IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

FRES-CO SYSTEM USA, INC.,	)	
	)	
Plaintiff,	)	
	)	
V.	)	C.A. NO. 05C-02-181-JRS
	)	
THE COFFEE BEAN TRADING - ROASTING, LLC, d/b/a CAFÉ LA RICA,	)	
	)	
Defendant.	)	

Date Submitted: April 29, 2005
Date Decided: July 22, 2005

MEMORANDUM OPINION

Upon Consideration of Defendant's Motion to Dismiss.
DENIED.

Richard M. Donaldson, Esquire, MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP, Wilmington, Delaware. Attorney for Plaintiff.

Matthew Neiderman, Esquire, DUANE MORRIS, LLP, Wilmington, Delaware. Attorney for Defendant.

SLIGHTS, J.

I.

The Plaintiff, Fres-Co System USA, Inc. ("Fres-Co"), has filed suit in this Court against The Coffee Bean Trading-Roasting, LLC ("The Coffee Bean") seeking monetary damages for unjust enrichment. The Coffee Bean has moved to dismiss the complaint because Delaware is not the proper forum for this litigation. Specifically, The Coffee Bean argues that it would endure undue burden and expense if it was required to litigate this case in Delaware and that Florida is a more appropriate forum because all of the witnesses and physical evidence are located there.

For the reasons that follow, after balancing the appropriate factors, the Court finds that The Coffee Bean has not demonstrated that an overwhelming hardship would result from litigating in Delaware and, consequently, has not sustained its burden on the motion. Accordingly, The Coffee Bean's motion to dismiss based on forum non conveniens must be denied.

II.

Fres-co is a Delaware corporation that maintains its principal place of business in Telford, Pennsylvania.[1] Fres-co manufactures, prints and sells pre-labeled packaging materials, develops comprehensive packaging systems, and sells and

[1]D.I. 1, at ¶ 1.

services packaging machines and equipment.[2] The Coffee Bean, a Delaware limited liability company, has its principal place of business in Miami, Florida and is a wholesale seller of coffee beans.[3] Its business includes roasting, grinding and packaging the beans.[4] Fres-co has been doing business with Ernesto Aguila, the "manager" of The Coffee Bean, since July 2001.[5]

Within the first year of their business relationship, Fres-co provided Mr. Aguilla with pre-labeled materials for 220,000 coffee packages.[6] In December 2002, Fres-co contacted Mr. Aquila to request payment of $19,061.71 for the pre-labeled materials.[7] Mr. Aquilla advised Fres-co that the materials were defective because the "UPC codes were of poor quality."[8] In response, Fres-co provided Mr. Aquilla with an authorization to return the unused defective packaging materials for a credit. None

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[2] *Id.* at ¶ 2.

[3] *Id.* at ¶ 3.

[4] *Id.* at ¶ 4.

[5] *Id.* at ¶ 6. Mr. Aguilla contends that when he first started doing business with Fres-co he worked for Café La Rica and that the Coffee Bean did not exist until December 2002. D.I.3, Aguilla Aff. at ¶ 4.

[6] *Id.* at ¶ 10.

[7] *Id.*

[8] *Id.* at ¶ 11. The specific nature of the defect is not explained further in the complaint or elsewhere in the record.

of the materials were ever returned.[9] Nevertheless, even though Mr. Aquilla did not return the materials or make payment, Fres-co continued to honor The Coffee Bean's requests to supply additional packaging materials.[10] Specifically, between July and October 2003, Fres-co shipped pre-labeled material for 300,800 coffee packages.[11] The cost of these materials totaled $26,175.70.[12]

Additionally, from August 2003 to October 2003, Fres-co provided service engineers to perform repair work on a used coffee packaging machine owned and operated by The Coffee Bean.[13] In connection with the repair work, Fres-co also supplied various replacement parts that were delivered to The Coffee Bean in Miami, Florida, where the machine was located.[14] The Fres-co engineers also installed some of the replacement parts.[15] The cost of Fres-co's engineering services totaled $26,829.04 and the cost of the replacement parts was $36,559.31.[16]

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[9] *Id.* at ¶ 12.

[10] *Id.* at ¶ 14.

[11] *Id.* at ¶ 15.

[12] *Id.*

[13] *Id.* at ¶ 16.

[14] *Id.*

[15] *Id.*

[16] *Id.* at ¶¶ 17, 19.

Fres-co subsequently informed Mr. Aquilla that it would not do any further work on the machine until it received payment for the pre-labeled packaging material, the engineering services, and the replacement parts.[17] Over the next several months, Fres-co attempted to a negotiate a resolution with The Coffee Bean to no avail.[18] In September 2004, after having received no payment or response to numerous requests for payment, Fres-co filed suit against The Coffee Bean in the Pennsylvania Court of Common Pleas in Bucks County, Pennsylvania.[19] The Coffee Bean challenged the suit on the basis of personal jurisdiction.[20] As a result, Fres-co voluntarily dismissed the litigation in Pennsylvania.[21] On February 15, 2005, Fres-co filed a complaint in this Court against The Coffee Bean alleging unjust enrichment.[22] Coffee Bean now moves to dismiss the complaint.

III.

The Coffee Bean argues that a weighing of the appropriate forum non conveniens factors demonstrates that it would be overwhelmingly burdensome to

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[17] *Id.* at ¶ 20.

[18] *Id.* at ¶ 21.

[19] *Id.* at ¶ 25.

[20] *Id.* at ¶ 26.

[21] *Id.* at ¶ 27.

[22] *See* D.I. 1.

require it to litigate in Delaware and that Florida is a more convenient forum. Specifically, The Coffee Bean argues that because The Coffee Bean's witnesses and documents, as well as the coffee packaging machine at issue, all are located in Florida, that state offers the most convenient forum. Additionally, The Coffee Bean contends that because The Coffee Bean has only six employees, the work interruption and expense caused by requiring its employees to travel to Delaware would negatively impact the business, especially with regard to Mr. Aguilla who is vital to the day to day operations. In response to these contentions, Fres-co simply alleges that The Coffee Bean has not carried its heavy burden of demonstrating with particularized evidence that overwhelming hardship would result if the litigation remains in Delaware.

IV.

Dismissal of an action based on the doctrine of forum non conveniens lies within the sound discretion of the court.[23] The doctrine empowers the Court to decline jurisdiction whenever considerations of convenience, expense and the interests of justice dictate that litigation in the forum selected by the plaintiff would be unduly inconvenient, expensive or otherwise inappropriate.[24] The plaintiff's

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[23] *Williams Gas Supply Co. v. Apache Corp.*, 1991 WL 18091, at *1 (Del. Super.).

[24] *Id.*

choice of forum should only be defeated, however, when "the combination and weight of factors to be considered balance overwhelmingly in favor of the defendant."[25] Stated differently, the defendant bears the heavy burden of demonstrating that the applicable factors overwhelmingly favor denying the plaintiff his choice of forum.[26] Therefore, the issue for the Court to decide in this case is whether The Coffee Bean has satisfied its heavy burden. The Court finds that it has not.

There are six factors that the Court must consider on a motion to dismiss based on forum non conveniens: (1) whether Delaware law is applicable; (2) the relative ease of access to proof; (3) the availability of compulsory process for witnesses; (4) the possibility of a view of the premises; (5) the pendency or non pendency of a similar action or actions in another jurisdiction; and (6) all other practical considerations which would make the trial easy, expeditious and inexpensive.[27]

A. The Pendency or Non Pendency of a Similar Action Elsewhere

When applying the six factors, Delaware law practically requires the existence

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[25] *Id.*

[26] *Sequa Corp. v. Aetna Casualty and Surety Co.*, 1990 WL 123006, at *3 (Del. Super.).

[27] *Monsanto Co. v. Aetna Casualty & Surety Co.*, 559 A.2d 1301, 1304-05 (Del. Super. Ct. 1988).

of another pending action, in an appropriate forum, for a party to succeed on a motion to dismiss litigation for inconvenience.[28] The Supreme Court of Delaware has stated that, "the absence of such other pending action is an important, if not controlling, consideration."[29] It is appropriate, then, that the Court should begin its analysis with this factor. Simply stated, there is no presently-pending action in another jurisdiction. This fact weighs heavily against dismissal.

B. The Ease of Access to Proof

At first glance, the second factor, ease of access to proof, would appear to weigh in favor of The Coffee Bean's application. The Coffee Bean alleges that all of its employees are located in Florida, including Mr. Aguilla. Its documents and equipment are also located there. The Coffee Bean argues that requiring its employees to come to Delaware during the litigation and for trial would cause a significant interruption to the business.

Notwithstanding The Coffee Bean's protestations of inconvenience, the Court is not persuaded by the argument and finds that any business disruption that may occur can easily be mitigated. If necessary, any depositions that would need to be taken of The Coffee Bean's employees could occur in Florida or be taken by video

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[28] *Id.* at 1308. *See also Taylor v. LSI Logic Corp.*, 689 A.2d 1196, 1200 (Del.1997)("[J]udicial discretion is to be exercised sparingly where, as here, there is no prior action pending elsewhere.").

[29] *Id.*

conference or similar technology.[30] Further, The Coffee Bean has not demonstrated that this is a document intensive case that would require it to transport volumes of documents from Florida to Delaware. Finally, the Court notes that if a Coffee Bean employee did have to be present in Delaware for a proceeding (including trial), the plane ride from Miami to Philadelphia takes only three hours.[31] The Coffee Bean has not met its burden on this factor.

C. The Availability of Compulsory Process for Witnesses

In connection with this factor, Delaware law requires the Defendant to identify the witnesses not subject to compulsory process and the specific substance of their testimony.[32] Here, while The Coffee Bean has generally argued that third-party witnesses may not be available in Delaware, they have not identified who these witnesses are or how their testimony would be relevant to this case. Without more, the Court must find that The Coffee Bean has not sustained its burden on this factor.

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[30] *Sequa,* 1990 WL 123006, at *5 (finding that the defendants had not "made any or sufficient showing why the testimony of [the] out-of-state, non-party witnesses could not be presented by...video tape deposition.").

[31] *See* http://www.expedia.com. *See also Fawcett v. State*, 697 A.2d 385, 388 (Del. 1997)("A Court may take judicial notice of a fact if that fact is not subject to reasonable dispute in that it is either (1) generally known within the territorial juridiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.").

[32] *Sequa,* 1990 WL 123006, at *5.

D. Viewing the Premises

The Coffee Bean argues that the fourth factor, the possibility of viewing the premises, favors dismissal because the coffee packaging machine that Fres-co serviced is located in Florida. But The Coffee Bean offers no reason why viewing the coffee packaging machine would be necessary in this case where the service performed on the machine, rather than the machine itself, appears to be the focus of the controversy.[33] Moreover, if an inspection of the equipment becomes relevant, the inspection can be captured photographically or digitally and then be displayed to the Court or the fact-finder as needed.[34] The Court, therefore, is not persuaded that this factor favors dismissal.

E. Whether Delaware Law is Applicable

The only factor that favors The Coffee Bean is that Delaware law does not appear to apply to this controversy.[35] The Court finds, however, that this factor alone

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[33]*See Monsanto,* 559 A.2d at 1038 (finding that the viewing of the premise factor did not weigh in the defendant's favor where the court was not persuaded that viewing the site was necessary or even relevant to the issues in the case).

[34]*See Candlewood Timber Group, LLC v. Pan American Energy, LLC,* 859 A.2d 989, 1002 (Del. 2004)(finding that defendant "made no effort to explain why video technology and other visual aids would be less informative than an in-person expedition," nor provided any cases which state that "forced reliance on video or other visual aids, in lieu of personal inspection, was found to be a hardship."). *See also Sequa*, 1990 WL 123006, at *6 ("[P]hotographs or other audiovisual aids would be a satisfactory substitute to an 'on-site' inspection.").

[35]Delaware law does not appear to apply because this is a quasi-contract action involving goods and services allegedly provided by Fres-co from Pennsylvania to The Coffee Bean in Florida.

is insufficient to tip the balance in favor of The Coffee Bean.[36]

F. Other Practical Considerations

Finally, The Coffee Bean argues that the other "practical considerations" in this matter favor dismissal. Specifically, The Coffee Bean argues that it will bear increased litigation cost by litigating in Delaware when compared to Florida. The Coffee Bean relies upon *IM2 Merchandising & Manufacturing, Inc. v. Tirex Corporation* [37] to show that the increased litigation costs incurred by a defendant while litigating in a particular jurisdiction is an important factor to consider in the forum non conveniens analysis. While the Court agrees that in some cases this consideration may tip the balance in favor dismissal, this is not that case.

In *IM2*, the Court of Chancery granted the defendant's motion to dismiss based on forum non conveniens.[38] The court found that Quebec, Canada, not Delaware, was the appropriate forum for the litigation.[39] In granting the motion, the court found two practical considerations to be important in its analysis of the increased litigation

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[36]*See Taylor*, 689 A.2d at 1200 ("The application of foreign law is not sufficient reason to warrant dismissal under the doctrine of forum non conveniens.").

[37]2000 WL 1664168 (Del. Ch.)

[38]*Id.* at 12.

[39]*Id.* at 11.

costs: the financial condition of the defendant and the plaintiff's domicile.[40] The court found that the defendant, a Delaware corporation with its headquarters in Montreal, Canada, was not a picture of financial health and, therefore, would likely not be able to bear the cost of litigating in Delaware.[41] Moreover, and obviously important to the court's ultimate conclusion, the plaintiff was a Quebec corporation and the defendant was arguing that Quebec was a more appropriate forum.[42] The court noted that where "the defendants are seeking to displace a plaintiff's chosen forum in favor of the forum where the plaintiff lives, the ramifications to the plaintiff are far less dramatic than if a grant of the defendant's motion will force the plaintiff to litigate some place distant from the plaintiff's domicile."[43]

Here, The Coffee Bean is requesting that Fres-co litigate somewhere distant from its domicile. Additionally, there has been no argument that The Coffee Bean is in a precarious financial condition such that it could not afford the cost of litigating in Delaware. The Coffee Bean is simply arguing that litigating in Delaware will be more expensive than litigating in Florida. By requesting that the litigation be moved

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[40] *Id.* at 9.

[41] *Id.*

[42] *Id.* at 1.

[43] *Id.* at 9.

to Florida, The Coffee Bean is, in essence, requesting that the Court shift this extra expense to Fres-co by requiring Fres-co to litigate in Florida, a venue that will likely be less convenient and more expensive for Fres-co. The Coffee Bean's effort to cost-shift cannot be countenanced given the substantial deference that must be shown to a plaintiff's choice of forum.[44] This factor does not justify dismissal.

V.

In conclusion, the Court finds that only one factor - - the application of foreign (non-Delaware) law - - favors The Coffee Bean's effort to move this case from Delaware. This factor alone will not carry The Coffee Bean's burden of demonstrating overwhelming inconvenience. Accordingly, the Motion to Dismiss is **DENIED.**

IT IS SO ORDERED.

/s/ Joseph R. Slights, III
Judge Joseph R. Slights, III

Original to Prothonotary

[44] *See sequa*, 1990 WL 123006, at *3 ("Delaware courts recognize that a plaintiff's choice of forum is to be afforded great deference.").