

No. 1-13-2710, 1-13-2711 & 1-13-2777 (Cons.)

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CAROL BROWN, as Special Administrator of the)	Appeal from the
Estate of ELIZABETH BROWN, deceased,)	Circuit Court of
)	Cook County.
Plaintiff-Appellee,)	
)	
v.)	
)	
DONOVAN'S REEF INC., d/b/a DONOVAN'S REEF)	
SPORTS BAR AND DONOVAN'S REEF RESORT,)	12 L 9944
LEN P. SATTLER, THOMAS M. SATTLER,)	
PHILIP K. FOLEY, KREUSER ELECTRIC, LLC,)	
HONEYWELL INTERNATIONAL, INC., d/b/a)	
FIRE-LIGHT ALARMS BY HONEYWELL, SYSTEM)	
SENSOR, LTD., FST, INC., and FST HOTEL, INC.,)	Honorable
)	Moira Johnson,
Defendants-Appellants.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Hyman and Justice Mason concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court had personal jurisdiction over three Wisconsin corporations that listed an office in the Illinois home of one of the corporations' owners, where the Wisconsin corporations used the services of Illinois accountants, attorneys, and insurance agents. The trial court did not abuse its discretion when it denied a *forum non conveniens* motion in litigation concerning a fire that occurred on the defendants' property in Kenosha County, Wisconsin, where non-party witnesses came from several Wisconsin counties, Cook County appeared more convenient for most of the parties, and other factors did not strongly favor transfer of the case to Kenosha County.

¶ 2 The estate of Elizabeth Brown filed a lawsuit in Cook County against nine defendants, alleging that the defendants bore responsibility for a fire that occurred in Wisconsin. Three Wisconsin corporations filed a motion to dismiss the claims against them for lack of personal jurisdiction. Five other defendants moved to dismiss the lawsuit on grounds of *forum non conveniens*. The trial court denied all the motions to dismiss. The defendants petitioned for leave to appeal from the denial of their motions to dismiss.

¶ 3 We granted the petitions for leave to appeal and address the appeals on their merits. We hold that Illinois courts have jurisdiction over the Wisconsin corporations because the corporations do business in Illinois. The defendants failed to show that the applicable convenience factors strongly favor transfer of the lawsuit to Wisconsin, so the trial court did not abuse its discretion when it denied the motion to dismiss the lawsuit for *forum non conveniens*. Accordingly, we affirm the rulings of the trial court.

¶ 4 **BACKGROUND**

¶ 5 On February 3, 2011, a fire at Donovan's Reef hotel in Twin Lakes, Wisconsin took the life of Elizabeth Brown, a resident of the hotel. In January 2013, Elizabeth's mother, Carol Brown, acting as administrator of Elizabeth's estate, filed an amended complaint in Cook

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County. The complaint charged Honeywell International, Inc., System Sensor, Ltd., and Kreuser Electric, LLC, with manufacturing and installing a defective fire alarm system in the hotel. Honeywell, a Delaware corporation, has offices in Chicago, but its Minnesota office tendered the defense for this case. System Sensor is a Delaware corporation with corporate headquarters in Kane County, Illinois. Kreuser Electric principally does business in Kenosha County, Wisconsin, as a Wisconsin limited liability company. The complaint also named as defendants three Illinois residents, Thomas Sattler, Len Sattler, and Philip Foley, and three closely-held Wisconsin corporations the three men owned: FST, Inc. and FST Hotel, Inc. (collectively, FST), which owned and operated the hotel where the fire took place, and Donovan's Reef, Inc., which operated the bar adjoining the hotel. The complaint charged the corporations and their owners with negligently failing to test and maintain the fire safety system for the hotel.

¶ 6 Donovan's Reef and FST moved to dismiss the claims against them for lack of personal jurisdiction. The three owners of Donovan's Reef and FST moved to dismiss the complaint under the doctrine of *forum non conveniens*, arguing that justice required transfer of the lawsuit to Kenosha County, Wisconsin. Honeywell and System Sensor separately moved to dismiss the complaint for *forum non conveniens*, suggesting that either Kenosha County or Lake County, Illinois, provided more convenient forums.

¶ 7 The estate presented the deposition of Thomas Sattler and corporate documents of FST and Donovan's Reef in opposition to the motions to dismiss. The corporate records of FST and Donovan's Reef listed a Chicago address as their "principal office." Thomas explained that the documents showed his home address as the corporate office. He did not know why his attorneys

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used that address. He said, "[T]he only thing I can think of is that they asked me my address."

The property in Wisconsin has no office. According to Thomas's deposition, Thomas, Len and Foley serve as officers of the three corporations, and the corporations have only one other employee, a bartender. Thomas and Foley both live in Chicago, while Len lives in Lake County, Illinois, where he maintains a home office. Thomas sometimes talks on the phone from his home, or on a cell phone in Illinois, with Foley, Len, or the bartender, about the business of the corporations. Len keeps some financial records of the corporations on his computer in his home office. Thomas keeps the corporate checkbooks with him, and when he stays at his home in Illinois, the checkbooks stay there. A Cook County attorney drafted the articles of incorporation for FST and Donovan's Reef, and those corporations use the services of Illinois attorneys, insurance agents and accountants.

¶ 8 Thomas asserted that 99% of the customers of the three corporations come from Twin Lakes. Thomas occasionally brings his friends from Chicago to the hotel and bar.

¶ 9 Len presented his own affidavit in support of the motion to dismiss the complaint. He asserted that three permanent residents of the hotel witnessed the fire on February 3, 2011. Twin Lakes police officers, fire fighters, and other emergency responders also responded to the fire.

¶ 10 Local ordinances required all Twin Lakes police officers and fire fighters to live in Kenosha, Racine or Walworth County in Wisconsin. The emergency responders took Elizabeth to a hospital in Racine County. The hotel and Twin Lakes police headquarters are 27 miles from the Kenosha County courthouse and 69 miles from the Daley Center in Chicago.

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¶ 11 The trial court found that it had personal jurisdiction over FST and Donovan's Reef because they do business in Illinois. For the *forum non conveniens* motions, the court acknowledged that Carol's choice of her home county as the forum for the suit had minimal significance, in so far as she acted as representative of her daughter's estate. The court gave some weight to Carol's choice because Carol would likely testify about damages. The court noted the convenience of Cook County as a forum for Sensor System, Thomas, Len and Foley; for Honeywell, Cook County seemed as convenient as Kenosha or Lake County. The court stressed that the witnesses resided in several counties, all reasonably close to Chicago, although the non-party witnesses lived closer to the Kenosha County courthouse. The court held that the "minimal travel distance [was] insufficient to warrant transfer in this case." Although Illinois courts cannot subpoena Wisconsin residents to appear in Cook County, the court noted that the parties could require all witnesses to sit for depositions in Wisconsin. The court also noted that the non-party witnesses came from several Wisconsin counties, so the location of non-party witnesses did not strongly favor Kenosha County.

¶ 12 Weighing all the public and private interest factors, the court held that the relevant factors did not weigh strongly in favor of transfer. Accordingly, the court denied the motions to dismiss the complaint for *forum non conveniens*.

¶ 13 FST and Donovan's Reef petition for leave to appeal from the ruling on personal jurisdiction in docket number 1-13-2710. Thomas, Len and Foley petition for leave to appeal from the rejection of their *forum non conveniens* motion in docket number 1-13-2711. Honeywell and Sensor System petition for leave to appeal from the ruling on their motion to

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dismiss in docket number 1-13-2777. All three petitions arise under Supreme Court Rule 306. Ill. S. Ct. R. 306(a) (2), (3) (eff. Feb. 16, 2011). We grant all three petitions and consolidate the appeals for disposition on their merits.

¶ 14

ANALYSIS

¶ 15

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¶ 16 Because the trial court decided the jurisdictional question on the basis of documentary evidence alone, without any testimony in court, we review its ruling *de novo*. *Riemer v. KSL Recreation Corp.*, 348 Ill. App. 3d 26, 33 (2004). The *Riemer* court recounted the applicable principles:

"[A] court's assertion of personal jurisdiction over a foreign corporation requires a determination that the corporation was "present and doing business" ' within Illinois. *** [T]he defendant must carry on business activity within the State ' " 'not occasionally or casually, but with a fair measure of permanence and continuity.' " ' [Citation.] In other words, there must be a ' "course of business or 'regularity of activities' as opposed to isolated or sporadic acts." ' "

* * *

Although there is no fixed 'doing business' test, most Illinois courts finding personal jurisdiction over foreign corporations have based their determinations on facts such as whether the defendant has maintained offices or engaged in sales activities in Illinois."

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Riemer, 348 Ill. App. 3d at 34-36 (quoting *Braband v. Beech Aircraft Corp.*, 72 Ill. 2d 548, 554-55 (1978) and *Alderson v. Southern Co.*, 321 Ill. App. 3d 832, 849 (2001)).

¶ 17 According to documents FST and Donovan's Reef filed with the Wisconsin Department of Financial Institutions, the corporations maintain their principal office in Cook County. FST and Donovan's Reef cite no case, and we have found none, in which the county in which a corporation maintains an office lacked personal jurisdiction over the corporation. Here, the record also shows that FST and Donovan's Reef conducted some corporate business from the office, when Thomas made and answered phone calls about the business. Len also conducted some corporate business in his home office in Lake County, Illinois. FST and Donovan's Reef used the services of Illinois attorneys, insurance agents and accountants. We agree with the trial court's conclusion that FST and Donovan's Reef do sufficient business in Illinois to give Illinois courts personal jurisdiction over them. We affirm the ruling challenged in docket number 1-13-2710.

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¶ 19 On appeal, Honeywell and Sensor System have not argued in favor of transferring the case to Lake County, Illinois. All of the appellants in docket numbers 1-13-2711 and 1-13-2777 argue only that the trial court should have granted their motion to dismiss the case because Kenosha County provided a more convenient forum for the litigation.

¶ 20 Our supreme court restated the central principles of *forum non conveniens* in *Fennell v. Illinois Central R.R. Co.*, 2012 IL 113812:

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"[T]he focus of interstate *forum non conveniens*, at issue in the case at bar, is whether the case is being litigated in the most appropriate state. ***

'The doctrine of *forum non conveniens* is founded in considerations of fundamental fairness and sensible and effective judicial administration.' ***

*** Private interest factors include: the convenience of the parties; the relative ease of access to sources of testimonial, documentary, and real evidence; the availability of compulsory process to secure attendance of unwilling witnesses; the cost to obtain attendance of willing witnesses; the possibility of viewing the premises, if appropriate; and all other practical considerations that make a trial easy, expeditious, and inexpensive. [Citations.]

The relevant public interest factors include: the administrative difficulties caused when litigation is handled in congested venues instead of being handled at its origin; the unfairness of imposing jury duty upon residents of a community with no connection to the litigation; and the interest in having local controversies decided locally. [Citations.]

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In determining whether the doctrine of *forum non conveniens* applies, the circuit court must balance the public and private interest factors. ***

* * *

*** The determination of a *forum non conveniens* motion lies within the sound discretion of the circuit court. On review, the circuit court's determination will be reversed only if it can be shown that the court abused its discretion in balancing the relevant factors. [Citations.] An abuse of discretion will be found where no reasonable person would take the view adopted by the circuit court." *Fennell*, 2012 IL 113812, ¶¶ 13-21.

¶ 21 Private Interests

¶ 22 Here, Carol resides in Cook County, but, as the trial court noted, her choice of her home as the forum has minimal relevance because she brought the suit in her capacity as representative of her daughter's estate. *Moore v. Chicago & North Western Transportation Co.*, 99 Ill. 2d 73, 79 (1983). Because Carol may testify about damages, the trial court properly accorded some weight to the convenience of the forum for her. See *Fennell*, 2012 IL 113812, ¶15.

¶ 23 Cook County is at least as convenient as Kenosha County for all of the parties other than Kreuser Electric and Len, as all other defendants have offices closer to the Daley Center. The officers and owners of FST and Donovan's Reef other than Len live in Chicago. The parties can present documentary and real evidence in either forum, perhaps somewhat more easily in

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Kenosha. Some witnesses live in Wisconsin, and Cook County cannot subpoena them to appear in person. See 735 ILCS 5/2-1101 (2013). The witnesses who live in Illinois are all parties, but the Wisconsin court cannot compel them to appear. *City of Sun Prairie v. Davis*, 226 Wis. 2d 738, 756-57, 595 N.W.2d 635 (1999). For the Wisconsin witnesses, the cost of driving to Cook County will exceed the cost of driving to Kenosha, but the costs should not differ greatly. For most of the parties, who may need to appear in court more often than the non-party witnesses, the travel to Cook County should cost less than the travel to Kenosha. Juries from either state could view the premises, at somewhat less cost if the Kenosha court holds the trial. The parties have not yet named their expert witnesses.

¶ 24

Public Interests

¶ 25 The Cook County courts handle far more cases than the Kenosha County courts, but Cook County has far more courtrooms and judges to handle the litigation. The defense presented evidence that Cook County courts take an average of 35 months to resolve cases that go to trial. The parties did not show how long Kenosha County courts take on average to resolve cases that go to trial, nor do the parties provide comparative data for the resolution of tort cases by settlement or pretrial motion. On the evidence in the record, we cannot say that court congestion favors either county.

¶ 26 A Cook County jury may have substantial interest in resolving a dispute where two Cook County residents, another Illinois resident and a corporation with its headquarters in Illinois face charges of negligence, even when the accident caused by the alleged negligence took place in another state. See *Ellis v. AAR Parts Trading, Inc.*, 357 Ill. App. 3d 723, 747 (2005). Kenosha

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County has a significant interest in the litigation of liability for a fire that occurred in Kenosha County, involving some Wisconsin corporations.

¶ 27 Balancing All Interests

¶ 28 Weighing all of the public and private interest factors, we find that the location of most of the non-party witnesses favors Kenosha County, but not very strongly, because the witnesses live in several counties, and none live very far from Cook County. See *First National Bank v. Guerine*, 198 Ill. 2d 511, 524 (2002). Because all the officers of FST and Donovan's Reef live in Illinois, and two of the officers live in Cook County, the location of the parties favors Cook County.

¶ 29 The other factors, as a whole, do not strongly favor Kenosha County. We cannot say that the trial court abused its discretion when it held that the defendants had not met their burden of showing that the interests of justice require transfer of the case to Kenosha County. See *Peile v. Skelgas, Inc.*, 163 Ill. 2d 323, 335 (1994). Accordingly, we affirm the rulings in docket numbers 1-13-2711 and 1-13-2777.

¶ 30 CONCLUSION

¶ 31 Illinois courts have personal jurisdiction over FST and Donovan's Reef because they have an office and do business in Illinois. The balance of public and private interest factors does not strongly favor transfer of this lawsuit to Kenosha County, Wisconsin, so the trial court did not abuse its discretion when it denied the motion to dismiss the case for *forum non conveniens*. Therefore, we affirm the rulings of the trial court.

¶ 32 Affirmed.