

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

EUN, HEE JAE)	CIVIL ACTION NO. 98-0607
)	
Petitioner,)	ORDER GRANTING MOTION
)	TO DISMISS AND DENYING
v.)	PRELIMINARY INJUNCTION
)	
LEE, JONG HUN and)	
YANG, KWANG JOON)	
)	
Respondents.)	
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I. INTRODUCTION

Plaintiff Hee Jae Eun (“Eun”) brings this action to recover interest payments on a loan, based on a memorandum (“Memorandum”) drafted and signed in South Korea. In the alternative, Eun brings this action for repayment of the loan itself with interest. Eun further seeks a preliminary injunction. Respondents Jong Hun Lee and Kwang Joon Yang (“Lee and Yang”) move to dismiss the action. They argue that the court does not have subject matter or personal jurisdiction, the venue is improper, and the forum is inconvenient. The court, having reviewed the briefs, exhibits, affidavits, and having heard and considered the arguments of counsel, now renders its written decision.

II. FACTS

Lee and Yang borrowed three hundred thousand dollars (\$300,000.00) from Eun in South Korea. They used these funds to establish Island Leisure Corporation (“Island”), a corporation organized under the laws of the CNMI. The Memorandum which forms the basis for this action was entered into in South Korea and reads (in an English translation from Korean):

[p. 2]

Creditor: Eun, Hee Jae...
Debtor 1: Lee, Jong Hun...President [sic]
Debtor 2: Yang, Kwang Jun...Vice President...

This agreement is made by the creditor and the debtors as follows:

1. Amount: 300,000 US Dollars.
2. Interest rate: 24% for a year (2% of payment each month-end)
3. Repayment date: December 31, 1999 year (when there is not any of discrepancy on interest payment, this

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- agreement can be extended on the condition of mutual consent [sic].
4. Method of Repayment: Partial repayment can be possible before the term and the ratio of the same interests will be applied for the balance after partial repayment.
 5. The creditor shall abandon [sic] all of his rights over the investment already put into the company below.
 6. The debtors shall not raise any kind of dispute or objection against legal measures taken in the terms of civil and criminal affairs [sic] in connection with any breach of the above conditions.

March 30, 1998

Creditor: Eun, Hee Jae [seal affixed]
Debtor: Island Leisure Copr. [sic]
President: Lee, Jong Hun [seal affixed]
Vice-President: Yang, Kwang Jun [seal affixed]

***This agreement note shall be substituted by a notarized instrument made in the Northern Mariana as of April 30, 1998 year. [signed by parties]

There was no subsequent instrument drawn or signed in the Commonwealth.

All of the parties presently reside in and are citizens of South Korea. Lee provides school certificates for his daughter and son, as well as a residential registration for his residence in Pusan, Korea, and his apartment in Daejon City, Korea. Yang provides a certificate of school enrollment for his son as well as a certificate of business registration for his bowling alley in Daejon City, Korea. Lee and Yang travel to the CNMI at least two to three times a year and have a local address, listed in Island's registration with the Attorney General, which is "P.O. Box 237, Tinian, mp, 96952." Their CNMI immigration status is listed on the registration as "two years business permit." Eun's residency in South Korea was stated in the complaint as well as at oral argument. Eun shows nowhere that he has any direct relationship to the CNMI.

Yang claims he has not been served with a copy of the summons and complaint. However, the court has a certificate of service, provided on the day of oral argument, from a Lee Soo Jung who personally served Yang in South Korea. Yang has not disputed service further.

[p. 3]

III. ANALYSIS

A. Subject Matter Jurisdiction

Subject matter jurisdiction defines the types of controversies a court may adjudicate. Restatement (Second) of Judgments §11 (1971). The Superior Court has subject matter jurisdiction "over all civil actions, in law and in equity...." 1 CMC §3202. When Lee and Yang argue that this court lacks subject matter jurisdiction, they are referring to its territorial jurisdiction. Restatement (Second) of Judgments §4, cmt. c; §11, cmt. b (1971). Territorial jurisdiction involves the

relationship between the place a transaction occurred, including the residence of the parties to the transaction, and the territory of the state where the action is brought. Id. §4 at cmt. a. Where applied in transnational situations, such as here, territorial jurisdiction hinges on whether there is a relationship to the state which makes an exercise of jurisdiction reasonable. Id.

B. Personal Jurisdiction

The concept of territorial jurisdiction is expressed as part of the Commonwealth long-arm statute dealing with personal jurisdiction.

Section 7 CMC §1102 states in relevant part:

(a) Any person, whether or not a citizen or resident of the Commonwealth, who in person or through an agent does any of the acts enumerated in this section, thereby submits such person, and, if not an individual, its personal representative, to the jurisdiction of the courts of the Commonwealth as to any cause of action arising from the doing of any of the following acts:

- (1) The transaction of any business within the Commonwealth;...
- (8) Any other act done within or outside the Commonwealth from which a cause of action arises and for which it would not be unreasonable, unfair or unjust to hold the person doing the act legally responsible in a court of the Commonwealth...

This statute allows the court to exercise personal jurisdiction over defendants to the extent permitted by due process. 7 CMC §1102; Core-Vent Corp. v. Nobel Industries AB, 11 F.3d 1482 (9th Cir. 1993); N.M.I. Const. art. I., § 5; U.S. Const. art. I, § 5. Due process requires that a non-resident defendant have minimum contacts with a forum state for personal jurisdiction to be asserted. Sablan v. Quarashi, 3 CR 762 (D.N.M.I. App. 1989). If a defendant has not had continuous and systematic contact with the forum state which would support a finding of general personal jurisdiction, it is still possible for a court to assert “special jurisdiction” over matters related to its activities within a forum. Id. at 768. The burden [p. 4] of establishing personal jurisdiction over a non-resident defendant is on the plaintiff. Bank of Saipan v. Camacho, 3 CR 195 (N.M.I. Tr.Ct. 1987).

C. Special Jurisdiction

Here, Eun has not decisively shown that Lee and Yang have had continuous and systematic contact with the CNMI.¹ Therefore, the court considers the three pronged test used to determine

¹ Although Lee and Yang are shareholders and officers of Island, the corporation is not a party to the lawsuit. Without any evidence provided by Eun, the court would have to imply Lee and Yang’s contacts by virtue of being shareholders and officers of Island. Because the burden is Eun’s, the court must further analyze the issue.

whether special jurisdiction may be asserted:

1. The nonresident defendant must do some act or consummate some transaction with the forum or perform some act by which he purposefully avails himself or the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws.
2. The claim must be one which arises out of or results from the defendant's forum-related activities.
3. Exercise of jurisdiction must be reasonable. CNMI v. Toronto-Dominion, 3 CR 928, 931 (D.N.M.I. 1989).

By incorporating Island in the CNMI, acting as shareholders and officers, obtaining immigration permits, and occasionally traveling to the CNMI in furtherance of business activity, Lee and Yang have availed themselves of the privilege of conducting business activities in this forum. Sablan v. Quarashi, 3 CR 762 (D.N.M.I. App. 1989). Furthermore, this claim arose over money loaned to defendants for the specific purpose of investing in a CNMI corporation.² The loan itself and the corporate acts which flowed from it in the CNMI are sufficiently interrelated to spring from Lee and Yang's forum-related activities.

To determine the reasonableness of an exercise of jurisdiction which would "comport with fair play and substantial justice," the further following factors will be considered:

1. The extent of purposeful interjection into the forum state;
2. The burden on defendant of defending in the forum;
- [p. 5] 3. The extent of conflict with the sovereignty of defendant's state;
4. The forum state's interest in adjudicating the dispute;
5. The most efficient judicial resolution of the controversy;
6. The importance of the forum to plaintiff's interest in convenient and effective relief;
7. The existence of an alternative forum. CNMI v. Toronto-Dominion, 3 CR 928, quoting Burger King Corp. v. Rudzewicz, 105 S.Ct. 2174, 2184 (1985), factors at 932 (D.N.M.I. 1989).

In balancing these factors, no one is dispositive: all are considered in turn. Core-Vent Corp. v. Nobel Industries AB, 11 F.3d 1482, 1488 (9th Cir. 1993).

² In fact the Memorandum at issue lists in the signature area "Island Leisure Corporation" as the debtor, with Lee and Yang listed as officers.

Once it has been found that a defendant has purposefully availed itself of the protection and benefits of the forum, the extent-of-purposeful-interjection factor is accorded no weight. CNMI v. Toronto-Dominion, 3 CR 928, 932-3 (D.N.M.I. 1989). Furthermore, a presumption then attaches that an exercise of jurisdiction is reasonable and a defendant may overcome it only by presenting a “compelling case” to the contrary. Id.

Here, the burden to the defendant is the same as to that of the plaintiff, as far as being forced to litigate outside of the place of residence. However, it has been recognized that there are unique burdens associated in litigating within the confines of a foreign country’s legal system. Sinatra v. National Enquirer, Inc., 854 F.2d 1191 (9th Cir. 1988). As such, there is a higher jurisdictional hurdle to leap when attempting to subject a defendant to a foreign sovereign. Core-Vent Corp. v. Nobel Industries AB, 11 F.3d 1482, 1489 (9th Cir. 1993).

In this situation, neither party, as South Korean citizens, should be at a disadvantage in either forum. Moreover, with modern advances in travel, the burden of litigating in a foreign country is significantly reduced. Id. at 1199. Especially here, where defendants have found the CNMI close enough to engage in a business, any burden which might attach by having to litigate in the CNMI is minimal. Additionally, courts have tended to approach inconvenient forum choices through other, non-jurisdictionally based methods. Id.

As to the conflict, if any, of the laws of South Korea, defendants have not presented any evidence to suggest that South Korea would object to its citizens being subjected to a suit in a foreign jurisdiction [p. 6] where those citizens have chosen to do business. Generally, it is not in a country’s best interest to protect citizens who have failed to honor obligations elsewhere. Sablan v. Quarashi, 3 CR 762, 772 (D.N.M.I. App. 1989).

Considering the issue of the CNMI’s interest in adjudicating the dispute, the fact that the plaintiff is a non-resident, and not a citizen, significantly lessens that interest. However, because Island is located in the CNMI, and the loan indirectly or directly involves Island, CNMI may have a marginal interest in the action.

Looking at the efficiency of the forum includes an examination of where witnesses and evidence are likely to be located, as trying a case where the plaintiff lives will almost always be the plaintiff’s preference. Core-Vent Corp. v. Nobel Industries AB, 11 F.3d 1482 (9th Cir. 1993).

However, in this situation, where the plaintiff does not live in the forum, the court fails to see how the CNMI can be more convenient for these parties who reside in South Korea. Neither party has fully addressed this issue, although Lee and Yang argue that the Memorandum was drafted and signed in Korea, suggesting possible Korean witnesses other than Lee and Yang. Without speculating how either side intends to prove its case, it is clear that a transaction entered into in Korea will need proof which is based in Korea.

Lastly is the issue of whether an alternate forum exists. It is the plaintiff's burden to show that an alternate forum is not available. Roth v. Garcia Marquez, 942 F.2d 617 (9th Cir. 1991). Eun has not shown that he could not litigate in South Korea.

Examining these seven factors together, the resulting burden to Lee and Yang to defend here is far greater than the burden to Eun bringing this action in South Korea. In addition, the CNMI does not have a significant interest in the outcome of this case between foreign nationals. Further, the convenience of the parties would seem to be greater in the country in which they reside. The efficiency of the forum similarly seems to be South Korea, the place where the agreement was entered and where any witnesses might be found. These factors weigh more heavily in the favor of Lee and Yang. The factors that weigh in the favor of Eun are that Lee and Yang purposely interjected themselves into the CNMI by forming a CNMI corporation, and there is no known South Korean interest in adjudicating the dispute. Given the fact that there is no particular CNMI interest in adjudicating this dispute either, that element balances itself out.

[p. 7] In sum, these factors tip in favor of Lee and Yang. As a result, it is unreasonable for the CNMI to assert personal jurisdiction over Lee and Yang under 7 CMC §1102. This case is dismissed. The issues of venue, *forum non conveniens*, and injunctive relief are moot.

IV. CONCLUSION

The motion to dismiss for lack of jurisdiction is granted and the motion for preliminary relief is denied for the reasons stated above.

SO ORDERED this 27 day of November, 1998.

/s/ Edward Manibusan
EDWARD MANIBUSAN, Presiding Judge