IN THE STATE COURT OF FULTON COUNTY

STATE OF GEORGIA

CLARENCE JOHNSON AND QUENTARIUS WADE, Plaintiffs,	)	
	)	CIVIL ACTION FILE
v.	)	
	)	13 EV 016563
RHEEM MANUFACTURING COMPANY COPELAND CORPORATION LLC, SENSATA TECHNOLOGIES, INC., SENSATA TECHNOLOGIES MASSACHUSETTS, INC., and UNITED REFRIGERATION, INC., Defendants,	)	

ORDER

The above styled action came regularly before the Court on the Defendants' several *Motion(s) To Dismiss Based Upon Forum Non Conveniens.* All parties were represented by counsel. After consideration of the applicable record, the Court hereby issues the following Order:

This product liability action arises from an injury producing incident in Texas. Plaintiffs allege that a defective air-conditioning unit, or a defective component part, ignited and injured Plaintiff Clarence Johnson. The Defendant manufacturers of the air conditioner and component parts now move to dismiss contending that Texas stands as a more convenient and appropriate forum to decide this litigation. The movants have also stipulated to a waiver of any statute of limitations defense otherwise available to them. Pertinent to the analysis are the following undisputed facts: Plaintiffs are both Texas residents;1 the subject air conditioning unit was

1 Quentarius Wade is Plaintiff Johnson's son.

designed and manufactured in Fort Smith, Arkansas- where Rheem's air conditioning division is located; and Defendant Rheem's corporate offices are located in Fulton County.

Motion To Dismiss For Forum Non Conveniens

In the codified *Forum Non Conveniens* doctrine, O.C.G.A. § 9-10-31.1, prescribes consideration of the following factors:

> (a) If a court of this state, on written motion of a party, finds that in the interest of justice and for the convenience of the parties and witnesses a claim or action would be more properly heard in a forum outside this state or in a different county of proper venue within this state, the court shall decline to adjudicate the matter under the doctrine of forum non conveniens. As to a claim or action that would be more properly heard in a forum outside this state, the court shall dismiss the claim or action. As to a claim or action that would be more properly heard in a different county of proper venue within this state, the venue shall be transferred to the appropriate county. In determining whether to grant a motion to dismiss an action or to transfer venue under the doctrine of forum non conveniens, the court shall give consideration to the following factors:
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> (1) Relative ease of access to sources of proof;
> (2) Availability and cost of compulsory process for attendance of unwilling witnesses;
> (3) Possibility of viewing of the premises, if viewing would be appropriate to the action;
> (4) Unnecessary expense or trouble to the defendant not necessary to the plaintiff's own right to pursue his or her remedy;
> (5) Administrative difficulties for the forum courts;
> (6) Existence of local interests in deciding the case locally; and
> (7) The traditional deference given to a plaintiff's choice of forum.

The Court begins by observing that it is the party which invokes the doctrine of *forum non conveniens* which has the burden of proving that the circumstances favor dismissal. See Blackmon v. Tenet Health System Spalding, Inc., 288 Ga. App. 137 (2007); R. J. Taylor v. Beck,

280 Ga. 660 (2006). "[U]nless the balance is strongly in favor of the movant, the choice of forum should rarely be disturbed." Gulf Oil Corp v. Gilbert, 330 U.S. 501 (1947). Secondly, consideration of the doctrine of *Forum Non Conveniens* is always a comparative analysis. The venue of Georgia must be considered relative to an adequate alternative forum rather than considering the burden on a Georgia Court in a vacuum. See Federal Insurance Co. v. Chicago Insurance Company. 281 Ga. App. 152 (2006). In reversing the trial court for failing to examine the factors in relation to an alternative forum, the Court in *Federal* also prescribed three findings that a trial court must make on the record when dismissing an action: "(1) an adequate alternative forum exists; (2) that dismissal serves the interest of justice and the convenience of the parties and witnesses (as guided by a consideration of the seven enumerated factors), and that therefore, (3) the claim or action is more properly heard in a forum outside the state." See *Federal* at 155. Lastly, the Court notes the inherent problem of resolving contentions of convenience in advance of significant discovery. The Defendants have filed these motions with their Answers. Without a developed factual record, assertions regarding availability of witnesses or relevant documents require the Court to rely to some extent on competing suppositions.2

Adequate Alternative Forum

The threshold issue in the analysis is whether an adequate alternative forum exists. Clearly, the Courts of Texas stand as an adequate alternative form.

2 Unlike a typical motion to dismiss, where this Court's consideration is limited to the Complaint, the Court assumes that the record may be enlarged by matters outside the pleadings when considering the factors of

Relative Ease and Access to Proof

Defendants contend that witnesses and documents relating to the medical care of Plaintiff are located in Texas and key documents relating to the design manufacturing and sale are located in Arkansas. (See Affidavit of Joseph Randall Moore). The Plaintiffs reside in Texas, as does Johnson's co-worker who was present at the time of the incident. Defendants also raise the potentially cumbersome process of obtaining the permission of a Texas court to facilitate discovery within the state. In response, Plaintiffs raise the significant point that this is a product liability action that concerns design and manufacturing decisions made at the corporate level. These issues are contended to provide a greater nexus to Georgia- where Rheem is located.

Clearly, any witnesses to the actual incident will be located in Texas. The same is true of medical personnel and medical records. Further, addressing Plaintiffs' point regarding manufacturing and design decisions, it does not appear that Georgia offers any advantages over Texas in discovering these issues. First, there is no contention that the unit was designed or manufactured in Georgia. In fact, Defendants contends that documents relevant to design and manufacturing are located in Arkansas. (See Affidavit of Joseph Randall Moore) Since there is no evidence that matters relating to design and manufacture are located here or in Texas, their location is essentially a neutral factor. Because Rheem is a party, and it is not contended that an entity distinct from Rheem is in possession of the documents, the production of relevant materials may be compelled from Rheem without regard to their physical location. In short, while Texas

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O.C.G.A. § 9-10-31.1.Otherwise, there would rarely exist a record sufficient to decide the motion.

offers at least some advantages in the collection of evidence, it does not appear that Georgia offers any advantages whatsoever. This factor weighs strongly toward dismissal.

Availability and Cost of compulsory process for attendance of unwilling witnesses

Defendants contend that Plaintiff's co-worker and employer are located in Texas and beyond the subpoena power of the Court. Defendants also raise the possibility of difficulties in utilizing a Texas Court in the assistance of discovery. In considering witnesses that are neither in Georgia nor Texas, this factor is neutral since either forum faces the same difficulties. However, as it does not appear that there are Georgia witnesses that would pose comparable difficulties for a Texas court, this factor weighs in favor of dismissal.

Viewing of the Premises

While it is a remote possibility that viewing the scene would be constructive, access to the site weighs in favor of dismissal.

Unnecessary expense or trouble to the Defendant not necessary to the plaintiff's own right to pursue his or her remedy

In arguing this element, the Defendant cites to the expense of litigating in Georgia when witnesses and evidence are located elsewhere. This has not been persuasively demonstrated. None

of the defendants are Texas residents and the trouble and expense of litigating in Georgia as opposed to Texas has not been shown to be comparatively burdensome. This factor is neutral at best.

Administrative Difficulties for the Forum Courts

Here, Defendants cite to the application of Texas law to this action and the difficulty of overseeing discovery taking place in other jurisdictions. While these considerations do not strike the Court as overly burdensome, this factor weighs minimally toward dismissal.

Existence of Local Interests In Deciding the Case Locally

Defendant contends that Georgia has little interest in deciding the dispute of this action. As the injury producing incident occurred in Texas rather than Georgia, and there is no evidence that design or manufacturing decisions occurred here, the Court agrees that this factor favors dismissal.

The Traditional Deference Given to the Plaintiff's Choice of Forum

This factor, of course, weighs heavily against dismissal. Moreover, as noted above in Gulf Oil Corp v. Gilbert, 330 U.S. 501 (1947), "unless the balance is strongly in favor of the movant, the choice of forum should rarely be disturbed."

In considering all of the above elements, the Court fails to find any comparative

convenience in Georgia under the operative factors of this analysis. While Rheem is a corporate resident of Georgia, that may be the only significant consideration linking this cause of action to this state. In cases where several manufacturers in different states produce component parts and the product causes injury after entering the stream of commerce, there may be no forum that is not to some degree inconvenient. Here however, it appears that Texas offers significant advantages that are sufficient to outweigh Plaintiffs' choice of forum. Accordingly, the Court finds: "(1) an adequate alternative forum exists; (2) that dismissal serves the interest of justice and the convenience of the parties and witnesses (as guided by a consideration of the seven enumerated factors), and that therefore, (3) the claim or action is more properly heard in a forum outside the state." See Federal Insurance Co. v. Chicago Insurance Company. 281 Ga. App. 152 (2006). The motion to dismiss in favor of the Courts of Texas is hereby GRANTED.

SO ORDERED this the 29th day of APRIL 2013

____s/John Mather_____
The Honorable John R. Mather
Judge State Court of Fulton County