

CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT,
DIVISION TWO

Kiely v. Hyph (USA), Inc.

Kiely v. Hyph (USA), Inc. · No. B337456 · Decided July 29, 2025

SUMMARY

The California Court of Appeal affirmed an order staying plaintiffs’ action in favor of Sweden based on traditional forum non conveniens, concluding that Sweden was a suitable alternative forum and that private and public interest factors favored Sweden. The court also rejected plaintiffs’ challenge concerning limited discovery and held that any California jury-trial right had been waived by failure to timely pay jury fees. The opinion addresses claims arising from an alleged fraudulent sale and subsequent transfer of shares in a music-technology company.

CASE DETAILS

COURT	California Court of Appeal, Second Appellate District, Division Two
WRITING FOR THE COURT	Lui, P. J.; Chavez, J.; Richardson, J.
JURISDICTION	California Court of Appeal, Second Appellate District, Division Two
DECIDED	July 29, 2025
DOCKET	B337456
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from an order of the Los Angeles County Superior Court granting defendants' motion to stay the action based on a mandatory forum-selection clause and traditional forum non conveniens, and staying the action pending completion of proceedings in Sweden.
STANDARD OF REVIEW	The suitability of an alternative forum is reviewed de novo. The balancing of private and public interest factors is reviewed for abuse of discretion, with factual determinations reviewed for substantial evidence. The appellate court does not reweigh the forum-selection factors or substitute its judgment for that of the trial court.
PRECEDENTIAL VALUE	Published and certified for publication

PARTIES

Michael J. Kiely, MDMK Ltd. v. Hyph (USA), Inc., Hyph Corporation, XHAIL, Inc., Max Renard, Andreas Carlsson, Alexander Dessauer, Anders Thorsell

TOPICS

forum non conveniens

appellate procedure

standard of review

commercial litigation

breach of fiduciary duty

PRACTICE AREAS

civil procedure

commercial litigation

corporate law

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court improperly denied or limited plaintiffs' discovery sought in opposition to defendants' forum non conveniens motion.
2. Whether Sweden was a suitable alternative forum.
3. Whether the trial court abused its discretion in balancing the private and public interest factors and staying the action on traditional forum non conveniens grounds.
4. Whether enforcement of the parties' Swedish forum-selection clause should be refused because litigation in Sweden would deprive plaintiffs of a California jury trial.

HOLDINGS

1. A trial court is not required to permit discovery before ruling on a forum non conveniens motion, and the trial court did not improperly prevent plaintiffs from conducting relevant discovery.
2. Sweden was a suitable alternative forum for plaintiffs' claims.
3. The trial court did not abuse its discretion in determining that the private and public interest factors favored Sweden and in staying the action on traditional forum non conveniens grounds.
4. The possibility that enforcement of a forum-selection clause will deprive a plaintiff of a jury trial in California, standing alone, is not a sufficient basis to refuse enforcement of the clause.

KEY QUOTATIONS

"In determining whether to grant a motion based on forum non conveniens, a court must first determine whether the alternate forum is a 'suitable' place for trial. If it is, the next step is to consider the private interests of the litigants and the interests of the public in retaining the action for trial in California." (at 10)

"The 'private and public interest factors must be applied flexibly, without giving undue emphasis to any one element,' and no court should decide there are circumstances in which the doctrine will always apply or never apply." (at 15)

"Even where enforcement of a forum selection clause may effectively deprive a plaintiff of the right to trial by jury, this circumstance alone does not provide a basis to avoid its enforcement." (at 17)

FACTUAL BACKGROUND

Michael J. Kiely, an Irish citizen and former California resident, and MDMK Ltd., an Irish corporation, held an ownership interest in XHAIL AB, a Swedish music-technology company. Kiely sold some XHAIL AB shares after defendants allegedly represented that an anonymous buyer would purchase them only at a discounted price; he later learned that Thorsell and his company were the actual buyers. Defendants subsequently arranged a share migration to HYPH Corporation that allegedly excluded plaintiffs and deprived them of an ownership interest. The relevant negotiations, witnesses, entities, and documents were principally located in Sweden or elsewhere outside California.

PROCEDURAL HISTORY

Plaintiffs filed suit in Los Angeles County alleging breach of fiduciary duty, fraud, violations of Corporations Code section 25401, and declaratory relief arising from the sale and subsequent transfer of XHAIL AB shares. Defendants moved to quash service and to stay or dismiss on forum non conveniens grounds. The trial court granted the motion, finding Sweden a suitable alternative forum and concluding that private and public interest factors favored Sweden; it also denied plaintiffs' new trial motion. The Court of Appeal affirmed on the independent ground of traditional forum non conveniens and addressed the forum-selection-clause and jury-trial arguments in light of EpicentRx.

DISPOSITION

affirmed

CASES CITED

- EpicentRx, Inc. v. Superior Court (July 21, 2025, S282521) __ Cal.5th __
- Stangvik v. Shiley Inc. (1991) 54 Cal.3d 744
- Fox Factory, Inc. v. Superior Court (2017) 11 Cal.App.5th 197
- Chong v. Superior Court (1997) 58 Cal.App.4th 1032
- Allen v. Liberman (2014) 227 Cal.App.4th 46
- Campbell v. Parker-Hannifin Corp. (1999) 69 Cal.App.4th 1534
- Archibald v. Cinerama Hotels (1976) 15 Cal.3d 853
- Great Northern Ry. Co. v. Superior Court (1970) 12 Cal.App.3d 105
- Guimei v. General Electric Co. (2009) 172 Cal.App.4th 689
- Baltimore Football Club, Inc. v. Superior Court (1985) 171 Cal.App.3d 352
- TriCoast Builders, Inc. v. Fonnegra (2024) 15 Cal.5th 766
- Atlantic Marine Constr. Co. v. United States Dist. Court for Western Dist. of Tex. (2013) 571 U.S. 49