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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

CHRISTINE REASER, Individually and as Personal Representative, etc., et al., Plaintiffs and Appellants, v. A.W. CHESTERTON COMPANY, et al., Defendants and Respondents.	B219026 (Los Angeles County Super. Ct. No. BC411344)

APPEAL from a judgment of the Superior Court of Los Angeles County. Abraham Khan, Judge. Reversed and remanded with instructions.

Simon, Eddins & Greenstone and Brian P. Barrow for Plaintiffs and Appellants.

Low, Ball & Lynch, Guy W. Stilson and Sonja E. Blomquist for Defendant and Respondent Armstrong International, Inc.

Carroll, Burdick & McDonough, James P. Cunningham and Susanne G. Arani for Defendant and Respondent Blackmer Pump Company.

Booth, Mitchel & Strange, Steven M. Mitchel and Jackie K. Vu for Defendants and Respondents Borg-Warner Corporation, by its Successor-in-Interest Borgwarner Morse Tec, Inc.

Foley & Mansfield, Keith M. Ameele and Tiffany M. Birkett for Defendant and Respondent BW/IP, Inc.

Tucker Ellis & West, Lillian Ma, Dean E. Short and John Son for Defendant and Respondent Carrier Corporation.

K&L Gates, Robert E. Feyder and Geoffrey M. David; Nicholas P. Vari (Of Counsel) and Michael J. Ross for Defendant and Respondent Crane Co.

Hassard Bonnington, Philip S. Ward, Robert L. Nelder and Nicole T. Roberts for Defendant and Respondent John Crane Inc.

Jackson Jenkins Renstrom, Gabriel A. Jackson, Peter K. Renstrom, Ana T. Portillo and Christine A. Huntoon for Defendant and Respondent DAP, Inc.

Carroll, Burdick & McDonough, James P. Cunningham and Susanne G. Arani for Defendant and Respondent Dover Corporation.

Pond North, Frank D. Pond and Previn A. Wick for Defendants and Respondents FMC Corporation on behalf of its former Northern Pump business; and McNally Industries, Inc.

Yukevich Calfo & Cavanaugh, James J. Yukevich, Steven D. Smelser and Patricia E. Ball for Defendant and Respondent Ford Motor Company.

Gordon & Rees, Michael J. Pietrykowski, Don Willenburg and T. Stephen Corcoran for Defendant and Respondent Gould Pumps, Inc.

Lynberg & Watkins, Ruth Segal, Ryan M. Terschluse and Rosemary H. Do; Vasquez, Estrada & Conway and Virginia Vasquez for Defendant and Respondent Hill Brothers Chemical Company.

Perkins Coie, David T. Biderman and Vick K. Mansourian for Defendant and Respondent Honeywell International Inc.

Bassi, Edlin, Huie & Blum, Robert S. Kraft, Jeffery J. Fadeff and Alice K. Loh for Defendants and Respondents Hopeman Brothers, Inc. and J.T. Thorpe & Son, Inc.

Howard Rome Martin & Ridley, Henry D. Rome, Bobbie R. Bailey and Lisa K. Rauch for Defendant and Respondent IMO Industries Inc.

Carroll, Burdick & McDonough, Laurie J. Hepler and Gonzalo C. Martinez for Defendant and Respondent Warren Pumps, LLC.

Hawkins Parnell Thackston & Young, Edward R. Ulloa, Julia A. Gowin and Kelly M. Hagemann for Defendant and Respondent Viking Pump, Inc.

Appellants, the estate of Robert Reaser, his wife and children challenge the trial court's order dismissing, on the grounds of *forum non conveniens*, the wrongful death/survival complaint alleging Mr. Reaser was exposed to products containing asbestos manufactured by almost four dozen respondents. The trial court concluded that Florida was the appropriate forum to adjudicate the matter and dismissed the California action. As we shall explain, while we conclude that the lower court did not err in granting the *forum non conveniens* motion based on the record then before it, the court should have stayed the action rather than dismissing it. Accordingly, we reverse.

FACTUAL AND PROCEDURAL BACKGROUND

1. Robert Reaser

Mr. Reaser was born in Stroudsburg, Pennsylvania in 1934 and was still living in Stroudsburg when he began service in the Navy in 1951. He served in the Navy from 1951 until 1971. While he served in the Navy he served on a number of Navy vessels stationed in various different locations and states including in San Diego for four months during the early 1950s, and in Long Beach from 1960 to 1964.[1] His work in the Navy while stationed in California included pipefitting and welding aboard the Naval vessels. According to appellants, Mr. Reaser's work in the Navy exposed him to products and materials containing asbestos.

After leaving the Navy in 1971, Mr. Reaser moved to Florida. Thereafter, he lived, raised a family and worked in Florida. He paid taxes in Florida from 1964 until his death in 2008. Before he retired in 1997, Mr. Reaser worked in construction and on automobiles. Appellants also claim that Mr. Reaser's work in construction and in automobiles exposed him to products that contained asbestos. After he retired, Mr. Reaser was diagnosed with mesothelioma, a type of cancer allegedly caused by exposure to asbestos. All of his treating physicians and treating hospitals are located in Florida.

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[1] Mr. Reaser also served on Navy vessels from 1951 until 1964 stationed in South Carolina, Massachusetts, Rhode Island and Florida.

2. Prior Lawsuits

On January 25, 2008, appellant Mrs. Reaser and Mr. Reaser filed a personal injury action and loss of consortium (BC 384385) in Los Angeles Superior Court against six defendants who manufactured products containing asbestos, and alleging he developed Mesothelioma resulting from Mr. Reaser's exposure to asbestos. The action was removed to federal court and is pending as a part of the Multi District Litigation ("MDL") filed in the Eastern District of Pennsylvania.

A week later on February 1, 2008, appellant Mrs. Reaser and Mr. Reaser filed another personal injury action in superior court (BC 384772) against a different group of more than 46 named defendants (and 450 Doe defendants), including a number of the respondents in this current action. The complaint alleged the exact same exposure history and claims as in the action that had been removed to federal court. Mr. Reaser's complaint also disclaimed any causes of action relating to federal enclave and federal officer jurisdiction.[2]

Defendants in that case moved to dismiss or stay based upon forum non conveniens grounds. The Reasers opposed the motion arguing that defendants had not shown that Florida was a suitable alternative forum for the action. On May 2, 2008, that motion was granted by Judge Paul Gutman and the action was stayed. Judge Gutman found that Florida was a suitable alternative forum and that the balance of the private and public factors weighed in favor of Florida. The court noted that the Reasers could seek to have the stay lifted if after filing the suit in Florida they could show that some of the defendants were not subject to personal jurisdiction there.

On May 31, 2008, Mr. Reaser passed away.

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[2] The Long Beach and San Diego shipyards where Mr. Reaser worked while in the Navy are located in federal enclaves, where the federal government exercises jurisdiction. (See *Taylor v. Lockheed Martin Corp.* (2000) 78 Cal.App.4th 472, 478.)

The Reasers filed a personal injury action in Florida in June 2008,[3] alleging the same claims against the same defendants as in the stayed California state court action. The Reasers alleged Mr. Reaser's exposure occurred in Florida or caused injury in that state. They further claimed that some of the named defendants had their principal place of business in Florida, while others conducted business or had sufficient contacts with the state to justify the exercise of Florida state court jurisdiction.

Defendant Hill Brothers Chemical Company ("Hill Brothers") (also a respondent in this action) specially appeared in the Florida state court to dismiss the action against it for lack of personal jurisdiction. In its motion, Hill Brothers claimed it was a California corporation with its principal place of business in Orange, California. It also asserted that it never sold asbestos in Florida and had conducted "negligible business" in the state of Florida.

Thereafter, in July 2008, before the Florida court could rule on Hill Brothers' motion, another defendant in the action, Elliott Turbomachinery, removed the Florida case to federal court.

In August 2008, Mrs. Reaser moved to lift the stay in the California state case so that she could amend the complaint to assert wrongful death and survival claims. She also argued that the stay should be lifted because Hill Brothers' motion to dismiss for lack of personal jurisdiction contained sufficient evidence to demonstrate that the Florida court lacked personal jurisdiction and that therefore, Florida was not a suitable forum for the litigation.

Judge Gutman denied the request to lift the stay and amend the complaint. The court explained:

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[3] At the time the Florida complaint was filed Mr. Reaser was a named plaintiff ; his counsel was apparently unaware that Mr. Reaser had died shortly before the action was filed.

> "While plaintiffs assert that the Florida court may not have any jurisdiction over Hill Brothers, the Florida court has yet to make any such determination. The Florida circuit court has not ruled on Hill Brothers' motion of 'no jurisdiction.' Consequently, the Florida circuit court has not determined that it lacks jurisdiction over Hill Brothers and this court will not speculate as to any such potential ruling. [¶] By reason of the foregoing, nothing has occurred to warrant reconsideration or revision of this court's May 2, 2008 ruling Florida is a suitable alternative forum."

3. Current Litigation

In early April 2009, Mrs. Reaser voluntarily dismissed the "stayed" California action, the Florida personal injury action and the federal personal injury action that had been created when the Florida state court action had been removed.

On April 7, 2009, Mrs. Reaser, on behalf of the husband's estate and herself and her adult sons and daughters (appellants here) filed this current action (BC 411344) for wrongful death and survival. The factual basis for the action is identical to that asserted in the personal injury actions, i.e., claiming that Robert Reaser developed mesothelioma as a result of alleged occupational exposure to asbestos-containing products. They have named more than 46 defendants and 450 Doe defendants.

In May 2009, defendant A.W. Chesterton filed a motion to dismiss or stay the action based on forum non conveniens. Chesterton asserted that Florida was the proper forum for the case. The motion was subsequently taken off calendar and in late June 2009, the court (Judge Abraham Khan) issued an Order to Show Cause (OSC) on the court's own motion to dismiss or stay the action based on forum non conveniens.[4] The

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[4] In the OSC, the court notified the parties of its intent to take judicial notice of the parties and court filings from the prior California personal injury case.

court authorized the parties to file briefs in support of or in opposition to the court's motion.[5]

Defendants urged the court to stay or dismiss the case, arguing that Florida had personal jurisdiction over the defendants either by stipulation or statute. They also pointed out that 20 of the named defendants were registered in Florida with agents for service of process.

Appellants opposed the OSC, arguing that the defendants had not shown that Florida was a suitable alternative forum. They pointed out that the inadequacy of the forum was demonstrated by the fact that Hill Brothers had already admitted in affidavits submitted in support of its prior motion to dismiss the Florida state case—that it was not subject to personal jurisdiction in Florida.

During oral argument at the OSC hearing on July 17, 2009, when the issue of Hill Brothers' prior position was raised, the court dismissed it:

> "I'm not relying so much on the fact that they've taken a position there which may be inconsistent with the position they've taken here so much as I'm relying on the fact that no court has passed judgment on their position. And just because they've argued it isn't the same as the court agreeing with them that that court has no jurisdiction over them and that's the point I think you are missing."

Appellants thereafter requested that the court "stay" rather than "dismiss" the action so that they could "get to the bottom of the issue of whether we can bring this case in Florida." The court denied the request. The court responded that because none of the plaintiffs were California residents and because: "California courts are presently in an unprecedented crises involving budget shortfalls, where court operations have been

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[5] Hill Brothers filed a brief in support of the stay or dismissal of the action. Hill Brothers accused appellants of forum shopping. Although it did not mention its prior motion to dismiss based on lack of jurisdiction in the Florida state case, Hill Brothers argued that the case belonged in Florida. Hill Brothers also represented that it was a Delaware corporation with a principal place of business in Norwalk, Connecticut.

greatly curtailed on staff-furlough days, such that the California courts can ill afford to accept with generosity cases of foreign residents belonging in other jurisdictions, thereby further increasing California case backlogs and court congestion for California residents. Although the Court would stay this entire action, in its discretion, if dismissal were not supported by the evidence, it instead determines that dismissal, as to overwhelmingly foreign residents, is authorized in light of the extraordinary circumstances." The court dismissed the action without prejudice.

This appeal followed in September 2010.

DISCUSSION

Forum non conveniens is an equitable doctrine by which a trial court may decline to exercise its jurisdiction to hear a case when it believes that the case may be more appropriately and justly tried elsewhere. (*Stangvik v. Shiley Inc*. (1991) 54 Cal.3d 744, 751 (*Stangvik*).) The doctrine is codified in Code of Civil Procedure section 410.30. The statute provides, in relevant part: "When a court upon motion of a party . . . finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just." (Code Civ. Proc., § 410.30, subd. (a).)

The defendants, as the moving parties in a *forum non conveniens* motion, bear the burden of proof. (*Stangvik, supra,* 54 Cal.3d at p. 751.) In ruling upon the motion, the trial court engages in a two-step analysis. First, it must determine whether there is a suitable alternative forum. If it finds that there is, it then must weigh the private interests of the litigants and the interest of the public in keeping the case in California.[6] (*Ibid*.)

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[6] After the trial court determines that another state constitutes a suitable forum, it must next "consider the private interests of the litigants and the interests of the public in retaining the action for trial in California." (*Stangvik, supra,* 54 Cal.3d at p. 751.) The private interests include the "ease of access to sources of proof, the cost of obtaining attendance of witnesses, and the availability of compulsory process for attendance of unwilling witnesses. The public interest factors include avoidance of overburdening local courts with congested calendars, protecting the interests of potential jurors so that they are not called upon to decide cases in which the local community has little concern, and

When the plaintiff is a resident of the forum state, the choice of forum is afforded substantial weight; however, a non-resident plaintiff's choice is entitled to less deference. (*Ford Motor Co. v. Insurance Co. of North America* (1995) 35 Cal.App.4th 604, 611.)

The first prong of the analysis presents a non-discretionary determination—if the lower court finds there is a suitable alternative forum, then the court exercises its discretion to determine and balance the public and private interests. Suitability of a forum is a legal question which we review de novo when the court's determination is based on undisputed facts. (*Roulier v. Cannondale* (2002) 101 Cal.App.4th 1180, 1186; *Cemwood, supra,* 87 Cal.App.4th at p. 436.) Where, however, the suitability determination is based on disputed facts this court will determine whether substantial

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weighing the competing interests of California and the alternate jurisdiction in the litigation." (*Ibid*.) The trial court's ruling on this step is reviewed for abuse of discretion. (*American Cemwood Corp. v. American Home Assurance Co.* (2001) 87 Cal.App.4th 431, 436 (*Cemwood*).)

Before this court, appellants make no claim that the trial court erred in striking this balance. In fact, their argument on appeal is premised entirely upon the first threshold determination concerning the suitability of the forum. On this record, we would nonetheless uphold the trial court's ruling that both the private and public interests weigh in favor of trying the case in Florida. Mr. Reaser lived and worked in Florida from 1964 until his death. He was stationed on Navy vessels in San Diego and Long Beach for a little over four years in the early to mid 1950s. It appears his contact with asbestos products in California was serendipitous—linked to his service on the Navy vessels in federal enclaves. Notably he has disclaimed any causes of action relating to his exposure in federal enclaves. Thus, the logical (if not only reasonable) inference is that the majority of his exposure occurred in Florida and most of the evidence (witnesses and documents) relevant to proving the liability portion of his claim would be found in Florida. Further, Mr. Reaser was diagnosed with mesothelioma in Florida and received his treatment there. Thus, the vast majority of the relevant medical records and witnesses are in Florida. Lastly, California residents should not be expected to serve as jurors in a case involving injuries incurred primarily outside of California by a non-resident. (*Hansen v. Owens-Corning Fiberglas Corp.* (1996) 51 Cal.App.4th 753, 760.) In sum, the trial court did not abuse its discretion in finding that the private interests of the litigants and the interests of the public weighed in favor of trying this case in Florida.

evidence supports the trial court's finding that a suitable forum exists. (*Guimei v. General Electric Co.* (2009) 172 Cal.App.4th 689, 696.)

Here appellants claim the lower court erred in finding that a suitable alternative forum existed in Florida. Specifically, they claim that respondents failed to satisfy their burden to demonstrate that *all* of the named defendants were subject to personal jurisdiction in Florida.

A state other than California is a suitable alternative forum for the lawsuit "if there is jurisdiction and no statute of limitations bar to hearing the case on the merits." (*Chong v. Superior Court* (1997) 58 Cal.App.4th 1032, 1037.)

The crux of the controversy on appeal is whether the moving parties must establish that the alternative forum, here, Florida can exercise personal jurisdiction over each and every defendant before the forum non conveniens motion can be granted. In that regard, *Hansen v. Owens-Corning Fiberglas Corp.* (1996) 51 Cal.App.4th 753 (*Hansen*) is instructive. *Hansen* was an asbestos case with 200 named defendants. (*Id.* at p. 756.) One defendant moved, pursuant to the forum non conveniens doctrine, to stay the litigation because Montana, where the plaintiff had lived and where most of the asbestos exposure allegedly occurred, was a suitable alternative forum. (*Id.* at pp. 756-757.) The moving defendant was amenable to service of process in Montana and the "vast majority of [the] defendants [had] contacts in both California and Montana." (*Id.* at p. 757.) However, at least three other defendants did not consent to jurisdiction in Montana and it was not known whether they had sufficient contacts with Montana to subject them to personal jurisdiction. (*Id.* at p. 758.) The trial court granted the motion to stay the California litigation subject to the following condition. After the plaintiff filed suit in Montana, he could return to the California trial court and request the stay be lifted if he could conclusively show that Montana was not a suitable alternative jurisdiction. (*Id.* at pp. 756-757.)

The appellate court affirmed the trial court's order. It rejected the plaintiff's argument that the moving party was required to prove that all defendants were amenable to service in Montana. It explained that it was "aware of no authority that a moving

defendant must show all defendants are subject to jurisdiction in a particular alternative forum." (*Id.* at pp. 758-759.) It concluded, after analyzing the cases relied upon by the plaintiff for that proposition, that none "state[d] or implie[d] all defendants must be subject to jurisdiction in an alternative forum before an order staying an action can be affirmed." (*Id.* at p. 759.) Given the lack of specific precedent on the issue, the *Hansen* court reasoned: "In asbestos cases such as this, where there are 200 named defendants, it is unreasonable to expect the moving defendant to prove all defendants are subject to jurisdiction in a particular alternative forum. Given the early stage for bringing a forum non conveniens motion, it would likely be unclear in many cases whether all defendants were even subject to jurisdiction in California." (*Id.* at p. 759.) Because the trial court had stayed the action pending a determination that all defendants were subject to jurisdiction in Montana, the appellate court upheld its ruling.

This case is similar to *Hansen* because it involves an asbestos claim against multiple defendants. Although *Hansen* involved 200 defendants and this case involves 46 named defendants, we do not think that numerical difference is a material distinction. We believe that the governing principle remains that in such a large multi-defendant action, the moving defendant need not show that all defendants are subject to jurisdiction in the same alternative forum before an action can be *stayed* based upon the principle of forum non conveniens. (*Hansen, supra,* 51 Cal.App.4th at pp. 758-759.)

Here, at the time the trial court ruled upon the motion, there were 46 named defendants. The defendants in this action were the same as those named in the prior personal injury action filed in Florida. Only one of those named in the prior action (and this wrongful death/survival action) – Hill Brothers had contested personal jurisdiction in Florida. All of the others had submitted to jurisdiction in Florida in that prior action, and the Florida state court did not rule on Hill Brothers' jurisdictional challenge. The lower court ruling on the instant *forum non conveniens* motion was well aware of these matters having granted judicial notice of the filings in the prior litigation. Consequently, at the time the lower court ruled on the forum non conveniens motion in this case there was no

showing that any one of the defendants was not subject to Florida jurisdiction.[7] There was, however, evidence in the record from which the lower court could infer that the majority of the defendants were amenable to service of process in Florida.

Appellants assert, however, that *Hansen* should be rejected as unsound. But, appellants' contrary arguments are not persuasive.

First, they rely heavily upon *Cemwood, supra*, 87 Cal.App.4th 431. There, the plaintiff insured filed an action in California against *five* of its insurers for declaratory relief and damages. The insurers were located in four different states; the plaintiff insured's parent corporation was located in Canada. Two of the defendant-insurers filed an action against the plaintiff in Canada and moved to dismiss or stay the California action on the basis of forum non conveniens. The trial court did not determine whether

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[7] After the trial court granted the *forum non conveniens* motion, appellants filed a wrongful/survival action in Florida against all of the defendants named in the California lawsuit. Three of the defendants, Hill Brothers, Syd Carpenter Marine Contractors, Inc. and M. Slayen and Associates, Inc. filed motions to dismiss in Florida for lack of personal jurisdiction. Appellants responded with cursory two-page oppositions to each. The Florida trial court granted the motions. Appellants have asked this court to take judicial notice of the proceedings—the parties' motions, the oppositions and the court's rulings—in the Florida Court. Appellants argue that the orders are relevant because they demonstrate that Florida was a suitable alternative forum.

We grant these requests pursuant to Evidence Code sections 452, subdivision (d), and 459, subdivision (a). However, this does not help appellants. While we take judicial notice of the existence of the documents in court files, generally we do not take judicial notice of the truth of the facts asserted in such documents. (See *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1564-1565.) Even if there are hearsay facts asserted within the records specified by the appellants that demonstrate that these three defendants are not subject to the personal jurisdiction of the Florida courts, appellants cannot rely upon such facts *on appeal of this matter* to show that Florida is not a suitable forum. "Reviewing courts generally do not take judicial notice of evidence not presented to the trial court. Rather, normally 'when reviewing the correctness of a trial court's judgment, an appellate court will consider only matters which were part of the record at the time the judgment was entered.' [Citation.] No exceptional circumstances exist that would justify deviating from that rule[.] [Citations.]" (*Vons Companies, Inc. v. Seabest Foods, Inc*. (1996) 14 Cal.4th 434, 444, fn. 4.)

all five defendants named in the California action were subject to jurisdiction in Canada. Instead, it granted the motion to stay subject only to the condition that the defendants agree to toll the statute of limitations. (*Id.* at pp. 434-435.)

The plaintiff appealed, contending that Canada was not a suitable alternative forum because the defense had failed to establish that all five defendants could be sued in Canada. The appellate court agreed, distinguishing *Hansen* in two important regards. One was that *Hansen* involved 200 named defendants whereas the case under review involved "but five defendants" so "it would not be unreasonable here to expect [the two moving defendants] to prove the three other defendants are subject to jurisdiction in a particular alternative forum." (*Id.* at p. 440.) The second distinction was that the *Hansen* trial court had stayed the California action pending a determination that all defendants were subject to jurisdiction to Montana whereas the *Cemwood* trial court had not conditioned its ruling on any subsequent determination about the other defendants' amenability to service in the alternative forum. Further, the two cases can be reconciled. Each case's holding is consistent with accepted forum non conveniens principles. Ordinarily the burden is on the moving defendant to demonstrate that the defendants are subject to jurisdiction in the alternative forum. However, if that showing cannot be made in a large multi-defendant lawsuit, then the action may be stayed (but not dismissed), pending a determination about the alternative forum's ability to exercise jurisdiction over all defendants. We therefore decline appellants' invitation to reject *Hansen* and conclude the lower court did not err when it failed to require that respondents prove that all named defendants were subject to personal jurisdiction in Florida.

Notwithstanding our conclusion on this narrow legal question, as we shall explain, we nonetheless also conclude that based on the history and circumstances of this litigation and the prior litigation involving these parties, the court erred when it *dismissed* the case rather than *staying* the action.

"Ordinarily, dismissal is the exceptional remedy and stay the usual remedy, so that if obstacles develop to litigation in the convenient forum the litigant may resume litigation in the California forum." (*A. Douglas Henderson v. Superior Court* (1978) 77

Cal.3d 583, 597-598.) When the trial court grants a stay on grounds of forum non conveniens, it retains jurisdiction over the case and may resume the proceedings upon a proper showing. (*Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 857 (*Archibald*).) According to *Archibald,* "the exceptional case which justifies the dismissal of a suit under the doctrine of forum non conveniens is one in which California cannot provide an adequate forum or has no interest in doing so. Examples would include cases in which *no party* is a California resident." (*Id.* at p. 858; italics added.) Nonetheless, "[i]n considering whether to stay an action, in contrast to dismissing it, the plaintiff's residence is but one of many factors which the court may consider. The court can also take into account the amenability of the defendants to personal jurisdiction, the convenience of witnesses, the expense of trial, the choice of law, and indeed any consideration which legitimately bears upon the relative suitability or convenience of the alternative forums." (*Id.* at p. 860)

The trial court has considerably wider discretion to grant stays because under a stay California retains jurisdiction. For that reason, even an action brought by a California resident is subject to a stay. (*Century Indemnity Co. v. Bank of America* (1997) 58 Cal.App.4th 408, 411 [action brought by two insurers, one of which was a California resident, where all parties were part of a declaratory relief suit brought in Hawaii]; and see *Hansen, supra,* 51 Cal.App.4th at p. 761 [a plaintiff and a defendant were California residents, but decedents' exposure to asbestos occurred primarily in Montana]; *Dendy v. MGM Grand Hotels, Inc.* (1982) 137 Cal.App.3d 457, 460-461 [plaintiffs and some defendants were California residents, but the hotel fire was in Nevada].)

Indeed, it appears the Court of Appeal in *Hansen* was persuaded to uphold the lower court's conclusion—the moving defendant need not prove all of the defendants were subject to jurisdiction—based in part on the fact that the trial court had *stayed* rather than *dismissed* the action. The *Hansen* court held: "[b]ecause the court here stayed the action pending a determination that all defendants were subject to jurisdiction in Montana, there was no abuse[ ] of discretion." (*Hansen, supra,* 51 Cal.App.4th at p.

759.) In contrast, here, the court dismissed the action, reasoning that dismissal was justified because none of the plaintiffs were California residents and because California courts faced an extraordinary budget crisis, furlough days and courtroom closures.

While it was certainly appropriate to consider the residence of the plaintiffs, the court completely ignored the fact that at least one of the defendants—Hill Brothers had claimed in the prior litigation to be a California resident,[8] not subject to jurisdiction in Florida. Other than to remark that the Florida court had not ruled on Hill Brothers' motion to dismiss, no effort was made by the court during the oral argument to explore the residency and personal jurisdiction issues with Hill Brothers' counsel. In light of Hill Brothers' litigation conduct in the prior personal injury litigation there was every reason to believe Hill Brothers would seek to have a wrongful death claim filed in Florida dismissed for lack of jurisdiction. Given the history of lawsuits between these parties, in our view, the court was remiss in disregarding the strong likelihood that successful challenges to jurisdiction would be made in Florida. The court's comments instead reflect that its greatest concern was with the perceived burden on the court. It is certainly true that dismissing the case creates less of a burden on the court, than a stay creates. However, if the lower court is correct, that is if the alternative forum is suitable because defendants are subject to jurisdiction in the other forum, then the burden on the court created by a stay and dismissal is the same—none. If the case is resolved in the other jurisdiction, then the "stayed" action will be dismissed. However, in the event the plaintiff cannot obtain relief in the alternative forum, then a stay gives the plaintiff the ability to pursue its claim in California. In our view, the court erred in failing to take full measure of these possibilities.

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8 In its respondent's brief, Hill Brothers stated that it is a California Corporation with its headquarters in Orange, California.

In sum, we conclude the court *did not* err in finding on the record before it at the time of the *forum non conveniens* motion that a suitable alternative forum existed and that the balance of the private and public interests favored another forum. However, in choosing to dismiss the action, the court picked the wrong remedy—the court should have stayed the action rather than dismissing it. [9]

DISPOSITION

The judgment of dismissal on the ground of *forum non conveniens* is reversed and the matter is remanded. On remand, the court is directed to grant the *forum non conveniens* motion, enter an order to stay the action, and to conduct further proceedings consistent with this opinion. Appellants are entitled to their costs on appeal.

WOODS, J.

We concur:

PERLUSS, P. J. **JACKSON, J.**

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[9] In this case had the trial court granted a stay in the first instance, rather than a dismissal of the action, appellants would have had the option to thereafter request that the stay be lifted by presenting evidence that they could not obtain complete relief in Florida based on the litigation conduct of the defendants in the Florida action. We will not speculate on how a court should rule on such a motion if a request is made in the future.