[Cite as *Mitrovich v. Hammer*, 2005-Ohio-5451.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NOS. 86211 & 86236

PAUL H. MITROVICH, ET AL.	:	
	:	ACCELERATED DOCKET
Plaintiffs-Appellants	:	
	:	JOURNAL ENTRY
vs.	:	and
	:	OPINION
GEORGE HAMMER, ET AL.	:	
	:	
Defendants-Appellees	:	

DATE OF ANNOUNCEMENT OF DECISION:	October 13, 2005
CHARACTER OF PROCEEDING:	Civil appeal from Court of Common Pleas Case No. CV-545310
JUDGMENT:	AFFIRMED
DATE OF JOURNALIZATION:	_____

APPEARANCES:

For Plaintiffs-Appellants: (Paul and Jean Mitrovich)	DAVID J. STERNBERG Sternberg & Zeid Co., L.P.A. 7547 Mentor Avenue Mentor, Ohio 44060-5466
For Defendants-Appellees: (George Hammer & the Estate of Mary Ellen Hammer)	JAMES J. IMBRIGIOTTA Glowacki & Associates 526 Superior Avenue, #510 Cleveland, Ohio 44114
For Defendant-Appellant: (State Farm Fire & Casualty Co.)	PATRICK J. O'MALLEY 55 Public Square, #800 Cleveland, Ohio 44113

COLLEEN CONWAY COONEY, P.J.:

{¶ 1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1.

{¶ 2} In this consolidated appeal, plaintiffs-appellants, Paul and Jean Mitrovich (the "Mitroviches") and defendant-appellant, State Farm Fire and Casualty Insurance Co. ("State Farm"), appeal the trial court's decision granting the motion to dismiss filed by defendants-appellees, George Hammer and the Estate of Mary Ellen Hammer (the "Hammers"). Finding no merit to the appeal, we affirm.

{¶ 3} In 2004, the Mitroviches brought an action against the Hammers and State Farm, alleging that the Hammers were negligent in maintaining their Lake Chautauqua, New York vacation condominium and that such negligence caused damage to the Mitroviches' condominium. State Farm filed a cross-claim against the Hammers for subrogation. The Hammers moved to dismiss the complaint and cross-claim on the basis of *forum non conveniens*, asserting that New York is the appropriate jurisdiction to litigate this matter. The trial court granted the Hammers' motion and dismissed the case without prejudice. The Mitroviches and State Farm appeal this decision.

{¶ 4} In their sole assignment of error, the Mitroviches and State Farm claim that the trial court abused its discretion and erred in dismissing the complaint on the basis of *forum non conveniens*, where the public and private interests outlined in

Chambers v. Merrell-Dow Pharmaceuticals, Inc. (1988), 35 Ohio St.3d 123, 519 N.E.2d 370, overwhelmingly support their choice of forum in Ohio.[1]

{¶ 5} The determination whether there is a more convenient forum for a given case is committed to the sound discretion of the trial court. *Chambers*, supra, at paragraph one of the syllabus. The decision of the trial court will be reversed only upon a clear abuse of discretion. Id. at 127. A reviewing court does not conduct a de novo review of the public and private factors considered by the trial court, but is constrained to determining whether the trial court's balancing of those factors clearly was arbitrary or unreasonable. *Welsh v. Estate of Samuel A. Costello* (Aug. 12, 1999), Cuyahoga App. Nos. 74680 and 74740, citing *Commercial Union Ins. Co. v. Great Am. Ins. Co.* (1997), 124 Ohio App.3d 1, 705 N.E.2d 370.

{¶ 6} In *Chambers*, supra, Ohio adopted the common law doctrine of *forum non conveniens*. Under *forum non conveniens*, a court may resist imposition upon its jurisdiction, although jurisdiction is authorized by a general venue statute. Id. at 125-126, citing *Gulf Oil Corp. v. Gilbert* (1947), 330 U.S. 501, 91 L. Ed. 1055, 67 S. Ct. 839. The doctrine assumes that proper jurisdiction and venue also lie with another forum in which the defendant may be sued. Id.

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[1]State Farm agrees with the Mitroviches' arguments and requests that this court reverse the trial court's decision.

{¶ 7} In determining whether there is a more convenient forum, a trial court must balance all relevant public and private interest factors. The public interest factors to be considered include: (1) the administrative difficulties and delay to other litigants caused by congested court calendars, (2) the imposition of jury duty upon the citizens of a community which has very little relation to the litigation, (3) a local interest in having localized controversies decided at home, and (4) the appropriateness of litigating a case in a forum familiar with the applicable law. *Chambers*, supra at 127.

{¶ 8} Private interest factors to be considered by the trial court include: (1) the relative ease of access to sources of proof, (2) the availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses, (3) the possibility of a view of premises, if a 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 126-127. The weight to be given any of these factors depends upon the facts of each case. *Glidden Co. v. HM Holdings, Inc.* (1996), 109 Ohio App.3d 721, 672 N.E.2d 1108.

{¶ 9} The Mitroviches first argue that the trial court abused its discretion when it dismissed their complaint without providing a thorough analysis on how the private and public interest factors weighed heavily in favor of litigating this matter in New York.

{¶ 10} The trial court, citing *Chambers*, stated in its judgment entry that "the private interest and public interest factors heavily favored litigating this matter in New York." Although the court did not set forth any reasoning, analysis, or factors it considered, we find that the plain language of the entry indicates that it considered all factors. Moreover, the Mitroviches have failed to set forth any supporting authority for their argument, and we find no requirement mandating that the court give an analysis of the factors it considered. Therefore, we presume that the trial court considered all factors in making its decision.

{¶ 11} The Mitroviches also argue that the trial court abused its discretion in disregarding the *Chambers* factors and finding that New York was the more appropriate forum to litigate this matter.

{¶ 12} We recognize that "the plaintiff's choice of forum should rarely be disturbed * * * particularly where the plaintiff has chosen his home forum." *Chambers*, supra at 127, citing *Gilbert*, supra at 508; *Koster v. Lumbermans Mut. Cas. Co* (1947), 330 U.S. 518, 524, 67 S. Ct. 828. 9 L. Ed. 1067. However, we also recognize that the appellate standard of review is an abuse of discretion and unless we find that the trial court acted unreasonably or arbitrarily, "'its decision deserves substantial deference.'" *Chambers*, supra at 127, quoting *Piper Aircraft Co. v. Reyno* (1981), 454 U.S. 235, 257, 102 S. Ct. 252, 70 L. Ed. 2d 419.

{¶ 13} In the instant case, we find no abuse of discretion by the trial court. Although all the parties reside in Ohio, the cause of action accrued in New York at their vacation condominiums. The only connection to Ohio are the parties involved. Therefore, imposing on an Ohio jury to decide this matter, which bears little relation to Ohio, weighs against the Mitroviches' argument. Moreover, New York law is the applicable law. Although the Mitroviches assert that this is a common law negligence action, the rules and regulations of the Chautauqua Lake Estates Association may be interpreted and analyzed in regards to the within matter.

{¶ 14} The Hammers assert that various third persons are indispensable parties to this action, over which Ohio would have no jurisdiction, but New York would. Those parties include plumbing and cleaning companies and the condominium association. The ability to summon witnesses from New York to litigate this matter in Ohio may be hampered. Also, this is an action for damages relating to real and personal property, and a view of the property may be necessary.

{¶ 15} Moreover, the Board of Managers of Chautauqua Lakes Estates Condominium has filed suit in New York against the Hammers for damages associated with this matter. Therefore, in the interest of judicial economy, all matters arising from the same cause of action should be litigated in the same forum, convenient and proper for all parties.

{¶ 16} Finally, contrary to the Mitroviches' assertions, there should be little difficulty in obtaining service against the Hammers, because they own property in New York, and George Hammer is the executor of the estate of Mary Ellen Hammer. See, N.Y. C.P.L.R. 302(a), New York's long-arm statute.

{¶ 17} Therefore, we find that the trial court acted reasonably and did not abuse its discretion in dismissing the complaint and cross-claim without prejudice on the basis of *forum non conveniens*.

{¶ 18} Accordingly, the sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellees recover of appellants the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, J. CONCURS;

ANTHONY O. CALABRESE, JR., J. DISSENTS
(SEE SEPARATE OPINION)

PRESIDING JUDGE
COLLEEN CONWAY COONEY

COURT OF APPEALS OF OHIO EIGHTH DISTRICT

COUNTY OF CUYAHOGA

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	:	
	:	
GEORGE HAMMER, et al.	:	
	:	
Defendants-Appellees	:	

DATE: October 13, 2005

ANTHONY O. CALABRESE, JR., J. DISSENTING:

{¶ 19} I respectfully dissent from my learned colleagues. In *Chambers v. Merrell-Dow Pharmaceuticals, Inc.* (1988), 35 Ohio St.3d

123, the Ohio Supreme Court unequivocally found "the plaintiff's choice of forum should rarely be disturbed * * * particularly where the plaintiff has chosen his home forum." *Chambers*, supra, citing *Gulf Oil Corp. v. Gilbert* (1947), 330 U.S. 501, 507; *Koster v. Lumbermens Mutual Cas. Co.* (1947), 330 U.S. 518, 524.

{¶ 20} The central purpose of a forum non conveniens inquiry is to ensure that the trial is convenient and that the most appropriate forum is available to the plaintiff. *Chambers*, supra. The doctrine of forum non conveniens is designed to prevent a plaintiff from using a liberal venue to vex, oppress, or harass a defendant by bringing a suit in a forum unrelated to the parties or cause of action. See *Gulf Oil Corp. v. Gilbert* (1946), 330 U.S. 501.

{¶ 21} I would find that the trial court abused its discretion and acted arbitrarily in dismissing the plaintiffs' complaint where the trial court failed to provide a thorough analysis on how the private and public interest factors, outlined in *Chambers v. Merrell-Dow Pharmaceuticals, Inc.* (1988), 35 Ohio St.3d 123, weigh heavily in favor of litigating the matter in another forum. I find that the evidence, taken as a whole, demonstrates that the court abused its discretion. Accordingly, I would sustain appellants' assignment of error and reverse and remand the decision of the trial court.