

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

- against -

APPROXIMATELY \$2,718,665.70
FORMERLY ON DEPOSIT IN PERSHING,
LLC., ACCOUNT NUMBER 009585 HELD
IN THE NAME OF KRISHNA
ENTERPRISES, LTD.,

Defendants in rem.

MURLI DATWANI, A/K/A MARK DATWANI:
AND FUNDACION GOKIYODAI,

Claimants.

KRISHNA ENTERPRISES, LTD.,

Claimant.
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DECISION AND ORDER

VICTOR MARRERO, United States District Judge.

On December 15, 2011, plaintiff the United States of America (the "Government") instituted this civil forfeiture action pursuant to 18 U.S.C. § 981(a)(1)(A) to forfeit and condemn funds (the "Funds") to the use of the Government consisting of approximately \$2,718,665.70 seized on or about July 8, 2011 from Pershing, LLC account number 009585 held in the name of or for the benefit of Krishna Enterprises, Ltd. ("Krishna"). On February 16, 2012, claimants Fundacion Gokiyodai ("Fundacion") and Murli

Datwani ("Murli") filed claims to the Funds. On February 21, 2012, claimant Krishna filed a claim to the Funds.

Fundacion and Murli moved to dismiss the action and subsequently filed an answer and an amended answer to the Government's complaint that included affirmative defenses and cross-claims against Krishna. Krishna also moved to dismiss the Government's complaint, and later the cross-claims of Fundacion and Murli.

At a pretrial conference held before Magistrate Judge Gabriel W. Gorenstein, upon learning that the Government intended to move to voluntarily dismiss the action pursuant to Federal Rule of Civil Procedure 41(a)(2) ("Rule 41(a)(2)"), Magistrate Judge Gorenstein stayed discovery and directed the parties to submit pre-motion letters to the Court.

By letter dated November 7, 2012, the Government informed the Court that it sought to voluntarily dismiss, discontinue, and abandon its civil forfeiture action pursuant to Rule 41(a)(2). The Government took no position as to whom the Funds should be returned or as to the Court's jurisdiction over Fundacion and Murli's cross-claims against Krishna.

By Order dated January 15, 2013, the Court held that the Government's civil forfeiture action was voluntarily dismissed with prejudice and the Government was no longer a party in the instant action. It further ordered that the Funds and any actual interest that has accrued thereon be transferred to and deposited in an interest-bearing escrow account under the sole control of Krishna's counsel, to be released only pursuant to an order of the Court. The Court also ordered that the Funds could be released only sixty days after service of an Order from the Court dismissing all remaining claims and cross-claims in this action with notice of entry in the event claimants have not by that date obtained and served a stay order from the United States Court of Appeals for the Second Circuit.

By letter dated January 29, 2013, Krishna requested that the Court dismiss the remaining claims on forum non conveniens grounds, citing Dubai as an adequate alternative forum for adjudication. The Court construes Krishna's letter as a motion to dismiss on grounds of forum non conveniens. By letter dated January 30, 2013, Fundacion and Murli maintained that the Southern District of New York was the most convenient forum for the adjudication of the

remaining claims, but asserted, in the alternative, that Panama was the most appropriate and convenient forum for the resolution of the remaining claims. Fundacion and Murli also proposed Switzerland or the British Virgin Islands (the "BVI") as secondary options that were more convenient forums than Dubai.

I. LEGAL STANDARD

Under the federal doctrine of forum non conveniens, "when an alternative forum has jurisdiction to hear [a] case, and when trial in the chosen forum would 'establish . . . oppressiveness and vexation to a defendant . . . out of all proportion to plaintiff's convenience,' or when the 'chosen forum [is] inappropriate because of considerations affecting the court's own administrative and legal problems,' the court may, in the exercise of its sound discretion, dismiss the case," even if jurisdiction and proper venue are established. Piper Aircraft Co. v. Reyno, 454 U.S. 235, 241 (1981) (quoting Koster v. (American) Lumbermens Mut. Casualty Co., 330 U.S. 518, 524 (1947)).

Forum non conveniens analysis has three steps. First, the Court "must determine the degree of deference that is

properly afforded the plaintiff's choice of forum." Norex Petroleum Ltd. v. Access Indus., Inc., 416 F.3d 146, 153 (2d Cir. 2005) (citing Iragorri v. United Techs. Corp., 274 F.3d 65, 73-74 (2d Cir. 2001) (en banc)). Then, it must determine "whether the alternative forum proposed by the moving party constitutes an adequate forum for the resolution of plaintiff's claims." Id. Finally, assuming the alternative forum is found to be adequate, the Court "must weigh the relevant private and public interest factors and determine whether the plaintiff's chosen forum or the proposed alternative is, in fact, more convenient and appropriate." Id. The Court must engage in a fact-intensive analysis and "there is no algorithm that assigns precise weights to the factors that inform forum non conveniens determinations." Gilstrap v. Radianz Ltd., 443 F. Supp. 2d 474, 477-78 (S.D.N.Y. 2006), aff'd, 233 F. App'x 83 (2d Cir. 2007) (internal quotation marks omitted).

The forum non conveniens doctrine does not require the Court to declare all permissible alternative forums or the specific permissible alternative forum, but only establish that a permissible alternative forum exists. See, e.g., Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 506-07 (1947)

(stating that the forum non conveniens doctrine "presupposes at least two forums in which the defendant is amenable to process" (emphasis added)).

II. DISCUSSION

Upon a review of the remaining claims, the Court concludes that dismissal on forum non conveniens grounds is warranted. The Court is persuaded that further proceedings in this forum would be unproductive and incompatible with judicial economy, and constitute an unnecessary waste of the parties' time and resources.¹

The operative facts largely arose in Panama and Dubai and the likely witnesses, third parties, and documents are located in either Panama or Dubai - well beyond the reach of the Court's subpoena power for third-parties. Fundacion is a family trust founded in Panama. Murli is a citizen

¹ Ordinarily there is a strong presumption in favor of the plaintiff's choice of forum. See Piper Aircraft, 454 U.S. at 250; DiRienzo v. Philip Servs. Corp., 294 F.3d 21, 28 (2d Cir. 2002); Iragorri, 274 F.3d at 70-71. However, here, the original plaintiff in this action, the Government, has voluntarily dismissed its cause-of-action pursuant to Rule 41(a)(2) and is no longer a party to this case. The Court therefore finds that the Government's choice of forum is not entitled to any deference under these circumstances. The Court also finds that Fundacion and Murli's choice of forum, as cross-claim plaintiffs, is not entitled to deference, because their cross-claims came before the Court only in connection with the Government's now-dismissed civil forfeiture proceeding. In addition, the fact that Fundacion is a foreign corporation and Murli is a foreign citizen also counsels against according deference to their choice of forum. See Iragorri, 274 F.3d at 71 ("[T]he choice of a United States forum by a foreign plaintiff is entitled to less deference.") (citation omitted).

and resident of Panama. Krishna is a corporation organized under the laws of the BVI and operating out of Dubai. No remaining party to this controversy therefore is a United States citizen and none of the operative events, other than the institution of the Government's civil forfeiture action, occurred in the United States. As a result, there is no material connection of this action to this Court and the core operative facts have, at best, only marginal links to the United States. See generally In re Alcon S'holder Litig., 719 F. Supp. 2d 263, 268-69 (S.D.N.Y. 2010); Do Rosario Veiga v. World Meteorological Org., 486 F. Supp. 2d 297, 303 (S.D.N.Y. 2007).

The Court therefore finds that the most convenient forums for this litigation are either Dubai or Panama. The Court is persuaded that the review of the relevant considerations, and the balancing of the public and private interest factors involved here, weigh heavily in favor of dismissal of this action on forum non conveniens grounds. See Gulf Oil Corp., 330 U.S. at 508-09 (1947).

Dismissal will be conditioned upon claimant Krishna's agreement, which shall be communicated to the Court within ten days of the date of this Order, consenting to the

jurisdiction of the appropriate courts in Dubai or Panama for the litigation of this action, and to accept service of process if sued by Fundacion and/or Murli in one of those forums in connection with this action.

III. ORDER

For the reasons discussed above, it is hereby

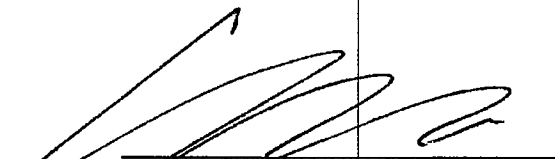
ORDERED that the motion (Dkt. No. 49) of claimant Krishna Enterprises, Ltd. to dismiss the remaining claims and cross-claims of claimants Fundacion Gokiyodai and Murli Datwani on grounds of forum non conveniens is **GRANTED**; and it is further

ORDERED that within ten days of the date of this Order claimant Krishna Enterprises, Ltd. submit to the Court a statement containing their agreement to consent to the jurisdiction of the appropriate courts of Dubai, United Arab Emirates or Panama for litigation of this matter, and to accept service of process if sued by Fundacion Gokiyodai and/or Murli Datwani in one of those forums in connection with this action.

The Clerk of the Court is directed to terminate any pending motions and close the case.

SO ORDERED.

Dated: New York, New York
22 May 2013



Victor Marrero
U.S.D.J.