

CASE STUDY PREPARED FROM ORIGINAL PUBLISHED OPINION

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Martinez v Ford Motor Company, et al. (5/27/2010)

Motion to Dismiss; Forum Non Conveniens

In February 2006, Plaintiffs and decedents were traveling in Mexico in their Ford Explorer, when a rollover accident occurred. Plaintiffs alleged the tread from one of their tires separated, causing a loss of control. Plaintiffs and the survivors of the dead passengers filed suit in San Diego County, in October 2006, alleging strict and negligent product liability, against Ford Motor Company and Cooper Tire and Rubber Company. Plaintiffs attached certified Spanish to English translations of official death certificates issued by Mexican authorities. The certificates identified decedents' nationality as "Mexican" and also identified the nationality of decedents' survivors, their parents, as "Mexican."

In January 2007, defendants answered. At the time both defendants were parties to a Judicial Council Coordination Proceeding in Los Angeles Superior Court known as the "Winston Tire Cases." On the date the answer was filed, Cooper petitioned to transfer the San Diego case to Los Angeles to be included in the coordinated proceeding. The motion was granted and the case was transferred.

Defendants then propounded extensive discovery to plaintiffs. They asked for multiple categories of documents, and served form and special interrogatories. Each plaintiff received over 70 special interrogatories from Ford, and was also served with a 28 page "plaintiff fact sheet" by Cooper. In all, over 1,400 pages of written discovery was served by the defendants and plaintiffs' responses spanned more than 650 pages. Cooper also took possession of the tires in July 2007.

In February 2008, defendants moved to dismiss the case based on forum non conveniens. They asserted plaintiffs' ties to Mexico predominated over any ties to California, and that would be the appropriate forum for the case. The accident occurred in Mexico, plaintiffs were Mexican nationals, and all lived in

Mexico. Defendants alleged the ties to California were minimal. Plaintiffs opposed, arguing defendants had delayed their motion to dismiss to take advantage of discovery mechanisms in California, not available to them in Mexico. The trial court granted the motion, dismissing the case. This appeal followed.

Division Eight of the Second Appellate District noted that forum non conveniens is an [equitable doctrine](#). (*Stangvik v Shiley Inc.* (1991) 54 Cal.3d 744) It invokes a trial Court's discretionary power to decline to exercise the jurisdiction it has over a cause of action when it believes the action may be more appropriately and justly tried elsewhere. It is a measure of the virility and flexibility of equitable principles that they may be applied to the end that neither party is permitted to secure an advantage to the prejudice of another. (See, *Elbert, Limited v Federated Income Properties* (1953) 120 Cal.App.2d 194)

Mexico does not allow the type or scope of discovery that California permitted defendants to propound in this case. A witness on Mexican law confirmed, "...we don't have discovery in Mexico." Ford and Cooper could not have received the discovery they obtained litigating in California. [A party abuses the discovery process when it takes advantage of California's laws and legal processes to propound discovery beyond the scope of establishing the grounds for a forum non conveniens motion and then, after getting its discovery, asserts California is an inconvenient forum.](#) (*Groom v Health Net* (2000) 82 Cal.App.4th 1189)

The Justices noted that defendants' successful transfer of plaintiffs' complaint to Los Angeles conflicts with their assertion that California is an inconvenient forum because the coordination proceedings presuppose the efficiency and convenience of trying multiple cases that share the "common glue" that tires designed and manufactured by Cooper Tire caused the injuries alleged in the coordinated lawsuits.

Defendants argue there is no time limit on bringing the motion, and contend their motion filed 18 months after the complaint was timely. Discovery directed toward developing the factual underpinnings of a motion for forum non conveniens might be necessary, and thus, by implication, not prejudicial. The Second DCA turned to the case of *Roulier v Cannondale* (2002) 101 Cal.App.4th 1180, in which a Swiss resident bought a bicycle in California and took it back to Switzerland, where he suffered injuries in an accident. He sued the bike shop and manufacturer in Los Angeles for selling a defective bicycle. The

manufacturer served extensive discovery, much of which had nothing to do with the proper forum, and later moved to dismiss. The trial court denied the motion because, "...the site of the accident is collateral to the issues raised by products liability and breach of warranty actions. Having the matter heard in California will ease access to evidence regarding design and manufacture, both of which took place in the United States." (Id. at p. 1184)

The appellate court sustained the ruling. *When a party uses judicial discovery procedures for an unfair advantage, using discovery procedures not available to discover plaintiffs' strategy and evidence before moving to dismiss, prejudice can be established.* Defendants suggest they were not alert to the possibility of a forum non conveniens motion until after they propounded discovery. Ford claimed it had no reason to know such grounds existed until receiving plaintiffs' discovery responses.

Yet the Justices pointed out that the complaint attached death certificates which clearly illustrated the issue, long before the discovery was served. Defendants did nothing with that knowledge for 18 months, and took discovery beyond the scope of what was necessary for a forum non conveniens argument. Defendants used a California court for discovery they could not have obtained in Mexico to get evidence unrelated to their forum non conveniens motion. Having availed themselves of the advantages of California courts to the prejudice of plaintiffs, defendants cannot now be heard to say our state's courts are inconvenient.

The judgment is reversed and the matter is remanded to the trial court to vacate its previous order and enter a new order denying defendants' motion. Plaintiffs are to recover their costs on appeal.