

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0659**

Steven A. Sugarman, et al.,
Appellants,

vs.

Muddy Waters Capital, LLC, et al.,
Respondents,

Jason Galanis,
Defendant,

Castalian Partners, LLC., et al.,
Respondents,

David Q. Mathews, et al.,
Respondents.

**Filed November 14, 2022
Reversed and remanded
Connolly, Judge**

Hennepin County District Court
File No. 27-CV-21-11850

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Considered and decided by Connolly, Presiding Judge; Chief Judge Segal; and Johnson, Judge; .

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellants challenge the dismissal of their defamation and related claims under the doctrine of forum non conveniens, arguing that the district court erred by failing to (1) analyze the adequacy prong of the forum-non-conveniens analysis, (2) afford appellants the proper presumption in favor of their chosen forum, and (3) safeguard appellants' procedural rights in dismissing the case. Because the district court failed to properly analyze the adequacy prong of the forum-non-conveniens analysis and failed to properly apply the presumption in favor of appellants' chosen forum, we reverse and remand.

FACTS

Appellant Steven A. Sugarman is a California businessman and the former chairman of the board, president, and chief executive officer of Banc of California (BAC).¹ He is also the managing member of appellant COR Capital, LLC, and appellant COR Advisors, LLC, both of which are Delaware limited-liability companies that are headquartered and registered to do business in California.

¹ Sugarman resigned from BAC in October 2017.

The respondents in this case are (1) Castalian Partners Value Fund, LP (Value Fund), a Delaware limited partnership with its principal place of business in Excelsior, Minnesota; (2) Castalian Partners, LLC (Castilian Partners), a Minnesota limited liability company with its principal place of business at the same address as Value Fund; (3) James Gibson, a Minnesota resident and the manager of Castalian Partners and the executive officer of Value Fund; (4) Muddy Waters Capital, LLC, Muddy Waters Research LLC, MLAF LP, and MWCP, LLC (collectively, the Muddy Waters entities), all of which are entities formed under the laws of Delaware with their principal places of business in California; (5) Carson Block, a California resident and founder and managing member of the Muddy Waters entities; (6) David Q. Mathews, a resident of Texas; and (7) QKM, LLC, a limited liability corporation with its principal place of business in Texas.

In September 2021, appellants brought this action against respondents and defendant Jason Galanis, who was convicted of felony fraud and is currently incarcerated in California.² The complaint alleged that federal authorities, in connection with their investigation of Galanis’s fraud scheme, interviewed Sugarman while he was still employed at BAC. According to the complaint, Sugarman provided federal authorities with information detailing criminal activity of Galanis. Appellants alleged that Galanis reacted by joining respondents together in a conspiracy to attack appellants through anonymous blog posts and tweets between October 2016, and October 2018, and that “[f]or some members of the conspiracy,” respondents and Galanis sought to “defame . . .

² Galanis defaulted in district court and is not a party in this appeal.

Sugarman in order to profit from the resultant damage caused to the stock price of [BAC],” and “for others, the conspiracy was advanced in a malicious attempt to destroy . . . Sugarman’s reputation as revenge for his cooperation with the United States Government in criminal prosecution of now-convicted fraudsters.” Appellants’ complaint sought damages for defamation, civil conspiracy to defame, aiding and abetting defamation, and violation of the Minnesota Unfair and Deceptive Trade Practices Act. Additionally, the complaint sought injunctive relief.

After the events alleged in appellants’ complaint, but before they filed this action in Minnesota, several suits involving appellants and respondents were filed in California, some of which are still pending. One such lawsuit was filed by appellants against respondents and Galanis in the United States District Court for the Northern District of California on July 24, 2019, asserting common-law causes of action and causes of action for RICO violations. Respondents sought to transfer the case to the United States District Court for the Central District of California, dismiss the RICO causes of action, and strike the complaint. The federal court denied the motion to transfer venue, and granted, with leave to replead, the motion to dismiss the RICO causes of action. Appellants later amended their complaint, and respondents renewed their motions to transfer venue and to dismiss. The federal court subsequently granted the motion to transfer venue to the Central District of California, dismissed the RICO claims, and declined to exercise supplemental jurisdiction of the common-law claims.

Several months later, appellants filed this action in Minnesota. Respondents moved to dismiss for forum non conveniens and moved to strike and dismiss based on arguments

related to Minnesota and California defamation law and anti-SLAPP statutes.³ The district court concluded that “California is a more convenient forum for this case to be heard than Minnesota” and, therefore, granted respondents’ motion to dismiss for forum non conveniens, “conditioned on the availability of an alternative forum in California.” The district court also concluded that respondents’ “Motion to Strike and Dismiss is therefore moot.” This appeal follows.

DECISION

Appellants challenge the district court’s decision to grant respondents’ motion to dismiss for forum non conveniens. Forum non conveniens is an equitable doctrine whereby a court may, in its discretion, “decline jurisdiction over transitory causes of action brought by nonresident citizens or noncitizens of this state when it fairly appears that it would be more equitable to have the case tried in another available court of competent jurisdiction.” *Hague v. Allstate Ins. Co.*, 289 N.W.2d 43, 45 (Minn. 1978). A forum-non-conveniens determination “is committed to the sound discretion of the [district] court,” to which substantial deference is given. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 257 (1981); see *Bergquist v. Medtronic, Inc.*, 379 N.W.2d 508, 511-12 (Minn. 1986). We will not reverse a forum non conveniens dismissal by the district court unless there has been an abuse of discretion. *Paulownia Plantations de Panama Corp. v. Rajamannan*, 793 N.W.2d 128, 133 (Minn. 2009). “A district court abuses its discretion in the context of forum non

³ “Typically, anti-SLAPP statutes protect the exercise of two types of public participation rights: the right to free speech and the right to petition the government.” *Leiendecker v. Asian Women United of Minn.*, 848 N.W.2d 224, 228 (Minn. 2014).

conveniens when the court makes an erroneous legal conclusion or a clearly erroneous factual conclusion.” *Id.*

“The first step in a forum non conveniens analysis is for the district court to establish the existence of an available and adequate forum. A forum is ‘available’ when the foreign court has jurisdiction over the case and the parties.” *Id.* at 133-34 (citations omitted). Conversely, the “adequacy” consideration “encompasses whether the party has an effective remedy in the alternative forum.” *Id.* at 134; *Piper*, 454 U.S. at 254 n.22 (stating that, in rare circumstances, the other forum may not be an adequate alternative, such as where the forum does not permit litigation of the dispute).

If an adequate alternative forum is available, the second step in a forum-non-conveniens analysis requires the district court to weigh the private- and-public-interest factors of both forums. *Paulownia*, 793 N.W.2d at 137. The private-interest factors are:

- (1) the relative ease of access to sources of proof;
- (2) availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses;
- (3) possibility of view of premises, if view would be appropriate to the action; and
- (4) all other practical problems that make trial of a case easy, expeditious, and inexpensive.

Id. at 137 (quotation omitted). The public-interest factors are:

- (1) the administrative difficulties flowing from court congestion;
- (2) the local interest in having localized controversies decided at home;
- (3) the interest in having the trial of a diversity case in a forum that is familiar with the law that must govern the action;
- (4) the avoidance of unnecessary problems in conflict of laws, or in the application of foreign law; and
- (5) the unfairness of burdening citizens in an unrelated forum with jury duty.

Id. (quotation omitted). There is a strong presumption in favor of the plaintiff's choice of forum, *id.*, and a court must weigh the private- and public-interest factors of each forum to determine whether the presumption has been successfully rebutted. *Bergquist*, 379 N.W.2d at 511. A dismissal of an action on grounds of forum non conveniens must be on conditions that protect a plaintiff's Minnesota procedural rights, which includes statutes of limitations. *Kennecott Holdings Corp. v. Lib. Mut. Ins. Co.*, 578 N.W.2d 358, 361-62 (Minn. 1998) (“[W]e hold that a dismissal based on *forum non conveniens* must be conditioned on the preservation of the benefits of those laws as were applicable in Minnesota. Procedural rights of a party should not yield to convenience.”).

Appellants argue that the district court committed reversible error by failing to properly (I) consider the adequacy step of the forum-non-conveniens analysis; (II) afford appellants with the strong presumption in favor of their choice of forum, to which they are entitled; and (III) condition dismissal of appellants' action on an available alternative forum in California.

I. The district court failed to properly consider whether California is an adequate forum.

The district court determined that “California is an adequate alternative forum for the case—that is, California has jurisdiction over the parties and subject matter.” But appellants contend that “[m]issing from” the district court's order “is any actual analysis of whether California is an adequate forum for purposes of transfer after dismissal pursuant to forum non conveniens.” Appellants contend that the district court “committed reversible

error in conflating ‘availability’ . . . with ‘adequacy’ . . . and then completely failing to perform any analysis as to the ‘adequacy’ of California as a transferee forum.”

Respondents argue that appellants have forfeited this argument because they failed to provide the district court any reason to conclude that California offers them no effective remedy. Instead, respondents argue that appellants “conceded [that] California offers an effective remedy by filing there, twice.” We disagree.

When opposing a plaintiff’s choice of forum, it is the defendant who has the burden of proof. *Ansello v. Wisconsin Cent., Ltd.*, 900 N.W.2d 167, 174 (Minn. 2017). Here, respondents are employing the wrong legal standard because respondents, as the moving parties, bear the burden in their forum-non-conveniens motion. *See id.* Moreover, respondents cite no caselaw supporting their argument that appellants have forfeited their argument as to adequacy by previously filing a similar action in another state. We therefore conclude that appellants’ adequacy argument is properly before us.

Turning now to the merits of appellants’ argument, we again recognize that “‘adequacy’ encompasses whether the party has an effective remedy in the alternative forum.” *Paulownia*, 793 N.W.2d at 134. An alternative forum is generally adequate if “the forum permits litigation of the subject matter of the dispute.” *Bank of Credit & Com. Int’l (Overseas) Ltd. v. State Bank of Pak.*, 273 F.3d 241, 246 (2nd Cir. 2001) (quotation omitted). Differences in substantive law between forums are irrelevant, unless “the remedy provided by the alternative forum is so clearly inadequate or unsatisfactory that it is no remedy at all.” *Bergquist*, 379 N.W.2d at 512 (quotation omitted); *see State Bank of Pak.*,

273 F.3d at 246 (stating that an adequate forum does not exist if a statute of limitations bars the bringing of a case in that forum).

In *Paulownia*, the plaintiff invested in the defendant's plan to commercially grow trees in Panama. 793 N.W.2d at 131. After the tree plantations failed, the plaintiff brought suit in Minnesota, where the defendant resides and where the plaintiff wired the majority of its investment money. *Id.* at 130-31. The district court subsequently granted the defendant's motion to dismiss for forum non conveniens on the condition that Panama would accept jurisdiction of the case. *Id.* at 133. On appeal before the supreme court, the plaintiff argued that Panama is an inadequate forum because it is corrupt and because Panama's procedural rules are inadequate. *Id.* at 136. The supreme court stated that the "district court evaluated the limited information supplied to the court and concluded that Panama did not present the 'rare circumstance' of an inadequate alternative forum." *Id.* at 137. Thus, the supreme court held that the district court did not abuse its discretion in finding Panama to be an adequate alternative forum. *Id.*

Appellants argue that "*Paulownia* recognizes the issuance of a conditional dismissal order must come only after the [district] court has engaged" in an analysis of the relevant issues of foreign law and the district court concludes that the alternative forum is adequate. Appellants argue that, because the district court "did no such analysis," the "condition" contained in the district court's order is inadequate under *Paulownia*.

Respondents argue that the district court "did assess" the adequacy prong and, based on the lengthy history of litigation between the parties, "reached the obvious conclusion that California is adequate." Indeed, the district court specifically recognized that "there

have been similar (with many—if not all—the same Parties) cases ongoing [in California] for quite some time.” But the district court’s order fails to address any alleged differences in substantive law between Minnesota and California. And, although the district court’s memorandum of law analyzes the availability prong of the forum-non-conveniens analysis, the district court failed to analyze the adequacy prong. Instead, the district court confused “availability” with “adequacy” by stating that “California is an adequate alternative forum,” but then stating: “that is, California has jurisdiction over the parties and subject matter.” *See Paulownia*, 793 N.W.2d at 133-34 (stating that a forum is “available” when a foreign court has jurisdiction over the case, whereas the “adequacy” consideration “encompasses whether the party has an effective remedy in the alternative forum”). Without any analysis of the adequacy prong, there is uncertainty as to whether appellants have an effective remedy in California. Therefore, we reverse and remand for the district court to address the adequacy prong of the forum-non-conveniens analysis.

II. The district court failed to afford appellants the strong presumption in favor of their chosen forum.

Appellants also contend that, in considering the private and public interest factors, the district court erroneously failed to afford appellants’ choice of Minnesota as the forum for litigation the strong presumption to which it was entitled. Indeed, there is generally “a strong presumption . . . in favor of the plaintiff’s choice of forum.” *Paulownia*, 793 N.W.2d at 137. “[B]ut that presumption applies with less than maximum force when the plaintiff is foreign.” *Id.* (quotation omitted). As the supreme court recognized: “The difference makes sense. It is reasonable to assume that the plaintiff’s home forum is convenient when

the home forum has been chosen. When the plaintiff is foreign and has not chosen the home forum, the assumption of convenience is less reasonable.” *Id.*

Referencing *Paulownia*, the district court concluded that “the strong presumption in favor of [appellants’] choice of forum applies with less force here because [appellants’] have not filed in their home forum.” Appellants contend that this conclusion is erroneous because it is based on a “faulty interpretation” of *Paulownia*. Specifically, appellants argue that the supreme court in *Kennecott Holdings*, made “very clear” that the “holding concerning a lowered presumption applie[s] only to plaintiffs not from the United States[,] and that plaintiffs from the United States[,] but residing in states other than Minnesota[,] were entitled to the same strong presumption as Minnesota-resident plaintiffs.” We agree.

In *Kennecott Holdings*, the supreme court stated:

The Insurance Companies claim that the holding in *Piper* and adopted by this court in *Bergquist* applies to Kennecott, a group of Delaware corporations, on the theory that a nonresident of Minnesota is foreign for purposes of the *Piper* rule: that is, a nonresident of Minnesota has a lesser presumption of appropriateness as to the selection of its forum than a resident of Minnesota. We disagree. The plaintiffs in *Piper* and *Bergquist* were from foreign nations, not different states among the United States. Although those cases held that a foreign plaintiff’s choice of forum deserves less deference, we construe the reference to “foreign” to be in the context of nationality, not state residency. In *Bergquist*, when we adopted the rule in *Piper* with respect to a foreign national plaintiff, we stated: Why should the United States taxpayers, or taxpayers of Minnesota in the present case, be presumed to pay for the costs of trial for a plaintiff who is a citizen of a foreign nation; who has a remedy in his own country; and whose defendant consents to being sued in the foreign country? Furthermore, we drew a distinction between citizens of different states and foreign nationals, a distinction that clearly makes sense in a time when our state courts frequently

entertain jurisdiction over United States nationals but nonresidents of Minnesota. To accord less deference to the choice of forum of a United States citizen because the plaintiff is not a resident of Minnesota simply defies fairness and logic. Therefore we conclude that Kennecott is entitled to the same strong presumption in favor of its choice of Minnesota as its forum as would a Minnesota resident.

578 N.W.2d at 361 (quotations and citations omitted).

A proper construction of the holding in *Kennecott Holdings* dictates that, because appellants are United States citizens, they are entitled to the same strong presumption in favor of their choice of Minnesota as their forum as a Minnesota resident. *See id.* Respondents, however, largely ignore the *Kennecott Holdings* decision and argue instead that the district court's consideration of the public-and-private-interest factors supports the district court's decision to grant their motion for forum non conveniens.

To support their position, respondents cite *Paulucci v. Nelson*, No. A16-0043 (Minn. App. Aug. 8, 2016), a nonprecedential opinion. In that case, Florida residents brought suit in Minnesota against a Florida resident and a Minnesota resident. *Paulucci*, 2016 WL 4162868, at *1-2. On appeal from the district court's dismissal for forum non conveniens, the plaintiffs argued that the district court erred by not applying a presumption in favor of their choice of forum. *Id.* at *4. In affirming the district court, this court recognized that "the presumption is not determinative because it 'may be rebutted if the defendants can show that public and private interest factors favor another forum.'" *Id.* (quoting *C.H. Robinson Worldwide, Inc. v. FLS Transp., Inc.*, 772 N.W.2d 528, 539 (Minn. App. 2009)). This court then concluded:

The district court considered various factors and concluded that they favored the Florida forum, thereby implying that the presumption was rebutted. [The plaintiffs] do not cite any caselaw for the proposition that the absence of any mention of the presumption is, by itself, reversible error. Thus, the district court did not err simply because its conclusion is contrary to the presumption that the plaintiff's choice of forum generally is favored.

Id.

We are not bound by *Paulucci* because it is a nonprecedential opinion. *See* Minn. R. Civ. App. P. 136.01(c) (“Nonprecedential opinions . . . are not binding authority . . .”). Moreover, *Paulucci* is distinguishable because, in that case, there was no mention of the presumption, but here, the district court specifically stated that “the strong presumption in favor of [appellants’] choice of forum applies with less force here.” This is the wrong standard under *Kennecott Holdings*. And finally, because forum non conveniens is an equitable doctrine, the proper presumption must be applied in weighing the public-and-private-interest factors of both forums. Accordingly, we reverse and remand for the district court to apply the proper presumption when considering whether that presumption was rebutted by the public-and-private-interest factors. *See C.H. Robinson*, 772 N.W.2d at 539 (stating that the strong presumption in favor of the plaintiff's choice of forum is not determinative because it “may be rebutted if the defendants can show that the public and private interest factors favor another forum”).

Because we reverse and remand for the district court to address the adequacy prong of the forum-non-conveniens analysis and to apply the proper presumption in weighing the public-and-private-interest factors, we need not address appellants’ argument that the

district court erred by failing to properly condition dismissal of appellants' action on an available alternative forum in California. But we note that, if, on remand, the district court again determines that Minnesota is an inconvenient forum and dismisses the case, it must do so on the condition that California is an available alternative forum after addressing the applicable statutes of limitations in California and Minnesota, as well as both states' anti-SLAPP laws.

Reversed and remanded.