

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA DIVISION**

TENTATIVE RULINGS

EVENT DATE: 09/10/2015 EVENT TIME: 08:20:00 AM DEPT.: 43
JUDICIAL OFFICER: Kevin DeNoce

CASE NUM: 56-2015-00465460-CU-BC-VTA
CASE TITLE: AEROVIRONMENT INC VS. TORRES

CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

EVENT TYPE: Motion to Dismiss - on the ground of Forum Non Conveniens
CAUSAL DOCUMENT/DATE FILED: Motion - Other, 08/04/2015

With respect to the below scheduled tentative ruling, no notice of intent to appear is required. If you wish to submit on the tentative decision, you may submit a telefax to Judge DeNoce's secretary, Hellmi McIntyre at 805-662-6712, stating that you submit on the tentative. Do not call in lieu of sending a telefax, nor should you call to see if your telefax has been received. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence. This case has been assigned to Judge DeNoce for all purposes.

Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

The court's tentative ruling is as follows:

Deny the motion to dismiss action on *forum non conveniens* grounds. Procedurally, Defendants waived this issue as they did not raise it at the time that they filed their demurrer. CCP §418(e)(3). Substantively, the private and public interests favor California as the jurisdiction to resolve this matter.

Discussion:

The complaint was filed on March 20th of this year and yet Defendants did not bring this motion until the beginning of August. Moreover, this motion is being brought after Defendants filed a demurrer. Pursuant to CCP §418.10(a)(2), a defendant "on or before the last day of his or her time to plead" may serve and file an inconvenient forum motion. Subsection (e) adds that a defendant may make an inconvenient forum argument at the same time he or she demurs. Subsection (e)(3) adds that "failure to make a motion under this section at the time of filing a demurrer.....constitutes a waiver of.....inconvenient forum."

Defendants cases in support of this issue being raised at this time are distinguishable. In both Martinez v. Ford Motor Co., (2010) 185 Cal. App. 4th 9 and Morris v. AGFA Corp., (2006) 144 Cal. App. 4th 1452, there had been no demurrer or motion to strike. None of the cases involve this situation: where a defendant fails to raise the inconvenient forum argument at the time of the demurrer. (See, Britton v. Dallas Airmotive, Inc. (2007) 153 Cal.App.4th 127, 133 ("Section 418.10, subdivision (e)(3), the only provision expressly providing for waiver, does not provide for waiver where a defendant fails to file a motion on forum non conveniens grounds before filing an answer. Rather, it provides for waiver only where a defendant fails to move on forum non conveniens grounds "at the time of filing a demurrer or motion to strike." (§ 418.10, subdivision (e)(3).) On its face, the provision is inapplicable because defendants never filed a demurrer or motion to strike.") The Court's view is that the issue has been waived.

Applicable Principles on Inconvenient Forum Issue

"When a court upon motion of a party on its own motion finds that in the interest of substantial justice an action should be heard in the forum outside this state, the court shall stay or dismiss the action in whole or in part on any

conditions that may be just." CCP §410.30(a). "[The] factors may be boiled down to three basic principles. Foremost is the availability of a suitable alternative forum for the plaintiff. (citation) The court then balances factors relating to the private interests of the litigants and the public interests of the forum state; among these, a resident plaintiff's choice of the forum is given substantial weight." Cal-State Business Products & Services, Inc. v. Ricoh (1993) 12 Cal.App.4th 1666, 1675.

Suitable Alternative Forum -

Pursuant to Animal Film, LLC v. DEJ Productions, Inc., (2011) 193 Cal. App. 4th 466, Defendants bear the burden on establishing that Washington is a suitable alternative forum and that there are no jurisdictional or statute of limitations issues that would be problematic in Washington. Given that Defendants in their reply agree to waive any statute of limitations argument and any personal or subject matter jurisdiction claims (See Reply at E), arguably Washington is a suitable forum.

Private Interest Defendants' Location - Obviously defendants are located in Washington so, convenience to them would be in Washington.

Evidence - Defendants documentary evidence would be located in Washington, but perhaps also in California given that MicaSense is a CA corporation with an office in Simi Valley.

Witnesses - Besides the parties, the witnesses would be in California. P points out that of the 16 witnesses that have been served with depo notices, 12 of them work in California.

Impact to Company - Ds make the argument that they are an 8 person startup company and travel to and from WA to CA would be harder on the company than for Aerovirement who has been in existence for 45 years and has approximately 600 employees and revenue of over \$250 million in fiscal year 2015.

Public Interest

Remedying Wrongful Conduct that Occurred in CA - This is the most obvious factor. These individual defendant worked for P in California at the time of the alleged misconduct. "A state has a strong interest in assuring its own residents an adequate form for redress of grievances." Stangvik v. Shiley, Inc., (1991) 54 Cal. 3rd 744, 748. P is a long time CA corporation.

Addressing the Legal Issues - There is a patent and confidentiality agreement at issue here. P's allege that Ds breached that agreement. P points out that CA would have an interest in how such agreements are construed and enforced.

Washington's Economic Interest? - Ds argue that Washington has an economic interest in protecting its start up corporations. Of course, California does as well. The alleged economic damage that occurred here took place *before* any economic benefit that Washington enjoyed when Defendants started their company up there.

Congestion of Courts - Defendants argues that the WA courts are much less congested than California. The Court assumes that the parties will be ready to proceed with this case in a timely fashion and this Court will be prepared to do so.