinn received care for her pre-existing lower back pain from Dr. Naimish Baxi, a physiatrist who has offices at HSS Paramus (NYSCEF doc. no. 11, ¶ 13). On May 11, 2022, Dr. Baxi administered epidural steroid injections to Quinn's lumbar spine at defendant's location in Manhattan because HSS Paramus is not equipped to handle such

procedures (NYSCEF doc. no. 18, ¶ 6). Dr. Baxi had one follow-up appointment with Quinn at his office at HSS Paramus on May 26, 2022 (*id.* at ¶ 7). Dr. Baxi resides in New Jersey (*id.* at ¶ 3). Although he is licensed to practice medicine in both New York and New Jersey, he does not maintain a medical office in New York (*id.* at ¶ 4).

In support of its motion to dismiss, defendant argues that New York is not a convenient forum as the relevant events occurred in New Jersey and the plaintiffs and other relevant witnesses reside in New Jersey, or, alternatively, that New Jersey law be applied in this case. Plaintiffs oppose the motion, arguing that there is sufficient nexus to litigating this action in New York would not pose undue hardship to defendant as it is a corporation registered in New York and its main hospital is located in Manhattan.

DISCUSSION

Under the doctrine of forum non conveniens, although a court may have jurisdiction over a matter, it is permitted to dismiss an action where the matter does not have a substantial nexus to New York (*National Bank & Trust Co. of North America. Ltd. v Banco de Vizcaya, S.A.*, 72 NY2d 1005, 1007 [1988], *cert denied* 489 US 1067 [1989]), and "the court finds that in the interest of substantial justice the action should be heard in another forum" (CPLR § 327[a]). "Generally, unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed" (*OrthoTec, LLC v Healthpoint Capital, LLC*, 84 AD3d 702, 703 [1st Dept. 2011], quoting *Anagnostou v Stifel*, 204 AD2d 61, 61 [1st Dept 1994]). "Forum non conveniens relief should be granted 'when it plainly appears that New York is an inconvenient forum'" (*Employers Ins. of Wausau v American Home Prods. Corp.*, 207 AD2d 1, 3 [1st Dept 1994], quoting *Silver v Great Am. Ins. Co.*, 29 NY2d 356, 361 [1972]). The burden is on the moving party to "demonstrate relevant private or public interest factors which militate against accepting the

litigation in that forum" (*Xiu Zhang Yin v Bennett*, 78 AD3d 936, 937 [2d Dept 2010], citing *Islamic Republic of Iran v Pahlavi,* 62 NY2d 474, 479 [1984], *cert. denied* 469 US 1108 [1985]; *Stravalle v Land Cargo, Inc.,* 39 AD3d 735, 736 [2d Dept 2007] and *Korea Exch. Bank v. A.A. Trading Co.,* 8 A.D.3d 344 [2d Dept 2004]). Application of this doctrine "requir[es] the balancing of many factors in light of the facts and circumstances of the particular case," including "the burden on the New York courts, the potential hardship to the defendant, and the unavailability of an alternative forum in which plaintiff may bring suit," whether both parties are non-residents, and whether the underlying cause of action occurred primarily in a foreign jurisdiction (*Islamic Republic of Iran,* 62 NY2d at 479). "The court may also consider the location of potential witnesses and documents and potential applicability of foreign law" (*Fekah v Baker Hughes*, 176 AD3d 527, 528 [1st Dept 2019], citing *Shin-Etsu Chem. Co., Ltd. v ICICI Bank Ltd.*, 9 AD3d 171 [1st Dept 2004]).

After carefully considering the relevant factors, the Court finds that New York is not the proper forum for this action. Initially, the Court finds that this relatively uncomplicated personal injury matter that would not be overly burdensome on New York courts, even if the claims potentially would be governed by New Jersey law and would not present a hardship for defendant as the defendant has ties to the state and it would be relatively easy for witnesses to travel from New Jersey. Although the aforementioned factors weigh in defendant's favor, on balance, the remaining factors show that there is no significant nexus between New York and the plaintiff's action and there is another available, and more appropriate, forum available to decide the plaintiffs' claims. Plaintiffs' claims are not time-barred and can still be raised in New Jersey. The only connection this case has to New York is that defendant is a New York corporation with its main

hospital located in Manhattan. Courts have granted motions to dismiss even where the defendant was a New York corporation domiciled in this state.

In *Sikinyi v Port Auth. of N.Y. & N.J.* (185 AD3d 619 [2d Dept 2020]), the Appellate Division, Second Department reversed the trial court's denial of the defendants' motion to dismiss the matter on the basis of *forum non conveniens* in a wrongful death action. Specifically, the court determined that defendants established that New York is an inconvenient forum in which to prosecute the action where the accident occurred in New Jersey, the decedent was a New Jersey resident who received medical treatment for the fatal injuries sustained during the accident in New Jersey, the plaintiff was a Georgia resident, and none of the potential witnesses were residents of New York (*id.* at 620). In taking into consideration all relevant factors, court found that the defendants domiciliary in New York did not outweigh the other factors that established that New York was not a convenient forum (*id.*).

Similarly, in *Alston v Divine Bros. Co.* (195 AD3d 563 [1st Dept 2021]), the court granted the defendant, a New York company's, motion to dismiss premised on *forum non conveniens* motion where the underlying accident occurred in Ohio, the identified witnesses all lived in Ohio, and the evidence indicated that the plaintiff resided in Ohio. And in *Fernie v Wincrest Capital, Ltd.* (177 AD3d 531, 531-532 [1st Dept 2019], *lv denied* 35 NY3d 907 [2020]), the court upheld the grant of a motion to dismiss pursuant to CPLR 327(a), despite that some of the witnesses and evidence was located in New York, and one defendant was a New York resident, because the dispute arose in a foreign jurisdiction and all the alleged acts and plaintiff's injury occurred in that jurisdiction.

Here, as in the above cited cases, although defendant is a New York corporation, New York's connection to this litigation is minimal where the plaintiffs and the potential witnesses reside and primarily work in New Jersey, plaintiff's injury occurred in New Jersey, and the plaintiff received treatment for the injury in New Jersey. Plaintiffs' claim that the treatment for lower back pain provided by Dr. Baxi at defendant's Manhattan location creates a sufficient nexus because of the potential that the preexisting back injury may have been exacerbated by the fall is too speculative to alter the analysis. As such, this Court finds that this action should be dismissed because there is no substantial nexus with New York and the plaintiffs have an alternate forum available in New Jersey to pursue their claims (*see* CPLR § 327[a]; *BSR Fund, S.A. v Jagannath*, 200 AD3d 554, 554-555 [1st Dept 2021]).

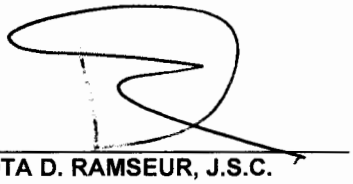
Given the court's grant of defendant's motion to dismiss, there is no need to reach defendant's choice of law arguments.

Accordingly, it is hereby

ORDERED that defendant's motion to dismiss the compliant pursuant to CPLR 327(a) is granted, and the complaint is dismissed; and it is further

ORDERED that defendant shall serve a copy of this order upon plaintiffs, with notice of entry, within ten (10) days of entry.

This constitutes the decision and order of the Court.



3/7/2023
DATE

DAKOTA D. RAMSEUR, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[X]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE