

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Michael E.A. Ford v. Robert Winston Brown, Exxon Corporation

Michael E.A. Ford v. Robert Winston Brown, Exxon Corporation, 16 Fla. L. Weekly Fed. C 243 (11th Cir. 2003)
· No. 01-14141

SUMMARY

The Eleventh Circuit held that the district court abused its discretion by denying a forum non conveniens dismissal of a defamation and tort suit brought by an English barrister against a U.S. company and its employee, because the private and public interest factors—including the location of evidence and witnesses in Hong Kong, the applicability of Hong Kong law, and comity concerns—overwhelmingly favored litigation in Hong Kong rather than Florida. The court clarified that a proper analysis must assess the elements of the plaintiff’s claims to determine the likely location of proof, and that a conditional dismissal is appropriate without requiring defendants to produce affidavits predicting that the foreign tribunal will accept jurisdiction or waive limitations defenses.

CASE DETAILS

COURT	United States Court of Appeals for the Eleventh Circuit
WRITING FOR THE COURT	Tjoflat; Cox; Bright
JURISDICTION	Federal
DOCKET	01-14141
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Interlocutory appeal from the United States District Court for the Southern District of Florida, which denied defendants' motion to dismiss on forum non conveniens grounds.
STANDARD OF REVIEW	Abuse of discretion
PRECEDENTIAL VALUE	precedential
PARTIES	Robert Winston Brown, Exxon Corporation v. Michael E.A. Ford

TOPICS

- civil procedure
- torts
- defamation
- appellate procedure

PRACTICE AREAS

- Civil Procedure
- Torts
- International Litigation

QUESTIONS PRESENTED

1. Whether the district court abused its discretion in denying defendants' motion to dismiss on forum non conveniens grounds.

HOLDINGS

1. The district court abused its discretion because it failed to balance the relevant private and public interest factors, which overwhelmingly favored Hong Kong as the appropriate forum; the case should have been dismissed on forum non conveniens.

KEY QUOTATIONS

“An interest to be considered, and the one likely to be most pressed, is the private interest of the litigant. Important considerations are the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of the premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive. There may also be questions as to the enforceability of a judgment if one is obtained. The court will weigh relative advantages and obstacles to fair trial. It is often said that the plaintiff may not, by choice of an inconvenient forum, 'vex,' 'harass,' or 'oppress' the defendant by inflicting upon him expense or trouble not necessary to his own right to pursue his remedy. But unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed. Factors of public interest also have a place in applying the doctrine. Administrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin. Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation. In cases which touch the affairs of many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only. There is a local interest in having localized controversies decided at home. There is an appropriateness, too, in having the trial of a diversity case in a forum that is at home with the state law that must govern the case, rather than having a court in some other forum untangle problems in conflict of laws, and in law foreign to itself.” (1307-08)

FACTUAL BACKGROUND

In 1992, a power station in Hong Kong exploded. Michael Ford, a British barrister, was retained to represent the owners in a Coroner's Inquest. Ford became suspicious of a cover-up by Exxon and its employee Brown, and claims he was fired after seeking ethical guidance. He alleges defendants made defamatory statements and interfered with his business in Hong Kong. The Hong Kong courts later found no conspiracy and sanctioned Ford for misusing client confidences. Ford sued in Florida for defamation, interference with business relations, and intentional infliction of emotional distress, claiming Exxon and Brown orchestrated his firing and public statements through agents in Hong Kong.

PROCEDURAL HISTORY

Plaintiff, a British barrister, sued defendants in Florida state court for torts arising from his termination in Hong Kong; defendants removed to federal court. The district court denied defendants' motion to dismiss on forum non conveniens and other grounds, certifying the order for interlocutory appeal. The Eleventh Circuit granted leave to appeal.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court shall conditionally dismiss the case.

CASES CITED

- Sibaja v. Dow Chem. Co., 757 F.2d 1215 (11th Cir. 1985)
- Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947)
- Esfeld v. Costa Crociere, S.P.A., 289 F.3d 1300 (11th Cir. 2002)
- Magnin v. Teledyne Cont'l Motors, 91 F.3d 1424 (11th Cir. 1996)
- Piper Aircraft Co. v. Reyno, 454 U.S. 235 (1981)
- C.A. La Seguridad v. Transytur Line, 707 F.2d 1304 (11th Cir. 1983)
- Van Cauwenberghe v. Biard, 486 U.S. 517 (1988)
- Societe Nationale Industrielle Aerospatiale v. United States Dist. Court for S.D. Iowa, 482 U.S. 522 (1987)
- Turner Entm't Co. v. Degeto Film GmbH, 25 F.3d 1512 (11th Cir. 1994)
- Schertenleib v. Traum, 589 F.2d 1156 (2d Cir. 1978)
- Mercier v. Sheraton Int'l, Inc., 935 F.2d 419 (1st Cir. 1991)
- Republic of Panama v. BCCI Holdings (Lux.) S.A., 119 F.3d 935 (11th Cir. 1997)
- Schexnider v. McDermott, 817 F.2d 1163 (5th Cir. 1987)

CITED IN

- Michael E.A. Ford v. Robert Winston Brown, Exxon Corporation, Ford v. Brown, 319 F.3d 1302, 1304 n.3 (11th Cir. 2003)
- Michael E.A. Ford v. Robert Winston Brown, Exxon Corporation, Ford v. Brown, 319 F.3d 1302, 1308 (11th Cir. 2003)

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