STATE OF NEW YORK
SUPREME COURT COUNTY OF SCHENECTADY

CARL W. LANTZ and MARY LANTZ,

Plaintiffs,

DECISION
AND ORDER

-vs-

Index #2018-1973
RJI #46-1-18-0973

GENERAL ELECTRIC COMPANY,
UNION CARBIDE CORPORATION, et al.,

Defendants.

The plaintiffs commenced the within action to recover damages for personal injuries allegedly incurred by Carl W. Lantz, resulting from his exposure to various asbestos containing products. The plaintiff commenced this action on August 23, 2018, by filing a summons and complaint in the Schenectady County Clerk's Office. Issue was subsequently joined and discovery has been conducted pursuant to an expedited schedule. This matter is currently scheduled for trial commencing December 10, 2019.

The defendants, General Electric Company and Union Carbide Corporation, (defendants), have made a motion pursuant to CPLR §327(a) to dismiss the plaintiffs' complaint, on the grounds of forum non conveniens. The defendants assert that in the interests of substantial justice this action should be heard in the State of Colorado. The defendants allege that all of the relevant factors, favor the State of Colorado over the State of New York. The defendants argue that there is an insufficient nexus to retain jurisdiction of this matter in the State of New York. The plaintiffs have opposed the defendants motions, arguing that there is a sufficient basis for retaining jurisdiction of this case in Schenectady County, New York.

The plaintiff, Carl Lantz, was diagnosed with mesothelioma in December of 2017. He alleges that he has developed the disease as a result of his exposure to asbestos containing materials. For the purpose of the within motion to dismiss, the plaintiffs allege that Mr. Lantz

was exposed to asbestos from his work as an electrician apprentice, and electrician, at the Public Service Company of Colorado, from 1969 to 2008. Generally Mr. Lantz asserts that it was his responsibility to repair and maintain various types of electrical equipment at various power substations and electrical plants in Colorado. The plaintiffs assert that the named defendants in this action were all responsible for Mr. Lantz's asbestos exposure and resulting illness.

CPLR Rule 327(a), permits a Court to stay or dismiss an action, in whole or in part, when the Court finds that in the interest of substantial justice, the action should be heard in another forum. The statute specifically states however, "The domicile or residence in this state of any party to the action shall not preclude the Court from staying or dismissing the action".

The doctrine of forum non conveniens permits a court to dismiss an action when, although it may have jurisdiction over a claim, the Court determines that in the interest of substantial justice the action should be heard in another forum (CPLR 327) (National Bank & Trust Co. Of N. Am. V Banco DeVizcaya, 72 NY2d 1005, 1007). This authority is exercised in the Court's discretion after considering various relevant factors including, inter alia, the potential hardship on defendant, the unavailability of an alternate forum and whether both parties are New York residents (see, Islamic Republic of Iran v Pahlavi, 62 NY2d 474,479[1984]; Banco Ambrosiano v Artoc Bank & Trust, 62 NY2d 65, 73). However, unless these factors weigh heavily in the defendant's favor, the plaintiff's choice of forum will not be rejected and the action will not be dismissed under this doctrine (Markov v Markov, 274 AD2d 870, 871[3rd Dept. 2000]).

On a motion to dismiss on the grounds of forum non conveniens, the initial burden is on the movant to demonstrate the relevant private or public interest factors that militate against a New York Court's acceptance of the litigation (Turay v Beam Bros. Trucking, Inc., 61 AD3d 964, 966; see Islamic Republic of Iran v Pahlavi, 62 NY2d 474, 479[1984]; Matter of Oxycontin II, 76 AD3d 1019, 1020-1021). Among the factors the court must weigh are the residency of the parties, the potential hardship to proposed witnesses including, especially, nonparty witnesses, the availability of an alternative forum, the situs of the underlying actionable events, the location

of evidence, and the burden that retention of the case will impose upon the New York Courts (Wild v University of Pennsylvania, 115 AD3d 944, 945-946[2nd Dept. 2014]).

The parties appear to concede, for the purpose of the within application, that both defendants were incorporated in the State of New York. The plaintiffs have been life-long residents of the State of Colorado, with the exception of 4 years when Mr. Lantz resided in California. Mr. Lantz's asbestos exposure occurred exclusively in the Colorado. Mr Lantz's employers and unions are all located in Colorado. The medical providers for Mr. Lantz are all located in Colorado as are all of the fact witnesses in this action. Mr Lantz has never been to New York State. The only connection he has to the State of New York is the New York City office of his attorneys, Levy Konigsberg LLP. The plaintiff has made at least one application thus far in the litigation to depose a fact witness in the State of Colorado, because the witness was unable to travel to the State of New York for the deposition. The parties also agree that Colorado law would apply, although there is some disagreement as to the extent of the difference between New York law and Colorado law. Turning to the issue of the burden that would be placed upon the Court if it retains the matter in New York, the Court notes, that its trial calendar is almost entirely made up of in extremis cases that have all been given trial preferences. Retention of this case would certainly delay the disposition of the preferred cases on the Court's calendar.

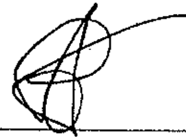
The plaintiffs have naturally opposed the motion by both defendants. Their arguments for retaining the action in New York are based primarily upon the "residence" of the defendants. The plaintiffs assert that both defendants are at home in New York and should be subjected to lawsuits in New York. CPLR Rule 327 expressly states that the defendants' residence in New York does not preclude the Court from dismissing or staying the action. The plaintiffs also argue that there are only insignificant differences between Colorado law and New York Law.

Upon reviewing the record, and considering all of the relevant and appropriate factors, this Court finds that the defendants have met their respective burdens of proof and that in the interest of substantial justice, this action should be heard in the State of Colorado. Pursuant to

CPLR Rule 327, the above entitled action is hereby dismissed, without prejudice, and without costs to any party, provided all defendants stipulate to waive all jurisdictional and statute of limitations defenses in Colorado, should any exist.

This writing constitutes the Decision and Order of this Court.

Signed this 24th day of May, 2019, at Johnstown, New York.



HON. RICHARD T. AULISI, J.H.O.

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